

Country Report: Poland



2021
Update

Acknowledgements & Methodology

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

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

The information in this report is up-to-date as of 31 December 2021, unless otherwise stated.

The Asylum Information Database (AIDA)

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



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Glossary & List of Abbreviations

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

Statistics

Overview of statistical practice

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

Applications and granting of protection status at first instance: 2021

	Applicants in 2021	Pending at end 2021	Refugee status	Subsidiary protection	Rejection	Refugee rate	Sub. Prot. rate	Rejection rate
Total	7,698	3,850	1,019	1,135	1,457	28.22%	31.43%	40.35%

Breakdown by countries of origin of the total numbers

Belarus	2,257	1,332	140	1,008	3	12%	87%	0.2%
Afghanistan	1,781	308	751	3	7	98%	0.3%	0.9%
Iraq	1,400	1,115	1	1	268	0.3%	0.3%	99%
Russian Federation	987	423	17	64	644	2.3%	8,8%	88%
Ukraine	261	109	1	5	238	0.4%	2%	97%
Syria	138	62	10	7	1	55%	38.5%	5.5%
Tajikistan	115	68	1	22	37	16%	36.5%	61.5%
Turkey	107	46	76	0	15	83.5%	0	16.5%
Iran	78	45	2	0	23	8%	0	92%
Georgia	71	22	0	0	45	0	0	100%

Source: Office for Foreigners, statistics provided upon request.

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

Gender/age breakdown of the total number of applicants: 2021

	Number	Percentage
Total number of applicants	7,698	100%
Men	4,658	60,5%
Women	3,040	39,5%
Children	2,514	32,5%
Unaccompanied children	199	2,5%

Source: Office for Foreigners, statistics provided upon request.

Comparison between first instance and appeal decision rates: 2021

	First instance		Appeal	
	Number	Percentage	Number	Percentage
Total number of decisions on merits	3,611	100%	1,018	100%
Decisions granting international protection	2,154	59,5%	11	1,1%
Rejection	1,457	40,5%	1,007	98,9%

Source: Office for Foreigners, statistics provided upon request.

Overview of the legal framework

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

Title (EN)	Original Title (PL)	Abbreviation	Web Link
Law of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland (Journal of Laws 2012 pos. 680)	Ustawa z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej (Dz.U. 2012 poz. 680)	Law on Protection	https://bit.ly/3sITJC2 (PL) - uniform text of the act, as of 2021
Law of 12 December 2013 on foreigners (Journal of Laws 2013 pos. 1650)	Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach (Dz.U. 2013 poz. 1650)	Law on Foreigners	https://bit.ly/3JaDFJY (PL) - uniform text of the act as of 2021
Law of 14 June 1960 Code of administrative procedure (Journal of Laws 2013 pos. 267)	Ustawa z dnia 14 czerwca 1960 r. Kodeks Postępowania Administracyjnego (Dz.U. 2013 poz. 267)	Code of Administrative Procedure	http://bit.ly/2RFIG5t (PL)
Law of 2 March 2020 on specific solutions related to the prevention and combating COVID and other infectious diseases and crisis they caused	Ustawa dnia 2 marca 2020 r. o szczególnych rozwiązaniach związanych z zapobieganiem, przeciwdziałaniem i zwalczaniem COVID-19, innych chorób zakaźnych oraz wywołanych nimi sytuacji kryzysowych	COVID Law	https://bit.ly/3djmlpK
Law of 12 March 2022 on assistance to Ukrainian nationals with regard to the arm conflict on the territory of this country	Ustawa z 12 marca 2022 r. o pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium tego państwa	Law on assistance to Ukrainian nationals	https://bit.ly/3JC15si The law is applicable as of 24 February 2022

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

Title (EN)	Original Title (PL)	Abbreviation	Web Link
Ordinance of the Minister of Interior and Administration of 19 February 2016 on the amount of assistance for foreigners seeking international protection (Journal of Laws 2016 pos. 311)	Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 19 lutego 2016 r. w sprawie wysokości pomocy dla cudzoziemców ubiegających się o udzielenie ochrony międzynarodowej (Dz.U. 2016 poz.311)	Regulation on Amount of Assistance for Asylum Seekers	http://bit.ly/2kwxqo7 (PL)
Ordinance of the Ministry of Interior of 23 October 2015 on the rules of stay in the centre for foreigners (Journal of Laws 2015 pos.1828)	Rozporządzenie Ministra Spraw Wewnętrznych z dnia 23 października 2015 r. w sprawie regulaminu pobytu w ośrodku dla cudzoziemców (Dz. U. 2015 poz. 1828)	Regulation on Rules of stay in the Centre for Asylum Seekers	http://bit.ly/1OheyUn (PL) amended thrice in 2021

Ordinance of the Ministry of Interior and Administration of 24 April 2015 on the guarded centres and detention centres for foreigners (Journal of Laws 2015 pos. 596)	Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 24 kwietnia 2015 r. w sprawie strzeżonych ośrodków i aresztów dla cudzoziemców (Dz.U. 2015 poz. 596)	Regulation on Detention Centres	http://bit.ly/37HtN8o (PL) amended in 2021 by: https://bit.ly/3aaJI2E
Ordinance of the Ministry of Interior of 4 November 2015 on the form of application for international protection	Rozporządzenie Ministra Spraw Wewnętrznych z dnia 4 listopada 2015 r. w sprawie wzoru formularza wniosku o udzielenie ochrony międzynarodowej	Regulation on the application form	http://bit.ly/2EDHycf (PL)
Ordinance of the Ministry of Interior and Administration of 13 March 2020 on temporary suspension of limitation of cross-border movement on some border crossing points	Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 13 marca 2020 r. w sprawie czasowego zawieszenia lub ograniczenia ruchu granicznego na określonych przejściach granicznych	Regulation on the cross-border movement	https://bit.ly/3GEjUsC , Amended in 2021 by https://bit.ly/3gwTtKX

Overview of the main changes since the previous report update

The report was previously updated in **April 2021**.

Asylum procedure

- ❖ **Access to the territory:** Access to the Polish territory at the Polish-Belarusian border became the most significant challenge in 2021. The number of foreign nationals wanting to cross the border increased significantly in mid-2021. In response Poland militarized the border, prevented access to international protection procedure and blocked access to the border zone by introducing the emergency state. As a result, foreign nationals were left stranded at the border for months and those who managed to get through were pushed back to the Belarusian side. The situation quickly became a humanitarian crisis, with people found in the dense woods, suffering from exhaustion and hypothermia. Approximately 21 persons were found dead by mid-December 2021. The situation at the Polish-Belarusian border gave rise to controversial legislative changes, which allow for an expulsion in a simplified procedure and restrict the possibility to apply for international protection for persons intercepted in the border area.
- ❖ **First instance procedure:** In 2021, a total of 7,698 applications for international protection were lodged, thus marking a significant increase compared to 2020 dominated by the pandemic (2,803 applications). The recognition rate at first instance increased significantly, with more than a half of applicants whose cases were examined in 2021 receiving refugee status or subsidiary protection. The recognition rate was influenced by the evacuation of nearly 1100 Afghans who were then granted refugee status. The vast majority of applicants granted subsidiary protection were Belarusians. Identification of vulnerable applicants remains the main procedural challenge.
- ❖ **Second instance procedure:** The chances of success of appeals at second instance remain very low. In 2021, out of 1,118 persons whose appeals were examined, 1107 had their decision left unchanged. The Refugee Board did not grant any refugee status and only granted subsidiary protection to 11 persons throughout the year. The Voivodeship Administrative Court in Warsaw continued to grant suspensive effect to the majority of appeals against decisions on international protection in 2021 if they concerned first applications. Moreover, on the basis of the COVID Law, the time limit to leave Poland continues to be extended by 30 days after the epidemic state (or the state of epidemic threat) is finished.
- ❖ **Nationalities of applicants:** In 2021 the main country of origin of applicants was Belarus, while in the previous years it was mainly Russian Federation. Second biggest group were Afghans, which was influenced by 1100 Afghans evacuated to Poland. In 2022 (as of 11 May) 3,296 million persons came from Ukraine to Poland as a result of war, most of them were Ukrainians.² However, thanks to the introduced facilitations, they did not have to apply for international protection. See more information in the box on the situation in Poland after 24 February 2022.

Reception conditions

- ❖ **Access to reception conditions:** The lack of access to material reception conditions is particularly worrying for persons who are waiting to officially apply for asylum as they are not – by law - entitled to any benefits during that waiting time. Moreover, the humanitarian crisis at the Polish-Belarusian border in 2021 left many prospective asylum seekers without access to food, water, shelter and medical assistance.
- ❖ **Forms and levels of reception conditions:** The number of reception centres dropped in 2021: at the end of the year only eight reception centres were operating (down from ten in 2020). Still more asylum seekers lived privately than in reception centres. The financial allowance that is provided

² The Border Guard official Twitter account, information from 11 May 2022, available at <https://bit.ly/3wydpo7>.

to them to meet basic needs remained insufficient. Despite the governments' plans to slightly increase it from 1st January 2022, the ordinance in this regard has not been adopted.

- ❖ **Conditions in reception facilities:** the amount and quality of food served in the reception centres was heatedly debated due to the mushroom poisoning in the Dębak centre that led to death of two children.
- ❖ **Access to education:** During COVID-19 pandemic asylum-seeking children continued to face obstacles in participating in online classes due to a shortage of computers and other necessary tools, conditions or assistance.
- ❖ **Health care:** More complaints about the medical contractor providing health care to asylum seekers (Petra Medica) were submitted in 2021. Asylum seekers were included in COVID-19 vaccinations program, but in practice they faced some obstacles in receiving vaccinations (refusal by doctors to refer asylum seekers for the vaccinations, disinformation and lacking assistance in foreign languages). Only 511 asylum seekers were vaccinated in 2021.

Detention of asylum seekers

- ❖ **Detention capacity:** Due to situation at the Polish-Belarusian border two new detention centres (in Czerwony Bór and Wędrzyn) were opened and the number of available detention places has been increased significantly up to 2308 at the end of 2021 compared to 595 in 2020. Foreigners were placed in containers (in Lesznowola and Kętrzyn) and in a sport hall in Kętrzyn.
- ❖ **Detention of children:** The best interest of the child is not properly assessed in detention proceedings. The courts rely on motions for detention issued by Border Guard, without a proper assessment of individual circumstances and regardless of the best interest of the child. Experts' opinions are very rarely requested and psychological opinions stating that detention has a negative impact on the child's well-being are disregarded in practice. Children cannot exercise their right to be heard as they are not involved in detention proceedings. Moreover, detention is not ruled for the shortest period of time and there are little efforts to reduce the duration of detention of children. In 2021 the number of detained children has increased up to 567 in total, whereas in 2020 only 101 children were detained.
- ❖ **Alternatives to detention:** The detention is automatic and is applied as a rule. The use of alternatives to detention continued to be an exception in 2021. During that year, Border Guards issued alternatives to detention in case of 96 asylum seekers and to 737 foreigners. The courts often claim that applying alternatives to detention is impossible, as asylum seekers cross the border unlawfully and there is a risk of escape, they do not have a regular place of residence or savings, ignoring the fact that asylum seekers are entitled to stay in reception centres and receive pocket money.
- ❖ **Legal assistance in detention:** Foreigners are not informed about their right to legal assistance in a court proceeding and they do not receive a Border Guards' motion on prolongation of their detention. Furthermore, in the district court in Krosno Odrzańskie even the legal representatives, if appointed in detention case, do not take part in the court proceedings. As a result, foreigners or their legal representatives are not able to present their views before the court decides on detention. Additionally, the information on the right to appeal is not translated in foreigners' language and they are not aware of the right to appeal. In some detention centres migrants have a restricted access to telephones, Internet and printer or scanner which influenced their ability to challenge their detention.

Content of international protection

- ❖ **Integration:** Studies show that housing is one of the major issues for both asylum seekers and beneficiaries of international protection in Poland. Several reports stress that in many cases beneficiaries face homelessness. In less extreme cases inadequate quality of housing results in slowing down the foreigners' integration and may have a negative impact on their physical and mental health. Another important gap relates to the lack of specialised medical services for victims of torture or traumatised refugees.
- ❖ **Labour market:** Beneficiaries face problems with learning Polish language and the lack of knowledge of Polish determines limited access to labour market.
- ❖ **Residence permits:** During the COVID-19 pandemic, the validity of the residence cards provided to beneficiaries of international protection was prolonged by law until 30 days after the end of the epidemiological state in Poland.
- ❖ **Long-term residence:** the first-instance procedure concerning the long-term residence permit was prolonged up to 6 months (instead of 3) and the appeal proceedings now should last no longer than 3 months (instead of 2).

Response to the situation in Ukraine as of 10 May 2022

As a result of the Russian invasion that started on 24 February 2022 in the territory of the Ukraine, Poland accepted refugees on an unprecedented scale. According to the Border Guard, 3.296 million persons came from Ukraine to Poland since the war started,³ mainly Ukrainian nationals. Since the beginning of this crisis, Poland implemented an 'open-door' policy. Indeed, on 27 February the Office for Foreigners published on its website that all the people fleeing Ukraine do not have to register anywhere or be concerned about the legality of their stay, including Ukrainian nationals that have already stayed in Poland before the outbreak of the conflict.⁴

Entry to Poland was made possible for people fleeing Ukraine on the basis of the consent of the Border Guard issued for 15 days⁵ on the basis of the article 6(5)c of the Schengen Code.⁶ However, the representatives of the Polish Commissioner for Human Rights as well as NGOs reported that foreigners of other nationalities than Ukrainian faced more obstacles to cross the border, especially when they did not have passports.⁷

Notwithstanding government's welcoming approach, it was the Polish society that provided immediate assistance such as food, water, clothes, transport and shelter to people crossing the border from Ukraine to Poland.

On 4 March 2022 the temporary protection status was introduced in the EU by the Council Implementing Decision for people fleeing war in Ukraine, that covered both Ukrainian nationals and third country nationals

³ The Border Guard, official Twitter account, information from 11 May 2022, available at: <https://bit.ly/3wydpo7>.

⁴ The Office for Foreigners, official website, information from 27 February 2022, available at: <https://bit.ly/3sNveP1>.

⁵ *In theory the concerned persons had to register after that period but in practice it was not required for accessing the services.*

⁶ *Article 32 of the Law on Foreigners*

⁷ The Commissioner for Human Rights, information from 27 February 2022, available at: <https://bit.ly/3Nq95OH> and from 1 March 2022, available at: <https://bit.ly/3Nr4KLe>.

living in Ukraine before 24 February on the basis of permanent residence permit or refugee status or equivalent form of protection.⁸

On 12 March 2022 special Law on assistance for Ukrainian nationals in connection with Russia's ongoing invasion of Ukraine (Law on assistance) was published and entered into force.⁹ Its provisions are applicable since 24 February 2022. This Law concerns Ukrainians who left Ukraine as a result of Russian aggression, came directly to Poland¹⁰ and then declared their intention to stay in Poland. They are entitled to register for the temporary protection status, which gave them the right to stay in Poland for 18 months. To be able to enjoy many other rights, services and benefits associated with this status, persons needed a national registry number (PESEL). Applying for it was made possible from 16 March, also in a less formalized manner. The Law applies also to spouses of Ukrainian nationals not holding Ukrainian citizenship who came to Poland from Ukraine as a result of the war.

All the other persons not covered by the Law on assistance can register for temporary protection status on the basis of the provisions of the Law on Protection, which are based on the Council Implementing Decision. The content of temporary protection status offered on the basis of the Law on Protection to foreign nationals living in Ukraine before the war and not being spouses of Ukrainian nationals is narrower; their status is more similar to international protection applicants, although they gain access to labour market straight after registration as a temporary protection beneficiary. The Commissioner for Human Rights suggested that the Law on assistance – ensuring wider protection than the existing provisions on temporary protection – should be applicable also to foreigners who lived in Ukraine before the war started.¹¹

On the basis of the Law on assistance, Ukrainian nationals gained full access to the Polish labour market (no work permit required) and the Polish health care system just like Polish nationals and received a one-off cash allowance for subsistence, amounting to PLN 300 (63 EUR) per person. Ukrainians were also entitled to many social benefits, including family benefits. Children from Ukraine gained the right to attend Polish schools on the same basis as Polish nationals. Many ad-hoc reception centres have been created in sport or concert halls, providing assistance, vaccinations, material help (such as hygiene articles), food and shelter. Also, institutions and private entities could benefit from a special allowance in case they hosted Ukrainian nationals (this allowance was then limited to 120 days).

According to the Office for Foreigners, as of 4 May the number of temporary protection status beneficiaries in Poland was 1.065.983 persons: 1.063.696 Ukrainian nationals and 2.287 foreigners of other nationalities.¹² As of 3 May 2022, in Polish schools of all levels (kindergarten, primary school, secondary school) there were 195.847 Ukrainian children who came after 24 February 2022. According to the Ministry of Labour and Social Policy, as of 2 May 2022 more than 102.000 Ukrainian nationals who came after the Russian invasion started currently work in Poland, 75% of whom are women.¹³

⁸ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection, available at: <https://bit.ly/3wslfjj>.

⁹ Law of 12 March 2022 on assistance for Ukrainian nationals in connection with Russia's ongoing invasion of Ukraine, available at: <https://bit.ly/3yT8a5A>.

¹⁰ The condition regarding direct entry was then deleted on 26 March 2022, applicable since 24 February 2022.

¹¹ The Commissioner for Human Rights, Comments on the Law on assistance for Ukrainian nationals, available at: <https://bit.ly/3sRxeWv>.

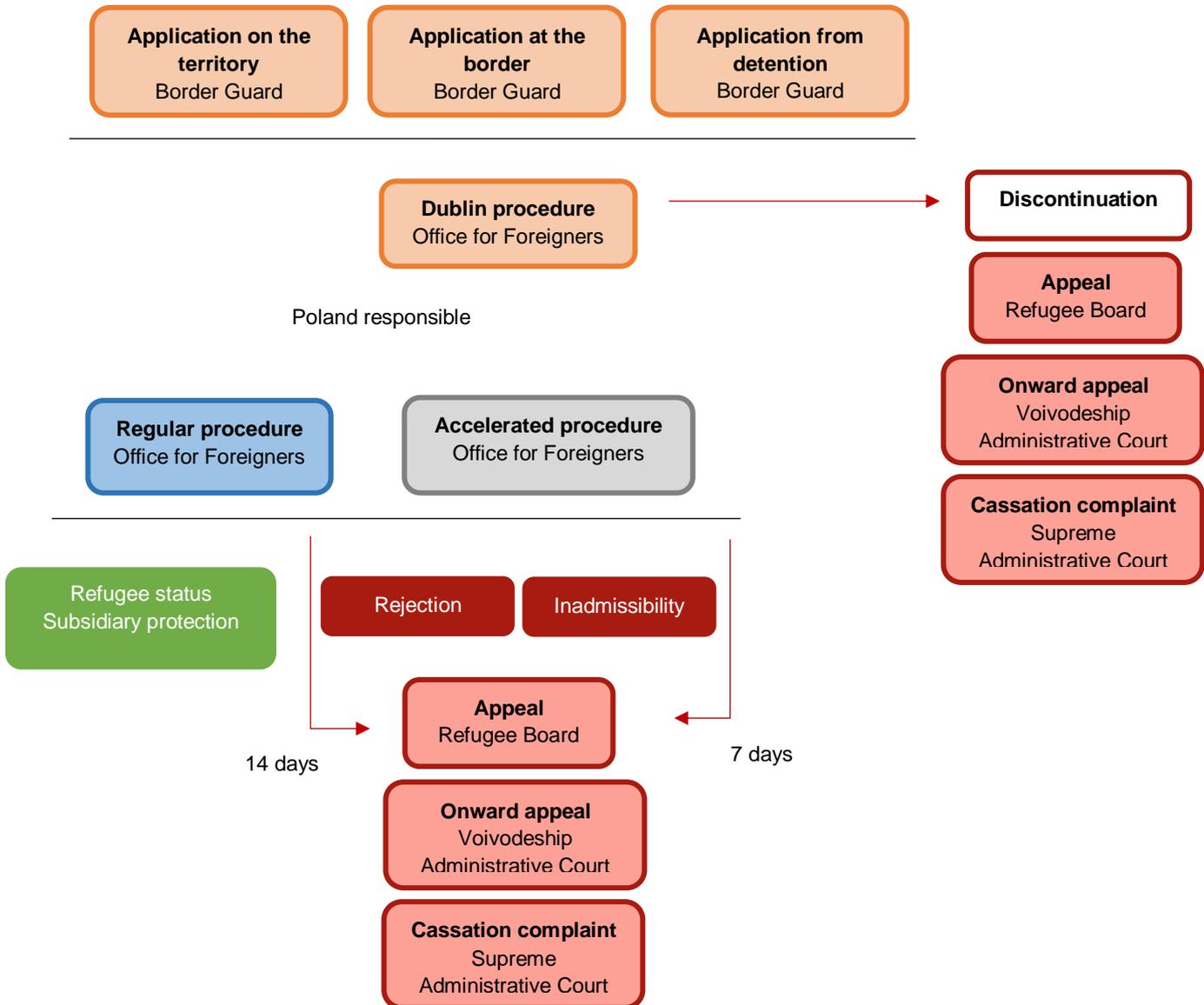
¹² The Office for Foreigners, information sent by e-mail, 13 May 2022.

¹³ Ministry of Labour and Social Policy, information from 2 May 2022, available at: <https://bit.ly/3wHul6m>.

Asylum Procedure

A. General

1. Flow chart



2. Types of procedures

Indicators: Types of Procedures

Which types of procedures exist in your country?

- | | | |
|--|---|--|
| ❖ Regular procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Prioritised examination: ¹⁴ | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ▪ Fast-track processing: ¹⁵ | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Dublin procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Admissibility procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Border procedure: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ❖ Accelerated procedure: ¹⁶ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

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

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

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

4. Number of staff and nature of the determining authority

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the determining authority?
Office for Foreigners	29 caseworkers	Ministry of Interior and Administration	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

The Office for Foreigners (OFF) is the authority responsible for examining applications for international protection and competent to take decisions at first instance. The number of caseworkers in 2021 was 29 (in comparison to 25 in 2020), who were responsible for conducting interviews and examining applications for international protection.

¹⁴ For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) recast Asylum Procedures Directive.

¹⁵ Accelerating the processing of specific caseloads as part of the regular procedure.

¹⁶ Labelled as "accelerated procedure" in national law. See Article 31(8) recast Asylum Procedures Directive.

Caseworkers are trained in all aspects of the asylum procedure, in particular drafting of decisions and conducting interviews. The training is provided internally as well as through the European Asylum Support Office (EASO). In addition, training for staff members conducted by UNHCR is envisaged, although no further information is available on which topics. Specific training is also provided by psychologists and EASO to staff members of the Department on Proceedings for International Protection on interviewing vulnerable groups immediately upon recruitment. Although there is no specialised unit for vulnerable groups within the OFF, only qualified staff members are allowed to decide on applications from persons with special needs. In 2020 the number of such staff members was 21.¹⁷ In 2021 this information has not been provided upon request.

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

The Head of the Office for Foreigners is appointed by the Prime Minister, upon the request of the Ministry of Interior and Administration, among persons applying via open call.¹⁸ There is no regular monitoring of the decisions, but in practice caseworkers fill in a special questionnaire which is made available to the Heads of Units and Departments of the OFF to review their activities. There is no quality control mechanism after a decision has been issued by the OFF, however. Monitoring can be conducted at any time by the responsible Ministry or the Supreme Chamber of Control (*Najwyższa Izba Kontroli*). According to the Office for Foreigners, the Ministry cannot be involved in any way in the decision-making process e.g. by issuing binding instructions or by intervening in specific individual cases. In high profile cases, an intervention is probable according to NGO lawyers working on specific cases.

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

5. Short overview of the asylum procedure

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

First instance: The main asylum authority is the Head of the Office for Foreigners, which falls under the Ministry of Interior and Administration. It is an administrative authority specialised in asylum and is responsible for examining, granting, refusing and withdrawing protection, in Poland, as well as for Dublin procedures (see [Number of staff and nature of the determining authority](#)). A Dublin procedure is applied

¹⁷ Information provided by the Office for Foreigners, 26 January 2021.

¹⁸ Article 17 of the Law on Foreigners.

whenever there is evidence or any sign that another State may be responsible for examining the claim.¹⁹ However, Poland is principally a “receiving” country, rather than a country which requests and carries out transfers to other countries.

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

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

The negative decision is not automatically accompanied by a return decision. In the two last cases, the determining authority informs the Border Guard about either one of these circumstances, subsequently allowing for return proceedings to be initiated.

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

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

The Refugee Board may then:

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

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

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

There is also a national protection status called ‘asylum’. A foreigner can be granted ‘asylum’ in a separate procedure if it is necessary to provide them with protection, but only if it is in the interest of the state. Political aspects are, therefore, taken into account in this procedure. Throughout the years, the procedure has been very rarely applied (3 positive cases in 2021, 4 positive cases in 2020, one case in 2019 and none in 2018).

¹⁹ The Dublin procedure should be applied in every case: Article 36(1) Law on Protection.

B. Access to the procedure and registration

1. Access to the territory and push backs

Indicators: Access to the Territory

1. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs? Yes No
2. Is there a border monitoring in place? Yes No
 - ❖ If so, who is responsible for border monitoring? National authorities NGOs Other
 - ❖ If so, how often is border monitoring carried out? Regularly²⁰ Rarely Never

Polish-Belarus border

Since mid-2021 the numbers of asylum seekers and migrants seeking to enter Poland from Belarus increased significantly. According to the Border Guards, in August 2021 alone 3,500 persons tried to cross the border, compared to none in August 2020.²¹ Belarus facilitated irregular migration to the EU in response to the EU sanctions,²² while Poland refused to provide access to asylum procedures to those in need. As a result, in August 2021 a group of some 30 Afghan nationals (men, women and children) was stranded for several weeks at the border near the village Usnarz Górny, without the possibility of neither entering Poland, nor going back to Belarus.

In the end of August the ECtHR issued an interim measure ordering Poland to provide food, water, clothing, medical assistance and, if possible, shelter to the group of Afghans stranded in Usnarz Górny.²³ On September 27, this order was extended and further two interim measures were indicated: The Court asked to provide direct contact between the applicants and their lawyer and not to send the applicants to Belarus if they were on the Polish territory.²⁴ Poland has not implemented them so far.

As a result, the only help to those people came from non-governmental sources. In August civil society organizations and activists provided humanitarian and legal assistance to persons trapped at the border and by encountering other groups of foreigners in the forests nearby were also able to document pushbacks.²⁵ Some NGOs opened a temporary office on the spot.²⁶

However, on 2 September 2021 the state of emergency was officially introduced in the part of Podlaskie and Lubelskie Voivodeship, in the area surrounding the border with Belarus.²⁷ It included a ban of staying in the area for everyone except certain categories of persons (i.e. inhabitants), a prohibition of recording by any technical means and restriction on access to public information on actions related to the border

²⁰ This refers to once per month.

²¹ The Border Guard, Podlaskie Division, news from 1.09.2021, At the Polish-Belarusian border: <https://bit.ly/3B6sWxF>.

²² Fundamental Rights Agency, Migration: Key fundamental rights concern, Quarterly Bulletin 3, available (EN) at: <https://bit.ly/3uEvu4G>.

²³ ECtHR, R.A. and Others v. Poland (application no. 42120/21), press release from 25 August 2021.

²⁴ ECtHR, R.A. and Others v. Poland (application no. 42120/21), press release from 28 September 2021

²⁵ Grupa Granica, 'Humanitarian crisis at the Polish-Belarusian border', 10 December 2021, available (EN) at: <https://bit.ly/3uF6jiF>.

²⁶ Fundacja Ocalenie, Polish-Belarusian border, summary of actions, information (EN) available at: <https://bit.ly/34zehim>.

²⁷ Ordinance of the Council of Ministers of 2 September 2021 on limitations of rights and liberties due to the state of emergency [Rozporządzenie Rady Ministrów z dnia 2 września 2021 r. w sprawie ograniczeń wolności i praw w związku z wprowadzeniem stanu wyjątkowego], available (PL) at: <https://bit.ly/3tdWdmw>.

protection. It severely limited the possibility for journalists and civil society organizations to monitor the situation at the border and provide humanitarian assistance.²⁸ Nevertheless, many people (activists as well as inhabitants of the restricted area) managed to stay active and help asylum seekers and migrants, who were often left in the dense woods surrounding the restricted area of the border zone for months, with serious health problems. (For the medical issues at the border see also chapter [Health care](#)).

The situation in the border zone has quickly become a humanitarian crisis. Besides leaving people without any assistance in the border area, Border Guards also carried out push backs. According to the report of Grupa Granica (GG) (a social movement of activists and NGOs voluntarily assisting asylum seekers and migrants at the border despite the limited access), the typical scenario was as follows: “most people who manage to cross the Polish border are forcibly brought back to the border and pushed towards the razor wire fencing on the border with Belarus. Polish border guards, assisted by the military and the police, stop migrants within the border area, and — failing to initiate any legal procedures (i.e. for return decision or granting international protection if a person asks for it)—force migrants to return to Belarus in places far from official border crossings. This process is applied indiscriminately: to elderly people, women, children and men. The migrants, however, are not returned. Immediately after they cross the border, the Belarusian guards violently force them to cross again into Poland.”²⁹

The Polish Ombudsman (the Commissioner for Human Rights) became the sole institution in Poland with access to areas near the border, albeit with some difficulties.³⁰ The border zone as well as the Border Guard unit’s detention facilities were visited around four times a month in the second half of 2021 by the Commissioner for Human Rights within the National Mechanism for the Prevention of Torture. The Commissioner also sent interventions to the relevant stakeholders, regarding e.g. living conditions at the border and access to the proceedings for international protection, since it had been confirmed by the Commissioner’s representatives, that the foreigners declared a will to apply for international protection.³¹ The Ministry of the Interior and Administration replied that the relevant legal provisions regarding international protection are complied with, and the persons are not in the territory of Poland and verbal contact between Polish officers and foreigners staying on the Belarusian side does not establish jurisdiction over them.³²

In November the Council of Europe Commissioner for Human Rights visited the border zone and reported that she had witnessed clear signs of their painful ordeal: wounds, frostbite, exposure to extreme cold, exhaustion and stress. The Commissioner also recognized hate and fear that surrounded the provision of humanitarian help to migrants and refugees and called for investigation of reprisals directed at people who brought humanitarian help, such as the attack on the cars of volunteer medics providing first aid to the people stuck at the border.³³

With temperatures in the forests dropping below zero, at least 21 persons died in the border area by mid December 2021, but the number is likely much higher.³⁴ UNHCR and IOM issued a joint statement on the deaths, saying they had made clear the dangers of pushbacks and of people “stranded for weeks, unable

²⁸ Fundamental Rights Agency, Migration: Key fundamental rights concern, Quarterly Bulletin 3, available (EN) at: <https://bit.ly/3uEvu4G>.

²⁹ Grupa Granica, ‘Humanitarian crisis at the Polish-Belarusian border’, 10 December 2021, available (EN) at: <https://bit.ly/3uF6jiF>.

³⁰ The Commissioner for Human Rights Poland and the CoE delegation was stopped by the Police on 18 November 2021, when they reached the restricted zone. Information available at: <https://bit.ly/375vkK1>.

³¹ The Commissioner for Human Rights Poland, Letter to the Ministry of Interior and Administration, 25 August 2021, available (PL) at: <https://bit.ly/3s5gFzn>.

³² The Ministry of Interior and Administration, Letter to the Commissioner for Human Rights, 19 October 2021, available (PL) at: <https://bit.ly/3LdAhjz>.

³³ The CoE Commissioner for Human Rights, Country visit, 19 November 2021, <https://bit.ly/3K7xN4X>.

³⁴ IOM via Twitter, 14 December 2021, available at: <https://bit.ly/3hnQeG2>.

to access any form of assistance, asylum or basic services. Many were left in dire situations, exposed to the elements, suffering from hypothermia.”³⁵

The Polish authorities’ response to the crisis concentrated mainly on militarization of the border, namely increasing the number of troops (Border Guard, Police and army) to protect the border and on building the physical barrier to stop influx of asylum seekers and migrants. Razor wire fencing is to be replaced by a high-tech 353-million-euro border wall, 186 km long and 5,5 m tall. Its construction started in January 2022 and its completion is planned by summer 2022. The construction is very controversial and has raised concerns from both the humanitarian and environmental point of view.³⁶

The state of emergency has been prolonged several times, most recently until 30 June 2022.³⁷ It is worth noting that on 18 January 2022, Poland’s Supreme Court examined the complaint submitted by the Commissioner for Human Rights and ruled on the legality on the country’s “state of emergency” legislation, finding that the emergency measures went beyond what is permitted by the Polish Constitution.³⁸

Developments of the legal framework and available statistics. The situation at the border gave rise to controversial legislative changes. On 21 August 2021 the Regulation on the suspension of cross-border movement – which is one of the COVID measures - was amended by the Ministry of Interior and Administration.³⁹ This amendment provided legal basis for direct removal of persons from the territory if they appeared at the border crossing point on which the cross-border movement had been suspended or limited or if they appeared outside of any border crossing point. According to the Commissioner for Human Rights, although this amendment does not concern persons seeking international protection directly, it limits significantly access to the proceedings for international protection. In fact, those who fall in the above categories cannot effectively apply for protection at all.⁴⁰

In parallel, on 23 August 2021, the government submitted to the Parliament a bill amending the Law on foreigners and the Law on granting protection to foreigners in the territory of the Republic of Poland. The draft law was aimed at accelerating expulsions of foreign nationals immediately after unauthorized crossing of the external border of the EU. The draft law triggered concern among human rights NGOs, as these provisions give grounds for removal of a foreign national from Poland, even if they apply for international protection.⁴¹

On 26 October 2021 the amendments entered into force. As previously planned, it introduced a new legal instrument allowing for expulsion: an order to leave Poland after the foreigner crossed the border in an unauthorized manner.⁴² The order to leave Poland is accompanied by re-entry ban covering Schengen zone, so it has the same effect as a return order based on EU Return Directive, but is much more simplified. The new law also allows the Office for Foreigners to disregard an application for international protection submitted by a foreigner who crossed the border in an unauthorized manner, unless:

- they came directly from the territory where their life or freedom was threatened by persecutions or serious harm and
- they presented reliable reasons for illegal entry and
- they applied for international protection directly after crossing the border.⁴³

³⁵ ECRE, Poland: Four Deaths at Belarus Border Expose “Dire Situation” Of Stranded Refugees – UNHCR Requests Access as Poland Deploys More Soldiers.

³⁶ Protest at the Polish-Belarusian border against the wall, 27 February 2022, <https://bit.ly/3MdB7Nu>.

³⁷ Ordinance of the from 28 February 2022, available at: <https://bit.ly/3Msv5Jh>.

³⁸ The Commissioner for Human Rights, The Ordinance on the state of emergency found unconstitutional, 19 January 2022, <https://bit.ly/3lxHuJw>.

³⁹ See the table Overview of the Legal Framework in the beginning of the report.

⁴⁰ Letter of the Commissioner for Human Rights to the Ministry of the Interior and Administration, <https://bit.ly/3K8KV2>.

⁴¹ Comments of the HFHR on the bill, 6 September 2021, <https://bit.ly/3lAsQ45>.

⁴² Article 303b of the Law on Foreigners.

⁴³ Article 33(1)a of the Law on Protection.

As for the relations between the Regulation and the amended version of the Law on Foreigners, both instruments are applied in parallel. The Law on Foreigners has a narrower personal scope because it applies to persons who were apprehended immediately after unauthorized crossing of the border. Contrary to the Regulation, the amended Law on Foreigners is not a temporary measure.⁴⁴

The Commissioner for Human Rights and NGOs strongly criticized the new law. UNHCR in its observation regretted that the amendments significantly restrict the possibility to seek asylum for persons intercepted in the border area, summarizing that "the Draft Law relies on a misapplication of article 31 of the Geneva Convention".⁴⁵

According to the GG, the new Law intended to make border guards' actions, previously unlawful, legal.⁴⁶ On the basis of the available statistics, the conclusion can be drawn that the new Law is much more frequently applied as a basis for the order to leave Poland than as a justification for disregarding the application for international protection. According to the Border Guards, in 2021 2,384 third country nationals were ordered to leave Poland on the basis of the new Law⁴⁷ Still, this instrument has been applied selectively, notably to some persons, perhaps because it requires a certain administrative procedure (contrary to the removal based on the Regulation amended on 21 August). The majority of persons are however expelled without their application being registered. As for the statistics on disregarding the application for international protection based on the new Law, the Office for Foreigners reported it was applied towards 5 persons in 2021⁴⁸, so it seems that this amendment did not have much impact so far in this regard.

According to the Border Guard Headquarters, 33,147 persons were refused entry at the Belarussian border in 2021. Only 52 persons submitted an appeal.⁴⁹

Unfortunately, it is impossible to estimate how many persons have been stranded between Poland and Belarus and how many of them need international protection and have been denied access to the proceedings. GG reports that from the beginning of September until mid-November the activists were asked for humanitarian assistance by 5,370 persons. Most importantly, they lost contact with many of them, including children, unable to get to know their whereabouts. GG reports they are still asked for assistance by some 50-70 foreigners per week at the border with Belarus.⁵⁰

Border monitoring. Official border monitoring is based on an agreement between UNHCR for Central Europe and the Border Guards Headquarters of 21 October 2009. The monitoring visits are to be conducted by the NGO Halina Niec Legal Aid Center and should, according to UNHCR, take place once a month. The reports from these visits are not publicly available. In addition, the past years, independent monitoring visits to the border crossing point in **Terespól** were held by the Commissioner for Human Rights,⁵¹ Amnesty

⁴⁴ G. Baranowska, Legalność i dopuszczalność procedury push-back (wywózek) i ocena prób ich legalizowania w Polsce [Legality and admissibility of push-back procedures and assessment of attempts of legalization of push backs in Poland], (in) W. Klaus (ed) Poza prawem. Prawna ocena działań Państwa Polskiego w reakcji na kryzys humanitarny [Outside the law. Legal assessment of the Polish state actions in reaction to the humanitarian crisis]. NA GRANICY POLSKO-BIAŁORUSKIEJ [Outside the law], Warsaw 2022.

⁴⁵ UNHCR, Observations on the draft law amending the Act on Foreigners and the Act on Granting Protection to Foreigners in the territory of the Republic of Poland (UD265), 16 September 2021, available at: <https://bit.ly/3oxgAth>.

⁴⁶ Grupa Granica, 'Humanitarian crisis...', p.18.

⁴⁷ Information provided by the Border Guard Headquarter, letter no KG-OI-VIII.0180.63.2022.BK, 8 April 2022.

⁴⁸ Letter from the Office for Foreigners to HFHR no BSZ.WKSI.0656.3.2022/RW, 26 January 2022.

⁴⁹ Information provided by the Border Guard Headquarter, letter no KG-OI-VIII.0180.7.2022.JL, 4 March 2022.

⁵⁰ OKO.press, information from 4 March 2022, available at: <https://bit.ly/3hE4wTd>.

⁵¹ Commissioner for Human Rights paid three unannounced visits to Terespól border crossing on 11.08.2016, 15.05.2018 and 23.09.2019, the report of the last visit available (in Polish) at: <https://bit.ly/31nzrtK>.

International,⁵² and Human Rights Watch⁵³ as well as other local NGOs such as the Legal Intervention Association (SIP)⁵⁴ and Helsinki Foundation for Human Rights (HFHR).⁵⁵ Already prior to the current situation at the border with Belarus, they confirmed the existence of grave systemic irregularities with accepting applications for international protection at the border.⁵⁶

International jurisprudence. On 23 July 2020, the ECtHR published its judgment in *M.K. and Others v Poland*⁵⁷ and on 8 July 2021 the ECtHR delivered a judgement in *D.A and others v. Poland*.⁵⁸ In both cases the Court concluded that the Polish authorities violated Article 3 ECHR by denying access to international protection proceedings.⁵⁹

Readmission agreements. Poland signed readmission agreements with several countries.

⁵² Amnesty International Poland, *Tam i z powrotem: Brześć–Terespól*, 7 December 2016, available at: <https://bit.ly/2GMcEOW>.

⁵³ Human Rights Watch, *Poland: Asylum Seekers Blocked at the Border*, 1 March 2017, available at: <https://bit.ly/2GMcGq2>.

⁵⁴ Legal Intervention Association, *At the Border*. Report on monitoring of access to the procedure for granting international protection at the border crossings in Terespól, Medyka and Warszawa-Okecie airport, Warsaw 2016, available at: <https://bit.ly/2tuJCK0>.

⁵⁵ Helsinki Foundation for Human Rights, *A Road to Nowhere: The account of the monitoring visit at the Brest-Terespól border crossing between Poland and Belarus*, Warsaw 2016, available at: <https://bit.ly/2ShztiG>, see also the report from 2019 on the situation.

⁵⁶ Helsinki Foundation for Human Rights, *Access to asylum procedurę at Poland's external borders, Current situation and challenges for the future*, Warsaw April 2019, available at: <https://bit.ly/3955t0w>. See also: Consortium of NGOs, *Submission to the UN Special Rapporteur on the human rights of migrants on push back practices from 01 February 2021*, available at: <https://bit.ly/2ZdTMBJ> and: The Commissioner for Human Rights, *Input of the Commissioner for Human Rights of the Republic of Poland for the Special Rapporteur's on the Human Rights of Migrants report on pushback practices and their impact on the human rights of migrants from 28 January 2021*, available at: <https://bit.ly/3u2J3bx>

⁵⁷ ECtHR, *M.K. v. Poland*, Application No 40503/17; *M.A. and Others v. Poland*, Application No 42902/17; *M.K. v. Poland*, Application No 43643/17.

⁵⁸ ECtHR, *D.A. and others v. Poland*, application no 51246/17.

⁵⁹ See the summary of the judgement: European Database of Asylum Law, *M.K. and Others v Poland: Repeated refusal to accept asylum applications amounted to collective expulsion*, available at: <http://bit.ly/3tOUpzD>. The ECtHR communicated also other cases against Poland, all concerning the same issue: *Sherov and others v. Poland* (application no 54029/17), to be examined together with three other applications (no 54117/17 *Saygoziev v. Poland*; no 54128/17 *Salimov v. Poland* and no 54255/17 *Mazhitov v. Poland*), as well as *A.I. and others v. Poland* (application no 39028/17), *T.Z. and M.M. and others v. Poland* (application no 41764/17) and *A.B. and others v. Poland* (application 42907/17).

Poland – readmission agreements with EU Member States

I. Bilateral agreements

I.I. with EU Member States within Schengen zone

No	Country	Date of signing	Date of entering into force
1.	Switzerland	19 September 2005	31 March 2006
2.	Spain	21 May 2002	23 June 2003
3.	Sweden	1 September 1998	9 April 1999
4.	Austria	10 June 2002	30 May 2005
5.	Czech Republic	10 May 1993	30 October 1993
6.	Greece	21 November 1994	5 May 1996
7.	Lithuania	13 July 1998	8 January 2000
8.	Latvia	29 March 2006	27 December 2007
9.	Slovakia	8 July 1993	12 November 1993
10.	Slovenia	28 August 1996	6 April 1998
11.	Hungary	25 November 1994	5 August 1995

I.II. with EU Member States outside Schengen zone

No	Country	Date of signing	Date of entry into force
1.	Ireland	12 May 2001	22 June 2002
2.	Bulgaria	24 August 1993	4 February 1994
3.	Croatia	8 November 1994	27 May 1995
4.	Romania	24 July 1993	19 January 1994

II. Multilateral agreements

No	Country	Date of signing	Date of entry into force
1. ⁶⁰	Belgium The Netherlands Germany France Italy Luxemburg	29 March 1991	1 April 1991
2. ⁶¹	Switzerland Belgium Denmark Spain The Netherlands Norway Sweden Czech Republic Germany Finland Greece Portugal Italy Romania Luxemburg United Kingdom	16 October 1980 By Poland – 19 May 2004	1 December 1980 For Poland – 1 June 2005

⁶⁰ Agreement related to the readmission of persons in an irregular situation, Brussels, 29 March 1991.

⁶¹ European agreement on transfer of responsibility for refugees, Strasbourg, 16 October 1980.

Legal access to the territory. There are no means beyond family reunification to legally access the territory in the form of humanitarian visas or corridors or resettlement or relocation. In 2021, there were only 91 applications for family reunification.

In August 2021 the total number of approximately 1,100 Afghans were evacuated to Poland. According to the Office for Foreigners as of the end of October, 861 of them stayed in Poland. By the end of 2021 those who stayed in Poland were granted refugee status.⁶² However according to some sources, around one third of them left Poland (also after the recognition) due to limited support.⁶³

2. Registration of the asylum application

Indicators: Registration

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

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

If the application is lodged at the border or in detention, the relevant authority receiving it is the SG unit responsible for the border check point or the detention facility. If the application is lodged in the territory, it can be submitted to any SG unit. There is also a possibility to declare an intention to apply for international protection by post for i.e. elderly persons, persons with disabilities, pregnant women, persons in hospitals or imprisoned.⁶⁴

Due to COVID-19 pandemic, direct customer service in the Office for Foreigners was suspended on 16 March 2020. Personal visits in the office were possible only in matters 'absolutely necessary' and only after a prior telephone appointment. Foreigners were asked to contact the Office for Foreigners in writing (by post and e-mail) or by phone. In the building of the Office for Foreigners in Warsaw, there is also a Border Guard unit, where applications for international protection can be submitted. The direct customer service was resumed by the Office on 25 May 2020 and since then service is provided in accordance with the sanitary rules resulting from the pandemic in Poland.⁶⁵

When applying for international protection, one has to submit their travel document (e.g. passport) to the SG. Travel documents are kept by the Head of the Office for Foreigners. Asylum seekers are issued a temporary ID document entitling them to stay on the territory of Poland, the Foreigner's Identity Temporary Certificate (*Tymczasowe Zaświadczenie Tożsamości Cudzoziemca*). The document is initially valid for 90

⁶² Gazeta Prawna, Afghans evacuated to Poland have support, news article, 3 January 2022, <https://bit.ly/3Mcr37E>

⁶³ Wprost, Poland evacuated Afghans but then left them, news article, 3 January 2022, <https://bit.ly/35Fcit0>.

⁶⁴ Article 28(2) Law on Protection.

⁶⁵ Letter from the Office for Foreigners to HFHR no BSZ.074.3.2021/RW received on 26 January 2020.

days – 10 days in case of Dublin returnees – then for 6 months and can be prolonged every 6 months by the Head of the Office for Foreigners until the end of the asylum procedure.⁶⁶ Due to COVID-19 pandemic, the validity of temporary ID was prolonged automatically until 30 days after the epidemic state in Poland was terminated.⁶⁷

The SG is entitled to inform an asylum seeker that it is impossible to lodge an application for international protection on a day when said individual comes to the SG unit. However, the SG must then set a date and place when it will be possible.⁶⁸ In such a situation (e.g. when there is a need to ensure an interpreter is available), the intention to apply for protection is laid down in a protocol and registered and the Border Guard has 3 working days to ensure the application is lodged and registered (in case of massive influx it is 10 working days). During this time decision on return cannot be executed.⁶⁹

In 2020, when the applications for international protection could not be lodged, mostly the ‘declarations of intention to submit the asylum application’ were accepted and registered by the Border Guards. However by law, the persons who ‘declared the intention to submit the asylum application’ are not covered by the medical and social assistance since they are not considered yet as applicants under national law.⁷⁰ In a letter to the Ministry of the Interior and Administration, the Consortium of NGOs raised the need to include these persons in the social system for asylum seekers (see [Obstacles to accessing reception](#)).⁷¹ According to the Office for Foreigners, there were 937 persons who declared the intention to apply for international protection in 2021, compared to 298 in 2020.⁷²

In 2021 the Border Guard reported that the intention to apply for protection was registered and the application was scheduled for a later date mostly in cases where interpreter was not available. The Border Guards confirmed that this also means that in some situations submitting an application was only possible in a detention centre.⁷³ Also this measure was used in case of subsequent applicants, who were already benefiting from social assistance, in order to organize submission of applications in a way that would allow for avoiding crowded spaced and waiting in line.

C. Procedures

1. Regular procedure

1.1. General (scope, time limits)

Indicators: Regular Procedure: General	
1. Time limit set in law for the determining authority to make a decision on the asylum application at first instance:	6 months
2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
3. Backlog of pending cases at first instance as of 31 December 2021:	3850
4. Average length of the first instance procedure in (2021):	127 days

⁶⁶ Article 55(1) and (2) and Article 55a(2) Law on Protection.

⁶⁷ Article 15z3 COVID Law.

⁶⁸ Article 28(1) Law on Protection.

⁶⁹ Article 330(1)8 Law on Foreigners.

⁷⁰ Article 70 (1) Law on Protection.

⁷¹ Letter of the Consortium of NGOs to the Ministry of the Interior and Administration from 26 March 2020, available (in Polish) at: <https://bit.ly/37hxHXm>.

⁷² Information provided by the Office for Foreigners, 26 January 2021 and 13 April 2022.

⁷³ Information provided by the Border Guard Headquarter, letter no KG-OI-VIII.0180.7.2022.JL, 4 March 2022.

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

The time limit set in law for the Head of the Office for Foreigners to make a decision on the asylum application is 6 months.⁷⁴ This period can be prolonged to 15 months if the case is considered complicated (218 cases in 2021),⁷⁵ if there are many asylum seekers applying at the same time (2 cases in 2021) or if the asylum seeker did not fulfil the obligation of presenting all the evidence and documents or attending the interview (none in 2021).⁷⁶ Excluding accelerated procedures, the number of decisions issued within 6 months-time limit was 495 in 2021. The Office stressed that there are no formal guidelines on what is considered a complicated case and the decision in this regard is taken individually.⁷⁷

In 2021 the average processing time for a decision on the merits was 127 days (in comparison to 207 days in 2020). The longest processing time took 531 days (in comparison to 2345 days in 2020) and the shortest 2 days.⁷⁸ The COVID-19 pandemic in 2021 did not have much impact on the duration of the proceedings, according to the Office for Foreigners.⁷⁹

According to the law, if the decision is not issued within 6 months, the general provisions on inaction of the administrative authority apply,⁸⁰ therefore the Head of the Office for Foreigners should inform the applicant in writing about the reasons of delay and the applicant can submit a complaint to the second-instance authority. In 2021 there were 858 cases in which the Office for Foreigners prolonged the proceedings under the general administrative law provisions. In practice, information about the reasons for delay is provided in a very general way and complaints to the second-instance authority hardly ever happen. The most significant consequence for the applicant of not receiving a decision on an asylum application within 6 months is a possibility to apply for a work permit on this basis (see [Access to the Labour Market](#)).⁸¹ The Head of the Office for Foreigners then issues a certificate, which – together with a temporary ID – gives a right to work in Poland until the end of the procedure. The certificate is also valid for appeal proceedings and onward appeal court proceedings if the suspensive effect is granted.

As of 31 December 2021, there were 3,850 persons whose cases were pending before the Office for Foreigners.⁸²

1.2. Prioritised examination and fast-track processing

There is no legal basis for prioritising certain types of cases. According to the Office for Foreigners, the Office made efforts to prioritise applications of the Afghan nationals as they were considered manifestly well-founded. To the contrary, the Office also tried to prioritise issuing negative decisions towards the applicants from Iraq who irregularly crossed the border.⁸³

⁷⁴ Article 34(1) Law on Protection.

⁷⁵ Information provided by the Office for Foreigners, BSZ.WKSI.0656.3.2022/RW 26 January 2022.

⁷⁶ Article 34 Law on Protection.

⁷⁷ Letter from the Office for Foreigners to HFHR no BSZ.WKSI.0656.3.2022/RW, 26 January 2022.

⁷⁸ Letter from the Office for Foreigners to HFHR no BSZ.WKSI.0656.3.2022/RW, 26 January 2022.

⁷⁹ Ibidem.

⁸⁰ Articles 36-38 Code of Administrative Proceedings.

⁸¹ Article 35 Law on Protection.

⁸² Letter from the Office for Foreigners to HFHR no BSZ.074.3.2021/RW received on 26 January 2021.

⁸³ Letter from the Office for Foreigners to HFHR no BSZ.WKSI.0656.3.2022/RW, 26 January 2022.

1.3. Personal interview

Indicators: Regular Procedure: Personal Interview

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the regular procedure? Yes No
 - ❖ If so, are interpreters available in practice, for interviews? Yes No
2. In the regular procedure, is the interview conducted by the authority responsible for taking the decision? Yes No
3. Are interviews conducted through video conferencing? Frequently Rarely Never
4. Can the asylum seeker request the interviewer and the interpreter to be of a specific gender? Yes No
 - ❖ If so, is this applied in practice, for interviews? Yes No

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

- ❖ A decision on granting refugee status can be issued on the basis of evidence already gathered; or
- ❖ An applicant is not fit to be interviewed (e.g. due to health or psychological problems).⁸⁴

The Office for Foreigners does not collect data on the numbers of interviews.⁸⁵

Interpretation

Interpretation is ensured respectively by the Head of the Office for Foreigners (for the first instance proceedings) and the Refugee Board (for the appeal proceedings); i.e. they are responsible for securing interpretation and appointing interpreters. The interview should be conducted in a language understandable for the applicant. In the asylum application, the asylum seeker has to declare their mother tongue as well as any fluent knowledge of other languages. Applicants can further request the interviewer and/or interpreter to be of a specific gender.⁸⁶

The contract established between the Office for Foreigners and interpretation services regulates the quality, liability, and specifies the field (asylum). Interpretation is available in most of the languages spoken by the asylum applicants in Poland. In 2018 reported problems concerned very rare languages, like Sinhala, Tamil, Bengali (Bangla) or Sorani dialect of Kurdish. Interpreters of these languages are available, but not at any time, that is why the waiting time for interview can be prolonged.⁸⁷ In 2019, NGOs reported cases where applicants were held responsible for inconsistencies in testimonies, which appeared because of improper interpretation.⁸⁸ In 2020 there was a temporary problem with Tamil language and 1 person was heard in English with his consent. The Office for Foreigners also reports that in 2021 there was a problem with approaching a female interpreter for some of rare languages and a male interpreter was called instead.⁸⁹

Recording and report

Audio or video recording is possible under national legislation if an applicant was informed about this fact and technical means allow for it,⁹⁰ but this is not implemented in practice because there are no technical means for it (no cases in 2020, no data for 2021).

⁸⁴ Article 44(1) and (2) Law on Protection.

⁸⁵ Information provided by the Office for Foreigners, 15 January 2019.

⁸⁶ Article 44(4)2 of the Law on Protection.

⁸⁷ Information provided by the Office for Foreigners, 15 January 2019.

⁸⁸ M. Sadowska, K. Słubik *Osoby LGBT [in] Stowarzyszenie Interwencji Prawnej (SIP), SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r.* (2019), available (in Polish) at: <http://bit.ly/2S507LV>, 14.

⁸⁹ Information provided by the Office for Foreigners, 26 January 2022.

⁹⁰ Article 44(5) of the Law on Protection.

The law provides that a copy of the report of the interview should be handed in to the applicant after a personal interview. In some cases the applicants do not take or keep them, but they can ask for a copy at any stage of the proceedings. The report is prepared in Polish and contains all the questions asked and responses received, but it is not a verbatim transcript. Although at the end of the interview the report is read to the applicant in an understandable language and before signing it, interviewees can make corrections (and are informed about such possibility), NGOs stress, that there is a recurring problem with this way of registering the interviews. Very often it happens that only after the interview the applicant goes through the copy of the interview report with a person who knows Polish and their national language and the inconsistencies in testimonies come to light. However, any comments and clarifications made in the appeal or in subsequent proceedings are generally not taken into account. Some NGOs suggest that recording the interview would allow to establish what was said during the interview and whether it was translated properly.⁹¹

In 2019 videoconferencing was used for interviews in the detention centres. NGOs found this practice problematic in terms of interpretation and with regard to vulnerable applicants, when presence of psychologist is required. In 2021 all the interviews in detention centres were conducted remotely, with the use of Polycom and Jabber applications.

Beyond detention context, in 2020 and 2021 videoconferencing was applied on a larger scale because of the pandemic, but the applicants still had to come to the Office for Foreigners. Interviewee and interviewer were sitting in separate rooms and upon the termination of the interview, the interviewee still had to sign the protocol of the interview. This practice was continued in 2021 and allowed for less delays in the duration of proceedings. According to the Office for Foreigners, protocols are mainly prepared on the computer, not handwritten.⁹²

1.4. Appeal

Indicators: Regular Procedure: Appeal

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

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

2. Average processing time for the appeal body to make a decision in 2021: 203 days

1.4.1. Appeal before the Refugee Board

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

The Refugee Board is an administrative body, consisting of twelve members, supported in their work by six employees, not involved in the decision-making process.⁹³ In the regular procedure, decisions are taken by three members. The procedure includes an assessment of the facts and there is a possibility of hearing applicants. The Head of the Office for Foreigners is not a party to these proceedings. The time limit set in

⁹¹ M.Jaźwińska, *Postępowanie w przedmiocie udzielenia ochrony międzynarodowej*, [in] Stowarzyszenie Interwencji Prawnej (SIP), *SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r.* (2019), available (in Polish) at: <http://bit.ly/2S507LV>, 19.

⁹² Letter from the Office for Foreigners to HFHR no BSZ.WKSI.0656.3.2022/RW, 26 January 2022.

⁹³ Information provided by the Refugee Board, 27 August 2015.

law for the appeal procedure is 1 month.⁹⁴ The appeal has suspensive effect.⁹⁵ Neither hearings nor decisions of the Refugee Board are made public.

In 2021, the average processing time for the Refugee Board to issue a decision in appeal proceedings was 203 days for the cases which finished in 2021. The longest processing time in 2021 took 1,697 days (in 2020 it was 1355 days) and the shortest - 6 days. There were no cases (down from 5 in 2020) where the Refugee Board decided to hear the applicant (but the Refugee Board stresses that applicants were also asked for written statements), and there were no cases of hearing a witness in 2021 (just like in 2020).⁹⁶

In 2021, according to the Refugee Board, there were no prolonged pauses in the decision-making process, although hearings were impossible in practice.⁹⁷

The Refugee Board may annul the first instance decision, overturn it, or confirm it. In 2021, appeals to the Refugee Board were submitted in case of 1,142 applicants. In case of 1,007 applicants the negative decision was upheld, meaning that the chances of success of appeals are very low in practice. In 2021, refugee status was not granted at all by the appeal body and subsidiary protection was granted in case of 11 persons.⁹⁸ As of 31 December 2021, there were 259 ongoing appeal cases before the Refugee Board.

When the negative decision or a decision on discontinuing the procedure for international protection is served, the person concerned has 30 days to leave Poland (unless they are in detention).⁹⁹ During these 30 days their stay in Poland is considered legal.¹⁰⁰ Nevertheless the Refugee Board also informs the Border Guard that the final negative decision on international protection has been served and the Border Guards is obliged to establish if there are legal grounds to launch return proceedings.¹⁰¹

In 2020, based on the COVID Law, the time limit to leave Poland has been prolonged until 30 days after the epidemic state (or the state of epidemic threat) is finished.¹⁰² In 2021 the state of epidemic was still in force.

1.4.2. Onward appeal before the Administrative Court

After the administrative appeal procedure before the Refugee Board, the decision of the latter can be further appealed to the Voivodeship Administrative Court in **Warsaw** within 30 days, but only points of law can be litigated at this stage.¹⁰³ The case is revised *ex tunc*. There is no fee for the procedure. This onward appeal does not have a suspensive effect on a final administrative decision. However, asylum seekers can ask the court to suspend a decision for the time of the court proceedings, if the decision can cause irreversible harm (so together with the complaint a motion to grant suspensive effect has to be submitted).¹⁰⁴ Also, the authority issuing the decision (in this case the Refugee Board) can grant suspensive effect on their own decision *ex officio* or upon request.¹⁰⁵

⁹⁴ Article 35(3) Code of Administrative Proceedings.

⁹⁵ Article 130(1) and (2) Code of Administrative Proceedings.

⁹⁶ Information provided by the Refugee Board, 21 January 2022.

⁹⁷ *Ibidem*.

⁹⁸ Information provided by the Office for Foreigners, 26 January 2022. However, according to the Refugee Board the number of persons granted subsidiary protection in 2022 was 10 and the number of persons with upheld negative decisions was 852, not 1007.

⁹⁹ Article 299(6)1b Law on Foreigners.

¹⁰⁰ Article 299(7) Law on Foreigners.

¹⁰¹ Article 299(10) and (11) Law on Foreigners

¹⁰² Article 15zzza COVID Law.

¹⁰³ Regulated in the Law of 30 August 2002 on the proceedings before administrative courts, Journal of Laws 2012 pos. 270 (*ustawa z dnia 30 sierpnia 2002 r. Prawo o postępowaniu przed sądami administracyjnymi, Dz.U. 2012, poz. 270*).

¹⁰⁴ Article 61(3) of the Law on proceedings before administrative courts.

¹⁰⁵ Article 61(2)1 of the Law on the proceedings before administrative courts.

The court procedure is adversarial; both the Refugee Board and the asylum seeker are parties before the court. However, the court cannot decide on the merits (i.e. grant protection), but only annul the administrative decision or uphold it. The ruling of the Voivodeship Administrative Court in Warsaw can itself be appealed to the Supreme Administrative Court by lodging a cassation complaint, based exclusively on the legal conditions foreseen in the law, also accompanied by a request for suspension of the administrative decision.

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

Since 2019, as a result of the judgement in the case C-181/16 *Sadikou Gnandi v. Belgium*, the Voivodeship Administrative generally suspends the enforcement of the negative decision on international protection based on article 46(5) of the Procedure Directive, to make sure the return decision is not enforced before the end of the Court proceedings on international protection.¹⁰⁶ In 2020 and 2021 this trend was generally sustained.

However this trend is applicable only with regard to the first application for international protection. In case of subsequent applications, if the application is deemed inadmissible, the Court refuses to grant suspensive effect to such a decision.¹⁰⁷

In 2020 the Voivodeship Administrative Court granted suspensive effect in 80 cases and in 91 cases refused to grant suspensive effect to any complaint regarding international protection (that means that these statistics cover also cases of refusal of international protection, Dublin cases, inadmissible applications) as a response to 210 motions for granting suspensive effect.¹⁰⁸

In the statistics provided by the Voivodeship Administrative Court in Warsaw for 2021 it was possible to distinguish negative decisions regarding international protection. In 2021 in 50 cases the Court decided to grant suspensive effect and in 37 refused to grant suspensive effect to such a decision.¹⁰⁹

On 28 April 2020 the Refugee Board made a resolution recommending its members to grant suspensive effect to the decisions on international protection, if there was a complaint to the court submitted against this decision in the time of COVID-19 pandemic (or pandemic threat) and some NGOs confirm that there were such cases in practice in 2020.¹¹⁰ However, in 2021 the Refugee Board did not suspend the enforcement of its own decisions anymore. Moreover, on the basis of the COVID Law, the time limit to leave Poland has been extended by additional 30 days after the epidemic state (or the state of epidemic threat) is finished.¹¹¹ Therefore access to appeal before a court may not have been an issue in 2021 and 2020 but still there is a procedural gap in this regard.

Overall, the administrative court proceedings in Poland raises questions of compliance with the EU law, in particular in light of the judgment of the CJEU of 29 July 2019, C-556/17, *Alekszj Torubarov v. Bevándorlási*

¹⁰⁶ Legal Intervention Association (SIP), Raport SIP w działaniu, Prawa cudzoziemców w Polsce w 2020 r. [Report SIP in action. Rights of foreigners in Poland in 2020], available (PL) at: <https://bit.ly/3LnxrIB>, 28.

¹⁰⁷ Legal Intervention Association (SIP), Raport SIP w działaniu, Prawa cudzoziemców w Polsce w 2020 r. [Report SIP in action. Rights of foreigners in Poland in 2020], available (PL) at: <https://bit.ly/3LnxrIB>, 28.

¹⁰⁸ Information provided by the Voivodeship Administrative Court on 21 January 2021.

¹⁰⁹ Information provided by the Voivodeship Administrative Court on 24 January 2021. However, with regard to some application for granting suspending effect the outcome was not given.

¹¹⁰ Information from SIP, obtained on 12 April 2021.

¹¹¹ Article 15zzza of the COVID Law.

és Menekültügyi Hivatal, which foresees that the administrative court should be given powers enabling enforcement of final court judgments. These powers must include the possibility of issuing a judgment on the merits if a final judgment is not complied with in subsequent administrative proceedings. Yet, in Poland the law does not provide such a possibility – i.e. the administrative courts do not decide on the merits and cannot grant international protection.¹¹²

According to the statistics of the Refugee Board, in 2021 there were 285 (down from 336 in 2020) complaints submitted to the Voivodship Administrative Court in Warsaw against all the decisions of the Refugee Board (i.e. decisions not only refusing protection). The Voivodship Administrative Court in Warsaw annulled the decision of the administrative authorities (either of the Refugee Board or both decision of the first and second instance) in 30 cases in 2021, and in 245 cases it dismissed the complaint. In 98 cases cassation complaints to the Supreme Administrative Court were lodged by the applicants in 2021 (another 3 complaints were lodged by the Refugee Board). The Supreme Administrative Court annulled the judgment of the Voivodship Administrative Court as well as the decision of the Refugee Board in 4 cases. In 28 cases in 2021 the cassation complaint was dismissed.¹¹³

1.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?
 - Yes
 - With difficulty
 - No
 - ❖ Does free legal assistance cover:
 - Representation in interview
 - Legal advice

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

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

- Legal information, provided by the employees of the Office for Foreigners in cases concerning revocation of protection in the first instance; and
- Legal aid in the second instance provided by advocates, legal counsellors and NGOs. It involves preparing appeal and providing legal representation in second instance in cases concerning:
 - 1) refusal of refugee status or subsidiary protection
 - 2) discontinuance of the procedure
 - 3) refusal of reopening the procedure,
 - 4) Dublin procedure,
 - 5) inadmissibility of the application
 - 6) revocation of protection status.¹¹⁴

In any type of decision mentioned above, issued by the first instance authority, the instruction on the right to free legal aid is included and is translated into the language understood by the applicant.¹¹⁵

¹¹² P. Iżycki, *O merytorycznym orzekaniu sądów administracyjnych w świetle standardu europejskiego – refleksje na gruncie wyroku Trybunału Sprawiedliwości z 29.07.2019 r., C-556/17, Alekszjij Torubarov przeciwko Bevándorlási és Menekültügyi Hivatal* [On Administrative Courts' Adjudication on the Merits of Cases in the Light of the European Standard: Reflections Concerning the Judgment of the Court of Justice of 29 July 2019, C-556/17, Alekszjij Torubarov v Bevándorlási és Menekültügyi Hivatal], Europejski Przegląd Sądowy 4/2020, abstract available at: <http://bit.ly/2ZmUqwQ>.

¹¹³ Information provided by the Refugee Board, 21 January 2021. This data may be not fully coherent because of delays in transferring information on judgements.

¹¹⁴ Article 69c-69m Law on Protection.

¹¹⁵ Article 53(1) and 54e(1) Law on Protection.

The system is managed by the Head of the Office for Foreigners who contracts lawyers, legal counsellors and NGO lawyers. Legal aid is provided by legal counsellors, advocates and 3 NGOs: the Association for Legal Intervention (SIP), The Rule of Law Institute and Halina Niec Legal Aid Centre.¹¹⁶ The list of legal counsellors and advocates who are available for 2021 is publicly available together with their contact details and is divided by the cities where they provide services.¹¹⁷

In 2021, 147 applicants appealing the decision of the Head of the Office for Foreigners benefited from the free legal aid system, 21 persons were assisted by counsellors or advocates and 126 by NGO lawyers. Taking into account the overall number of appeals (1,142) in 2021,¹¹⁸ the system does not have much impact on effective provision of legal aid to applicants.

The Association for Legal Intervention (SIP) as one of the few NGOs providing legal aid within the system is also of the opinion that providing assistance only in the second instance is not enough. Main evidence is gathered in the first instance proceedings – that is when the applicants are interviewed, country of origin information is collected and witnesses can be heard. And this is the phase of the proceedings, where cost-free legal assistance is not provided (i.e. private lawyer can be arranged, but it means the applicant bears the costs). SIP gives examples of cases, where some evidence from the country of origin were presented in the appeal were not taken into account by the second instance authority, because the applicants should have presented them in the first instance. The argument, that the applicant had not been advised by the lawyer on what evidence can be relevant for the procedure was not considered.¹¹⁹

There is also a separate free legal aid system for the administrative court proceedings (onward appeal). Representation before administrative courts can be provided only by professional legal representatives (lawyers, legal counsellors). There is a general possibility to apply for a cost-free professional legal representation before these courts on the same rules that apply to Polish citizens (i.e. insufficient financial resources). There is a form, in Polish, available in the court or on the court's website (not in the offices of administrative authorities examining the claim). In 2021 the Voivodship Administrative Court in Warsaw (examining all the complaints against decisions regarding international protection) granted free legal assistance in 59 cases and refused to grant it in 30 cases.¹²⁰

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

Before the system of legal aid was created, legal assistance had been provided by NGOs under European Refugee Fund (ERF)-funded projects. This funding, now provided under AMIF, practically has been suspended since mid-2015.¹²¹ Many NGOs, with qualified lawyers, continued to provide free legal assistance in the proceedings (including first instance), but this assistance is not provided on a large scale nor is it stable, since it often depends on short-term funding within projects. Due to the lack of funding NGOs generally lack resources and cannot provide assistance to applicants on a wider scale covering e.g. the presence of a lawyer during any interview.

In August 2021 many NGOs moved to the border zone to provide legal and humanitarian assistance there (see [Access to the territory and push backs](#)). The introduction of state of emergency on 2 September limited this assistance. It is also worth noting that when the ECtHR extended interim measure in case *R.A. and others v. Poland* (application no. 42120/2), it requested that the Polish authorities allow the applicants' lawyers to make necessary contact with their clients. The ECtHR also indicated that, if the applicants are on Polish territory, they should not be sent to Belarus. Poland did not comply with the measure and provided

¹¹⁶ The list of legal counsellors, advocates and NGOs is available on the OFF website at: <https://bit.ly/2TYEAUW>.

¹¹⁷ The Office for Foreigners, cost free legal aid, list of service providers, <https://bit.ly/3C9ge1C>.

¹¹⁸ Information provided by the Office for Foreigners, 26 January 2021.

¹¹⁹ SIP, *Raport SIP w działaniu, Prawa cudzoziemców w Polsce w 2019 r.*, [Report SIP in action. The Rights of the foreigners in 2019.], available (in Polish) at: <https://bit.ly/2NhMJ8K>.

¹²⁰ Information provided by the Voivodship Administrative Court on 24 January 2022.

¹²¹ See the details of problems with funding of the Polish NGOs in the letter of 11 Polish NGOs to the European Commission from 21 January 2020, available at: <https://bit.ly/2RI51ii>.

the ECtHR with its position maintaining that, although it understands the humanitarian aspect of the Court's position, it cannot violate the integrity of the neighbouring country where the migrants are situated. Moreover, Poland suggested that the applicants' legal representatives go to the nearest border-crossing point in order 'to cross the Polish–Belarusian border in accordance with the law and, when on the territory of Belarus, go to the camp where the complainants are staying'.¹²²

2. Dublin

2.1. General

Dublin statistics: 2021

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
Total	416	143	Total	3,525	265
Take charge	57	13	Take charge	2,138	150
Take back	359	130	Take back	1,387	115
Romania	147	76	Germany	927	54
Germany	62	18	France	253	6
Bulgaria	41	5	Belgium	81	0

Source: Office for Foreigners, Transfers – the Border Guards.

Outgoing Dublin requests by criterion: 2021		
Dublin III Regulation criterion	Requests sent	Requests accepted
“Take charge”: Articles 8-15:	57	25
Article 8 (minors)	0	0
Article 9 (family members granted protection)	9	3
Article 10 (family members pending determination)	4	0
Article 11 (family procedure)	2	0
Article 12 (visas and residence permits)	17	17
Article 13 (entry and/or remain)	5	1
Article 14 (visa free entry)	0	0
“Take charge”: Article 16	2	0
“Take charge” humanitarian clause: Article 17(2)	18	4
“Take back”: Article 18	359	173
Article 18 (1) (b)	289	61
Article 18 (1) (c)	4	43
Article 18 (1) (d)	66	69
Article 20(5)	0	0

Source: Office for Foreigners.

¹²² Fundamental Rights Agency, Migration: Key fundamental rights concern, Quarterly Bulletin 3, available (EN) at: <https://bit.ly/3uEvu4G>.

Incoming Dublin requests by criterion: 2021		
Dublin III Regulation criterion	Requests received	Requests accepted
“Take charge”: Articles 8-15	2138	669
Article 8 (minors)	0	0
Article 9 (family members granted protection)	8	3
Article 10 (family members pending determination)	12	0
Article 11 (family procedure)	18	0
Article 12 (visas and residence permits)	703	587
Article 13 (entry and/or remain)	1366	78
Article 14 (visa free entry)	24	0
“Take charge”: Article 16	0	0
“Take charge” humanitarian clause: Article 17(2)	7	1
“Take back”: Articles 18 and 20(5)	1387	864
Article 18 (1) (b)	1330	391
Article 18 (1) (c)	17	325
Article 18 (1) (d)	33	148
Article 20(5)	7	0

Source: Office for Foreigners, SI Pobyt.

Application of the Dublin criteria

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

The dependent persons and discretionary clauses.

The humanitarian clause was applied once in 2021, while the sovereignty clause was not used at all.¹²³ No information on the circumstances was provided.

2.2. Procedure

Indicators: Dublin: Procedure

1. Is the Dublin procedure applied by the authority responsible for examining asylum applications?
 Yes No
2. On average, how long does a transfer take after the responsible Member State has accepted responsibility?
 No information¹²⁴

The Head of the Office for Foreigners is responsible for Dublin procedures and the Border Guard for transfers.¹²⁵ All asylum seekers over the age of 14 are fingerprinted and checked in Eurodac at the time of lodging their asylum application. In all cases the Head of the Office for Foreigners applies the Dublin procedure.¹²⁶ The ruling of the CJEU in *Mengesteab*,¹²⁷ allowing Member States to apply the Dublin procedure as of the moment of registration before the lodging of the application, has not changed the

¹²³ Information provided by the Office for Foreigners, 9 March 2022.

¹²⁴ Information provided by the Border Guard Headquarter, 4 March 2022.

¹²⁵ Article 36(2) Law on Protection.

¹²⁶ Article 36(1) Law on Protection.

¹²⁷ CJEU, Case C-670/16, *Tsegezab Mengesteab v. Bundesrepublik Deutschland* (GC), Judgment of 26 July 2017.

practice of the Office for Foreigners, which starts the Dublin procedure as of the moment of lodging of the application.

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

Individualised guarantees

The Office for Foreigners responded, that in 2021 only Greece was on the list of countries to be asked for individualised guarantees, but since there was no positive decision, no transfers to Greece took place anyway.

Transfers

According to the Border Guard, the transfer is organised within days from the moment the decision on transfer becomes final, bearing in mind the time in which other states expect to be informed about the transfer in advance and depending on the availability of plane tickets, etc.¹²⁸

However, in 2020 and 2021, due to the COVID-19 pandemic, the waiting period was longer. Dublin transfers were suspended between 16 March and 8 July 2020. Subsequently, the transfers were carried out, but the procedure of testing for COVID on 72 hours before the plane was to land in the territory of another Member State as well as waiting for results ended up delaying the purchase of plane tickets. In addition, some Member States required additional documents regarding health of the person (e.g. **Spain**).¹²⁹ The Office for Foreigners also highlighted problems with regard to transfers to Bulgaria and Romania in 2021 (postponed transfers, the obligation to send information about Covid-19 vaccination).¹³⁰

Asylum seekers are transferred under escort only when there is a risk of absconding or if they have already absconded before. According to the Office for Foreigners, it concerns applicants staying in detention, but there are also cases where applicants staying outside the centres were transferred under escort. The Border Guards reported that in 2021, 3 persons was transferred from Poland under escort.¹³¹

There is also a legal basis for detention in Dublin outgoing procedures, based on the risk of absconding (see section on [Grounds for Detention](#)).¹³² The Border Guard reported that in 2020, 33 (down from 63 in 2019) persons were transferred under Dublin from detention centres.¹³³ No information about the legal grounds of the detention in practice was provided.¹³⁴

2.3. Personal interview

There is no separate interview where an applicant's case falls under the Dublin Regulation. Additional questions for the Dublin procedure form an integral part of the asylum application form.¹³⁵

¹²⁸ Information provided by the Border Guard, 5 February 2021.

¹²⁹ Ibidem.

¹³⁰ Information provided by the Office for Foreigners, 26 January 2022.

¹³¹ Information provided by the Border Guard, 4 March 2022.

¹³² Article 398(1)(3a) Law on Foreigners.

¹³³ No information provided for 2021.

¹³⁴ Information provided by the Border Guard, 5 February 2021.

¹³⁵ Ordinance of the Ministry of the Interior of 4 November 2015 on the asylum application form (Rozporządzenie Ministra Spraw Wewnętrznych z dnia 4 listopada 2015 r. w sprawie wzoru formularza wniosku o udzielenie ochrony międzynarodowej), available (in Polish) at: <http://bit.ly/1I97b7F>.

2.4. Appeal

Indicators: Dublin: Appeal

Same as regular procedure

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

Asylum seekers can appeal against decisions taken in the Dublin procedure to the Refugee Board (and then to the Voivodeship Administrative Court in Warsaw and the Supreme Administrative Court) within 14 days following the same procedure described in the section on appeals in the [Regular Procedure: Appeal](#).

The average time for the appeal procedure in Dublin cases in 2021 was 33 days (down from 59 days in 2020). In 2021 the Refugee Board issued 65 decisions (up from 16 in 2020) in Dublin proceedings, with only one decision overturning the decision of the first instance authority.¹³⁶

2.5. Legal assistance

Indicators: Dublin: Legal Assistance

Same as regular procedure

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

Free legal assistance is offered as described in the section on [Regular Procedure: Legal Assistance](#). State legal aid covers preparing an appeal and representation in the second instance.¹³⁷

2.6. Suspension of transfers

Indicators: Dublin: Suspension of Transfers

1. Are Dublin transfers systematically suspended as a matter of policy or jurisprudence to one or more countries?
- | | |
|------------------------------|--|
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
|------------------------------|--|
- ❖ If yes, to which country or countries?

In 2021 requests were submitted to any country. Only **Greece** was to be asked for individual guarantees but in practice it did not take place, because there was no positive decision and no transfer was carried out.¹³⁸

2.7. The situation of Dublin returnees

There is no information on obstacles in accessing the asylum procedure for Dublin returnees. There were cases where HFHR tried to follow asylum seekers transferred back from another country and learned from the SG that they applied straight away for voluntary return and left the territory. The reason why they chose

¹³⁶ Information provided by the Refugee Board, 21 January 2022.

¹³⁷ Article 69e Law on Protection.

¹³⁸ Information provided by the Office for Foreigners, 26 January 2022.

to return over a (re)examination of their asylum claim is unknown. The time limit to reopen the procedure is 9 months. Contrary to Article 18(2) of the Dublin III Regulation, in cases where e.g. the applicant did not wait for examination of his or her asylum claim in Poland but went to another Member State and did not come back to Poland within 9 months, the case will not be evaluated under the regular “in-merit” procedure. Their application lodged after this deadline will instead be considered as a subsequent application and subject to an admissibility procedure.¹³⁹

In 2021 the number of decisions on discontinuation of the proceedings for international protection was 1,073.¹⁴⁰ The vast majority of these decisions were issued because the applicant withdrew the application, but not in the explicit way, e.g. did not reach the reception centre after applying for protection or left the reception centre and did not come back within 7 days, did not go to the interview, or left Poland.¹⁴¹ In 2021, the Office registered 62 requests to reopen the procedure, lodged within 9 months-time limit.

A development identified by SIP in the report for 2020 may be relevant: there were cases of Russian, Ukrainian and Tajik applicants, where the authorities gave importance to the fact that the family member of the applicant had been granted protection in another EU Member State. The Refugee Board for instance ruled that the fact of granting international protection in Germany to the closest family members of the applicant should be considered a new relevant circumstance, increasing the probability of granting protection to the applicant. Therefore even if this was their subsequent application it should not be considered inadmissible.¹⁴²

In March 2021 the Commissioner for Human Rights published a report¹⁴³ within the National Mechanism for the Prevention of Torture, in which cases of improper detention of Dublin returnees with PTSD in the previous years were described. According to the report, the problems occurred due to numerous procedural shortcomings during the transfer of a family to Poland by the German police, as well as the lack of appropriate operational algorithms that should have been implemented in order to promptly identify victims of torture and violence as well as persons whose mental and physical condition rule out their placement in detention. These cases were reported in 2016, but After visits in detention centres in 2018 and 2019, the Commissioner for Human Rights confirmed that the problem persisted.¹⁴⁴ Although the Border Guard implemented guidelines (algorithm) on how to deal with persons requiring special treatment, they address treatment in detention, rather than providing that the person identified as a victim of violence should be released from detention (as required by the law).¹⁴⁵

NGOs add that the system in place is not effective because a person who is a victim of violence should not be put in detention at all, i.e. identification should be conducted before placing in detention and not in

¹³⁹ Article 40(6) Law on Protection.

¹⁴⁰ Article 40 Law on Protection.

¹⁴¹ Article 40 Law on Protection.

¹⁴² Legal Intervention Association (SIP), *Raport SIP w działaniu, Prawa cudzoziemców w Polsce w 2020 r.* [Report SIP in action. Rights of foreigners in Poland in 2020], available (PL) at: <https://bit.ly/3LnxrIB>, 22.

¹⁴³ The Commissioner for Human Rights, *Obcokrajowcy w detencji administracyjnej Wyniki monitoringu Krajowego Mechanizmu Prewencji Tortur, Nieludzkiego, Poniżającego Traktowania lub Karania BRPO w strzeżonych ośrodkach dla cudzoziemców w Polsce* [Foreigners in administrative detention. Summary of monitoring within the National Mechanism for the Prevention of Torture in the detention centres in Poland, available (PL) at: <https://bit.ly/3LnF3ef>.

¹⁴⁴ Commissioner for Human Rights, *Raport Krajowego Mechanizmu Prewencji Tortur z wizytacji Strzeżonego Ośrodka dla Cudzoziemców w Lesznowoli (wyciąg)*, 18 December 2018, available (in Polish) at: <http://bit.ly/2SO3DgP>.

¹⁴⁵ Commissioner for Human Rights, *Raport Krajowego Mechanizmu Prewencji Tortur z wizytacji Strzeżonego Ośrodka dla Cudzoziemców w Lesznowoli (wyciąg)*, 18 December 2018, available (in Polish) at: <http://bit.ly/2SO3DgP>, *Report from Biała Podlaska*, 7 January 2019, available (in Polish) at: <http://bit.ly/2BU7ej5>, 7.

detention.¹⁴⁶ In the report for 2020 published by SIP in 2021, the NGO confirms that problems with proper identification of victims of violence still remains problematic.¹⁴⁷

This problem does not concern solely Dublin returnees, as described in detail below (see [Guarantees for vulnerable groups](#) and [Detention of vulnerable applicants](#)).

3. Admissibility procedure

3.1. General (scope, criteria, time limits)

An admissibility procedure is provided for in national legislation.¹⁴⁸ The Head of the Office for Foreigners is the authority responsible for taking a decision on admissibility. If an asylum application is deemed inadmissible, the Head of the Office for Foreigners issues a decision on the inadmissibility of the application.¹⁴⁹

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

- a. Another Member State has granted refugee status to the applicant;
- b. A third country can be considered a [First Country of Asylum](#) with regard to the applicant;
- c. The applicant submitted a subsequent application after receiving a final decision, based on the same circumstances;
- d. A spouse of an applicant lodged a new asylum application after the applicant received a final decision and when the spouse's case was a part of an application made on their behalf and there are no facts justifying a separate application of the spouse.¹⁵⁰

The application is considered inadmissible if there is a first country of asylum where the applicant is treated as a refugee and can enjoy protection there or is protected against *refoulement* in any other way.¹⁵¹

The Office for Foreigners delivered the following inadmissibility decisions in 2021:

Inadmissibility decisions: 2021	
Ground for inadmissibility	Number of persons
Subsequent application	815
Application by dependent (spouse)	24
Refugee status in another Member State	4
First country of asylum	0
Total	883

Source: Office for Foreigners

There are no specific time limits that must be observed by the Head of the Office for Foreigners in this procedure, so the rules governing regular procedures are applicable; the general deadline is 6 months. There is no data on whether the time limits for taking a decision are respected in practice. In 2021, 3662

¹⁴⁶ Association for Legal Intervention (Stowarzyszenie Interwencji Prawnej, SIP), *Komentarz SIP: sprawozdanie Polski przed Komitetem przeciwko Torturom ONZ* (Association for Legal Intervention comments on Poland's reporting before UN Committee against Torture), 30 July 2019, available at: <https://bit.ly/2UncJR7>.

¹⁴⁷ Legal Intervention Association (SIP), *Raport SIP w działaniu, Prawa cudzoziemców w Polsce w 2020 r.* [Report SIP in action. Rights of foreigners in Poland in 2020], available (PL) at: <https://bit.ly/3LnxrIB>.

¹⁴⁸ Article 38 Law on Protection.

¹⁴⁹ Article 38(4) Law on Protection.

¹⁵⁰ Article 38 Law on Protection.

¹⁵¹ Article 38 Law on Protection.

decisions were issued within 6-month time limit – but this includes all the proceedings, not only admissibility.¹⁵²

3.2. Personal interview

Indicators: Admissibility Procedure: Personal Interview

Same as regular procedure

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

The rules concerning personal interviews are the same as in the [Regular Procedure: Personal Interview](#). There is no data on how many interviews were conducted in admissibility procedures in 2021. For the admissibility procedures a lot depends on whether the case requires a detailed interview, as in the regular procedure, or whether it focuses only on specific issues (e.g. new circumstances). The scope of the interview is not limited to identity, nationality, and travel route.¹⁵³

3.3. Appeal

Indicators: Admissibility Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the admissibility procedure?
 - Yes No
 - ❖ If yes, is it Judicial Administrative
 - ❖ 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: Appeal](#), including its suspensive effect. The deadline for the appeal is 14 days.

3.4. Legal assistance

Indicators: Admissibility Procedure: Legal Assistance

Same as regular procedure

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

Free legal assistance is offered in under the same conditions as described in the section on [Regular Procedure: Legal Assistance](#). State legal aid covers preparing an appeal and representation in the second instance.¹⁵⁴

¹⁵² Information provided by the Office for Foreigners, 26 January 2022.

¹⁵³ Information provided by the Office for Foreigners, 1 February 2017.

¹⁵⁴ Article 69e Law on Protection.

4. Border procedure (border and transit zones)

There is no border procedure in Poland. In January 2017, the Minister of the Interior and Administration presented a draft amendment to the Law on Protection, which introduces a border procedure for granting international protection. The Commissioner for Human Rights, as well as the main NGOs in Poland, have criticised the draft law for failing to provide sufficient safeguards including limited access to effective remedies and for introducing detention for the duration of the border procedure. The proposal was updated in February 2019.¹⁵⁵ According to the proposal, if a negative decision is issued during the border procedure, the Office for Foreigners will also decide on return in the same decision. There would be 7 days to appeal this decision to the Voivodeship Administrative Court (not to Refugee Board, as in the regular procedure) and the appeal will not have an automatic suspensive effect. The draft law also provides for the adoption of a list of safe countries of origin and safe third countries. The Commissioner for Human Rights¹⁵⁶ and NGOs¹⁵⁷ sent their statements about the draft law, criticizing the concept of safe third country and safe country of origin, as well as legal conditions to apply border procedure and access to effective remedy. Last amendment in the process of adopting the act of law was made in August 2019 and concerned the postponement of adopting this act from the second to the third quarter of the 2019. No further information is available as of December 2021.

In 2021 the situation at the Polish – Belarusian border led to the introduction of legal instruments that limited access to protection at the border (see [Access to the territory and push backs](#)).

5. Accelerated procedure

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

The application for international protection is subject to an accelerated procedure if the applicant:¹⁵⁸

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

The statistics obtained from the Office for Foreigners show that in 2021, 103 applications (covering 105 persons) were channelled in the accelerated procedure. These concerned the following grounds:

¹⁵⁵ Draft law available at: <http://bit.ly/2lqboVu>.

¹⁵⁶ The Commissioner for Human Rights, letter commenting on the draft law from 1 April 2019, available (in Polish) at: <https://bit.ly/31pTAQf>.

¹⁵⁷ Stowarzyszenie Interwencji Prawnej, letter commenting on the draft law from 15 February 2019, available (in Polish) at: <https://bit.ly/2v6aiaV> and HFHR, letter from 15 February 2019, available (in Polish) at: <https://bit.ly/2LTPEnk>.

¹⁵⁸ Article 39 of the Law on Protection.

Applicants whose applications were channeled in the accelerated procedure: 2019-2021			
Grounds	2019	2020	2021
Reasons unrelated to grounds for international protection	134	82	85
Misleading authorities by withholding or presenting false information or documents	0	0	0
Inconsistent, contradictory, improbable or insufficient statements	14	22	15
Application solely to delay or frustrate return	14	10	4
Threat to national security or public order	0	1	1

Source: Office for Foreigners

The Head of the Office for Foreigners should issue a decision in the accelerated procedure within 30 calendar days. If a decision cannot be issued within 30 calendar days, the Head of the Office for Foreigners has to inform the applicant about the reasons for the delay and the date when a decision will be issued.¹⁵⁹ There are no consequences if this time limit is not respected. In 2021 the average time of processing applications in the accelerated procedure was 88 days.¹⁶⁰

5.2. Personal interview

Indicators: Accelerated Procedure: Personal Interview

Same as regular procedure

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

The interview in the accelerated procedure is conducted according to the same rules as in the regular procedure (see [Regular Procedure: Personal Interview](#)).¹⁶¹ There is no information on the number of cases in which the interview takes place – Office for Foreigners does not aggregate such data. The interview does not differ from the one in a regular procedure – it is in the same form and the same rules apply.¹⁶²

5.3. Appeal

Indicators: Accelerated Procedure: Appeal

Same as regular procedure

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

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

- (1) The time limit to lodge an appeal is 7 calendar days instead of 14;¹⁶³

¹⁵⁹ Article 39(2) of the Law on Protection and the articles 36-38 Code of Administrative Proceedings.

¹⁶⁰ Information provided by the Office for Foreigners, 26 January 2022.

¹⁶¹ Article 44 Law on Protection.

¹⁶² Information provided by the Office for Foreigners, 1 February 2017.

¹⁶³ Article 39(2)(3) Law on Protection.

- (2) Decisions on the appeal in this procedure are issued by only one member of the Refugee Board, instead of three as in the regular procedure.¹⁶⁴

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

5.4. Legal assistance

Indicators: Accelerated Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
 - Yes With difficulty No
 - ❖ Does free legal assistance cover:
 - Representation in interview
 - Legal advice

2. Do asylum seekers have access to free legal assistance on appeal against a decision in practice?
 - Yes With difficulty No
 - ❖ Does free legal assistance cover
 - Representation in courts
 - Legal advice

Free legal assistance is offered in the same context described in the section on [Regular Procedure: Legal Assistance](#). State legal aid covers preparing an appeal and representation in the second instance.¹⁶⁵

D. Guarantees for vulnerable groups

1. Identification

Indicators: Identification

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers?
 - Yes For certain categories No
 - ❖ If for certain categories, specify which:

2. Does the law provide for an identification mechanism for unaccompanied children?
 - Yes No

Applicants who need special treatment are defined in particular as:¹⁶⁶

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

¹⁶⁴ Article 39(2) Law on Protection.

¹⁶⁵ Article 69e Law on Protection.

¹⁶⁶ Article 68(1) Law on Protection.

1.1. Screening of vulnerability

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

The Head of the Office for Foreigners is obliged to assess whether these persons need special treatment in the proceedings regarding granting international protection or regarding social assistance. In order to make this assessment, the authority can arrange for a medical or psychological examination of the applicant, funded by the state. In case the Head of the Office for Foreigners does not arrange for the medical or psychological examination, it is obliged to inform the person that might require special treatment that they can arrange for such an examination themselves and bear the costs. If a person does not agree to be subjected to medical or psychological examination, they should be considered a person that does not require special treatment. The Head of the Office for Foreigners should make the assessment immediately after the submission of the application for international protection and at any other time until the procedure is finished, in case any new circumstances arise.¹⁶⁷

In 2019, the UN Committee against Torture pointed out the problem with the appointment of experts to determine whether foreigner is a victim of torture.¹⁶⁸ Responding to the Committee, the Polish delegation stressed that qualification as a victim of torture does not require an opinion from a specialist and is a part of specialised medical assistance provided during the refugee procedure.

According to the study from 2020, the Office for Foreigners representative admitted that typically a conversation with a psychologist is scheduled if the relevant fields in the application for international protection are ticked. Then the psychologist issues an opinion in which they recommend whether to treat an applicant as requiring special treatment.¹⁶⁹

Since 2017 in Biala Podlaska, near the reception centre, there has been a separate medical unit where initial verification of asylum seeker's health is conducted. Both the procedure and medical unit are called "epidemiological filter".¹⁷⁰ The Office for Foreigners informed, that since 16 June 2019 every asylum seeker in the reception centre, subject to the obligatory procedure of epidemiological filter, is also subject to vulnerability screening. This is envisaged in the new contract for health services for asylum seekers from 4 June 2019.¹⁷¹

NGOs generally confirm that the system of identification envisaged in the law does not work in practice. According to SIP, the Office for Foreigners does not, in principle, require opinions from experts in order to determine, for example, basing on of scars and wounds if an applicant has been a torture victim. Such a practice makes it difficult for foreigners to prove that they have been victims of torture in the country of origin. Foreigners arrive in Poland frequently with visible signs of torture. In such cases ordering of an examination by an expert could help acquire reliable evidence of experienced torture.¹⁷² In the opinion of SIP, problems with proper identification of the victims of violence remained in 2020.¹⁷³ Persons who declared

¹⁶⁷ Article 68(3)-(6) Law on Protection.

¹⁶⁸ Poland, UN Web TV, *Consideration of Poland (Cont'd) - 1762nd Meeting, 67th Session of Committee Against Torture*, 24 July 2019, available at: <https://bit.ly/2RXiHqd>, and reply of Poland, UN Committee against Torture, *Concluding observations on the seventh periodic report of Poland*, 22-24 July 2019, available at: <https://bit.ly/2tw02w>.

¹⁶⁹ Pachocka, M. and Sobczak-Szelc K., 'Refugee Protection Poland – Country Report', Multilevel Governance of Mass Migration in Europe and Beyond Project (Horizon2020), January 2020, available at: <https://bit.ly/2U1A9uL>; 69.

¹⁷⁰ Epidemiological filter was realised under the Swiss Polish Cooperation Programme, see: <https://bit.ly/3mMGtDd>.

¹⁷¹ Information provided by the Office for Foreigners on 9 April 2020.

¹⁷² Association for Legal Intervention (Stowarzyszenie Interwencji Prawnej, SIP), *Komentarz SIP: sprawozdanie Polski przed Komitetem przeciwko Torturom ONZ* (Association for Legal Intervention comments on Poland's reporting before UN Committee against Torture), 30 July 2019, available at: <https://bit.ly/397QNOg>.

¹⁷³ Legal Intervention Association (SIP), *Raport SIP w działaniu, Prawa cudzoziemców w Polsce w 2020 r.* [Report SIP in action. Rights of foreigners in Poland in 2020], available (PL) at: <https://bit.ly/3LnxrIB>, 13.

that they were victims of violence were not subject to medical or psychological treatment. Also psychologists present during interviews did not prepare opinions which would analyse this circumstance.

According to HFHR even in case of applicants with PTSD the inconsistencies in testimonies may lead to refusal of international protection. Also, at the later stages of the procedure, the appeal body or courts still do not appoint independent experts to determine applicants' state of mental health.

NGOs documented important judgements in 2019 on the matter. The Supreme Administrative Court,¹⁷⁴ and the Voivodeship Administrative Court in Warsaw,¹⁷⁵ ruled on cases where the applicants were diagnosed with PTSD due to violence/torture experienced in their countries of origin, however examination has not been performed by experts appointed by the authorities deciding on international protection. The courts upheld refusal decisions on international protection stating that the testimonies of applicants were inconsistent, the courts also stated that the authorities had no obligation to appoint experts to assess mental state of health of the applicants. In the oral justification of the judgment from 16 May 2019 the Supreme Administrative Court stated that psychological opinions prepared by the Border Guards, doctors from psychiatric hospital and experts appointed by the detention court are not credible because they are based on the applicants' testimonies (all of these opinions stated that the applicant experienced violence).¹⁷⁶

Identification of vulnerable applicants is also conducted by the Border Guard while registering the application for international protection (the Border Guard assesses whether an applicant may belong to one of these two groups: victims of trafficking in human beings or persons subject to torture).¹⁷⁷ When applying to the court to place an applicant in detention, the Border Guard is also obliged to identify victims of violence and other persons for whom detention will cause a threat to life or health. For this purpose, the Border Guard implemented an algorithm, criticized by the Commissioner for Human Rights and NGOs (see [Detention of vulnerable applicants](#)).

The Office for Foreigners does not collect statistics on the number of asylum seekers identified as vulnerable, which was confirmed during UN CAT report on Poland in 2019.¹⁷⁸ According a study for 2019, published in 2020, in which the Office for Foreigners representatives were interviewed, the largest group are individuals who were subject to physical or psychological violence.¹⁷⁹ However, for the purpose of this report, the Office for Foreigners reported that in the fourth quarter of 2019, there were 274 asylum seekers identified as requiring special treatment, only 1 person identified as a victim of violence.¹⁸⁰ In 2020 and 2021 the Office responded that there were no statistics in this regard.

According to the Office for Foreigners, identification of vulnerable applicants takes place also during regular psychological counselling, available in every reception centre and at the Office for Foreigners (see [Health Care](#)).¹⁸¹

¹⁷⁴ The Supreme Administrative Court, judgments from 16.05.2019, II OSK 3536/18 and from 13.06.2019, II OSK 3769/18 (not published).

¹⁷⁵ The Voivodeship Administrative Court in Warsaw judgment from 4.04.2019, IV SA/Wa 353/19 (not published).

¹⁷⁶ Information from HFHR obtained on 30 October 2019 and 10 January 2020.

¹⁷⁷ Ordinance of 5 November 2015 on the asylum application form (Rozporządzenie Ministra Spraw Wewnętrznych z dnia 5 listopada 2015 r. w sprawie wzoru formularza wniosku o udzielenie ochrony międzynarodowej), available (in Polish) at: <http://bit.ly/1hljviW>.

¹⁷⁸ UN OHCHR, Committee against Torture concludes its consideration on the report of Poland, 24 July 2019, available at: <https://bit.ly/2Sgy10j>.

¹⁷⁹ Pachocka, M. and Sobczak-Szelc K., 'Refugee Protection Poland – Country Report', Multilevel Governance of Mass Migration in Europe and Beyond Project (Horizon2020), January 2020, available at: <https://bit.ly/2U1A9uL>, p. 69.

¹⁸⁰ Information provided by the Office for Foreigners on 9 April 2020.

¹⁸¹ Information provided by the Office for Foreigners, 1 February 2018.

1.2. Age assessment of unaccompanied children

Polish law provides for an identification mechanism for unaccompanied children.¹⁸² An asylum seeker who claims to be a child, in case of any doubts as to their age, may have to undergo medical examinations – with their consent or with the consent of their legal representative – in order to determine their actual age. There are no additional criteria set in law.

In case of lack of consent, the applicant is considered an adult. Results of the medical examination should contain the information, if an asylum seeker is an adult. In case of any doubts, the applicant is considered as a minor.¹⁸³ The responsibility for undertaking a medical examination is triggered by the authorities and shall be ensured by the SG.¹⁸⁴ The law states that examination should be done in a manner respecting dignity and using the least invasive technique.¹⁸⁵

In December 2016 guidelines on age assessment were drafted and were still applicable as of 2021¹⁸⁶

2. Special procedural guarantees

Indicators: Special Procedural Guarantees

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

Yes For certain categories No

❖ If for certain categories, specify which:

2.1. Adequate support during the interview

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

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

Upon the request of the applicant considered requiring special treatment, in cases justified by their needs, the actions in the proceedings regarding granting international protection are performed by a person of the same gender, and in the presence of a psychologist, medical doctor or an interpreter, of a gender indicated by the foreigner.¹⁸⁷

Also, the Head of the Office ensures that the interview is conducted by a person trained in the techniques of hearing such persons and in using the country of origin information.¹⁸⁸ The Office for Foreigners does not have a specialised unit dealing with vulnerable groups, however caseworkers are trained by psychologists and EASO experts and only trained staff work on these cases.¹⁸⁹ In 2020 there were 21 such

¹⁸² Article 32 Law on Protection.

¹⁸³ Article 32(5) Law on Protection.

¹⁸⁴ Article 32 Law on Protection.

¹⁸⁵ Article 32(4) Law on Protection.

¹⁸⁶ Information provided by the Border Guard, 5 February 2021. No further information on age assessment was provided for the years 2016-2020.

¹⁸⁷ Article 69 Law on Protection.

¹⁸⁸ Article 44(4)(1) Law on Protection.

¹⁸⁹ Information provided by the Office for Foreigners, as of 16 July 2019.

caseworkers. In 2021 the Office for Foreigners did not give the exact number but ensured that persons with special needs are heard exclusively by persons trained in this regard.¹⁹⁰

However NGOs have brought up for years that the identification of vulnerable applicants is improper and since they are not properly identified, they are not given adequate support during the procedure. In the report for 2020 SIP stresses that psychologists present during interviews did not prepare opinions which would pay attention to the fact that the interviewee was a victim of violence and how this may affect their statements.¹⁹¹

In 2020 and 2021 the interviews were mainly conducted through videoconferencing, but the interviewee and interviewer stayed in the Office for Foreigners, using separate rooms. According to the Office for Foreigners there were no requests for conducting interviews in another manner, by direct conversation.¹⁹² This only happened in 2021 in exceptional cases.¹⁹³

2.2. Exemption from special procedures

In 2018 the Office for Foreigners stressed that the law does not exclude the application of the accelerated procedure towards vulnerable applicants (apart from some restrictions concerning unaccompanied children, where it is only allowed to examine their application in an accelerated procedure where they pose a threat to national security) and did not present any statistical data on the use of the accelerated procedure in their case.¹⁹⁴ In 2021 and 2020 the Office responded that there were no statistics in that regard.

3. Use of medical reports

Indicators: Use of Medical Reports

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

The law provides that a medical or psychological examination can be conducted in order to assess whether a person needs special treatment with regard to procedural safeguards and reception.¹⁹⁵ There is no medical examination for the purpose of confirming past persecution or serious harm.

NGOs report that the Office for Foreigners does not, in principle, require opinions from experts in order to determine, for example, basing on of scars and wounds if an applicant has been a torture victim. Such a practice makes it difficult for foreigners to prove that they have been victims of torture in the country of origin. Foreigners arrive in Poland frequently with visible signs of torture. In such cases ordering of an examination by an expert could help acquire reliable evidence of experienced violence.¹⁹⁶

¹⁹⁰ Information provided by the OFF by email, 13 April 2022.

¹⁹¹ Legal Intervention Association (SIP), Raport SIP w działaniu, Prawa cudzoziemców w Polsce w 2020 r. [Report SIP in action. Rights of foreigners in Poland in 2020], available (PL) at: <https://bit.ly/3LnxrIB>, 13.

¹⁹² Information provided by the Office for Foreigners, 26 January 2021.

¹⁹³ Information provided by the Office for Foreigners, 26 January 2022.

¹⁹⁴ Information provided by the Office for Foreigners, 15 January 2019.

¹⁹⁵ Article 68 Law on Protection.

¹⁹⁶ M.Jaźwińska, Postępowanie w przedmiocie udzielenia ochrony międzynarodowej, [in] Stowarzyszenie Interwencji Prawnej (SIP), SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r. (2019), available (in Polish) at: <http://bit.ly/2S507LV>, 20.

According to the Commissioner for Human Rights, there is a poor knowledge of the Istanbul Protocol among medical staff and psychologists in the detention centres.¹⁹⁷

4. Legal representation of unaccompanied children

Indicators: Unaccompanied Children

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

Yes No

The Law on Protection provides for the appointment of a legal representative to an unaccompanied child - special guardian (*kurator*).¹⁹⁸ There are no exceptions; each child has to have a legal representative and all unaccompanied children get one in practice. The Head of the Office for Foreigners or the SG immediately lodges the request to the district custodial court. The court appoints the legal representative. Under the law, the deadline for appointing the guardian is 3 days. There is no information on compliance with this rule in practice. One guardian is appointed for the following proceedings: international protection, Dublin, social assistance, voluntary return.

There is no special requirement in the Law on Protection for being eligible as a representative of an unaccompanied child for an asylum procedure: the representative should be an adult and have legal capacity. Under the law, only the person who undertakes procedural acts in the proceedings in granting international protection to an unaccompanied minor should fulfill certain conditions.¹⁹⁹ There is no remuneration for being a legal representative. In practice in the last years there were problems arising from the insufficient numbers of trained legal representatives for unaccompanied children. NGO personnel and students of legal clinics at universities are appointed as guardians. The legal representative should be present during the interview, together with a psychologist, and may ask questions and make comments.²⁰⁰

The Border Guard reports that since December 2017 they use a list of NGO workers who declared their willingness to be a representative of a child.²⁰¹ However, as the Border Guard confirms, due to the lack of funding, some NGOs withdrew their representatives from the list. As of 2021, there were a total of 11 legal representatives on the list, for a total number of 199 unaccompanied children. Their presence on that list is not binding, which means they are not obliged to become a representative.²⁰² Also the list has not been updated since 2019 and is outdated in many cases.

In Poland, according to the Commissioner for the Rights of the Child (Ombudsperson for Children), ensuring legal representation for unaccompanied children remains a challenge, as the legal provisions are not adapted to the needs of such children.²⁰³ Also in 2018 the Commissioner for the Rights of the Child called on the Ministry of Justice to introduce a special type of legal representation of unaccompanied foreign children in Poland. In the opinion of the Commissioner that would allow a comprehensive and stable representation of a foreign child on the Polish territory, bearing in mind their best interest. The Commissioner criticised the fact that guardians were appointed for concrete proceedings or set of proceedings and they did not have a closer relation with a child, which impeded decision-making and assessing the children's best interest in other fields (such as education, medical care, etc.).²⁰⁴

¹⁹⁷ The Commissioner's conference presentation from 26.04.2019 r., information available (in Polish) at: <http://bit.ly/3u9z588> and of 3 December 2018, information available (in Polish) at: <http://bit.ly/2T5YvE7>.

¹⁹⁸ Article 61 Law on Protection.

¹⁹⁹ Article 66 Law on Protection.

²⁰⁰ Article 65(3) and (4) Law on Protection.

²⁰¹ Information provided by the Border Guard, 11 January 2018.

²⁰² Information provided by the Border Guard, 17 January 2020.

²⁰³ Fundamental Rights Agency, Migration: Key fundamental rights concerns, Bulletin 2, available (EN) at: <https://bit.ly/3GENm1Q>, p. 27.

²⁰⁴ The Commissioner for the Rights of the Child, letter to the Ministry of Justice, 2 July 2018, available (in Polish) at: <http://bit.ly/2SemiZK>. These letters are no longer available online once the Commissioner for the Rights of the Child changed and the website is being rebuild.

In the shadow report to Committee on the Rights of the Child from 2020, NGOs stress that some guardians do not have any personal contact with the unaccompanied minor they represent and because of such a practice, the child does not have much information on their legal situation. Children do not have access to any information that would be adjusted to their age (leaflets, websites). Also, guardians are not supported by interpreters, which makes the communication ever more difficult.²⁰⁵

Currently unaccompanied children are placed in various intervention facilities in Poland, instead of in a central institution. After the court ruling appointing the representative, they can be placed in foster care facilities or foster families. In 2021, as in the past years, unaccompanied minors were mostly placed in foster care facilities in **Kętrzyn** (24 persons) – due the proximity to the detention centre in **Kętrzyn**, from which they are released because of age - or in **Warsaw** (9 persons). In 2021 they were placed also in **Elk** (5 persons), **Białystok** (4 persons), **Rybnik** (3 persons) and **Krano, Ruszkow and Bialowieza** (2 persons in each).²⁰⁶ There is no information on whether the personnel speak foreign languages there, this is not one of the criteria.²⁰⁷

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

In 2021 there were 199 unaccompanied children (up from 113 in 2020) applying for international protection in Poland.²⁰⁸ According to the Office for Foreigners the vast majority of procedures are discontinued because of implicit withdrawal of the application (the minors leave the centres and do not return), in case of some nationalities (e.g. Vietnamese) the percentage of discontinued applications is 100%.²⁰⁹

E. Subsequent applications

Indicators: Subsequent Applications

1. Does the law provide for a specific procedure for subsequent applications? Yes No

2. Is a removal order suspended during the examination of a first subsequent application?

- ❖ At first instance Yes No
- ❖ At the appeal stage Yes No

3. Is a removal order suspended during the examination of a second, third, subsequent application?

- ❖ At first instance Yes No
- ❖ At the appeal stage Yes No

Subsequent applications are subject to an **Admissibility Procedure**. If there are no new grounds for the application, a decision on inadmissibility is issued. In 2021, there were 1,426 subsequent applications, submitted mainly by Russian and Afghan nationals.²¹⁰

The first subsequent application has suspensive effect on a return decision and return order cannot be executed.²¹¹ If the application is considered inadmissible because the applicant did not present any new evidence or new circumstances of the case²¹² it can be appealed within 14 days and until the Refugee Board makes a decision, suspensive effect is upheld. If the application is considered admissible, i.e.

²⁰⁵ NGOs alternative report to the government report on implementation of the Convention of the Rights of the Child, submitted to UNICEF, August 2020, available (PL) at: <https://bit.ly/3s3hZXX>.
²⁰⁶ Information provided by the Office for Foreigners, 26 January 2022.
²⁰⁷ Information provided by the Office for Foreigners, 27 August 2015.
²⁰⁸ Information provided by the Office for Foreigners, 26 January 2021.
²⁰⁹ Information provided by the Office for Foreigners, 15 January 2019.
²¹⁰ Information provided by the Office for Foreigners, 26 January 2022.
²¹¹ Article 330(2) and (3) Law on Foreigners.
²¹² Article 38(4) Law on Protection.

containing new evidence or new circumstances relevant for the case, the Head of the Office for Foreigners issues a decision considering the application admissible.²¹³ In this case, suspensive effect is in force until the final administrative decision on international protection is served. In case of further subsequent applications, there is no suspensive effect on a return order.²¹⁴

In 2021 the Office for Foreigners issued 51 decisions deeming the subsequent application admissible, while the applications of 815 persons were dismissed as inadmissible.²¹⁵

In 2019 the Voivodeship Administrative Court in **Warsaw** issued a judgement in which the Court stated that the subsequent application cannot be deemed inadmissible even if only one single element of facts of the case has changed.²¹⁶

However, as SIP reports, the decision makers apply a narrow interpretation of the notion of ‘new evidence or new circumstances’ and also misinterpret the importance of new evidence and new circumstances to the proceedings.²¹⁷ Moreover, the SIP lawyers noted that there is a well-established practice of not conducting interviews in subsequent application proceedings, including when the applicant presented new evidence or new circumstances in the case.

Also there is no consistent approach to the change in the country of origin situation. The SIP lawyers report both decisions on admissibility of the application in such cases where the human rights situation in the country of origin deteriorated (e.g. Belarusian), as well as decisions claiming the application inadmissible in similar circumstances.²¹⁸ The lawyers believe the subsequent applications are considered inadmissible automatically, even if the person returned to the country of origin and then applied again for international protection and also if their health condition changed.²¹⁹ With regard to personal interviews, appeal and legal assistance, see section on the [Admissibility Procedure](#).

F. The safe country concepts

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

Since the 2015 reform of the law, the safe country of origin concept is not applicable in Poland. The draft law submitted in 2017 (and updated in February 2019, yet not adopted as of February 2022 introduces the safe country of origin concept and foresees the adoption of national lists of safe countries of origin and safe third countries.²²⁰

²¹³ Article 38(5) Law on Protection.

²¹⁴ Article 330(2)2 Law on Foreigners.

²¹⁵ Information provided by the Office for Foreigners, 26 January 2022.

²¹⁶ The Voivodeship Administrative Court judgement from 18 April 2019 IV SA/Wa 3394/18, summary available (in Polish) at: <https://bit.ly/2UkEbiB>.

²¹⁷ Legal Intervention Association (SIP), Raport SIP w działaniu, Prawa cudzoziemców w Polsce w 2020 r. [Report SIP in action. Rights of foreigners in Poland in 2020], available (PL) at: <https://bit.ly/3LnxriB>, p.25.

²¹⁸ Ibidem.

²¹⁹ Legal Intervention Association (SIP), Raport SIP w działaniu, Prawa cudzoziemców w Polsce w 2021 r. [Report SIP in action. Rights of foreigners in Poland in 2019], available (PL) at: <https://bit.ly/3tgXbhS>.

²²⁰ Draft law available (in Polish) at: <http://bit.ly/2lqboVu>.

The concept of first country of asylum is included in the law and reflects the wording of Article 35 of the recast Asylum Procedures Directive. This provision was not relied on in 2021 and 2020²²¹ and applied in 4 cases in 2019.²²²

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

1. Provision of information on the procedure

Indicators: Information on the Procedure

1. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice? Yes With difficulty No

❖ Is tailored information provided to unaccompanied children? Yes No

The same level of information on the asylum procedure is provided to applicants during all types of procedures. The Border Guard officer who receives an asylum application has to inform in writing the applicant in a language that they understand on:²²³

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

This information, covering the list of NGOs, is provided at the border crossing points and is available in 22 languages.²²⁴

The Office for Foreigners also offers information in the form of a booklet entitled “First steps in Poland – Guidebook for foreigners applying for international protection,” available in 6 languages (Russian, English, Georgian, Arabic, French and Polish) and contains basic information on Poland, Polish law regarding asylum seekers and social assistance.²²⁵ With regard to general information on the asylum procedure, rights and obligations of asylum seekers etc. as well as information on rights after protection is granted it has to be stressed that they are formulated in legal terms and are therefore not easily understandable.

Asylum seekers are informed about the Dublin procedure when they apply for international protection in accordance with the Dublin III Regulation and the Commission’s Implementing Regulation no 118/2014, including the specific leaflet for unaccompanied children.²²⁶

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

²²¹ Information provided by the Office for Foreigners, 26 January 2021 and 26 January 2022.

²²² Information provided by the Office for Foreigners, 22 January 2020.

²²³ Article 30(1)(5) Law on Protection.

²²⁴ Information provided by the Border Guard, 11 January 2018.

²²⁵ Office for Foreigners, *First steps in Poland handbook*, available at: <http://bit.ly/2BEraXC>.

²²⁶ Information provided by the Border Guard, 17 January 2020.

and NGOs. According to the Border Guards the instructions are provided in every unit, also at the border and are available in 22 languages.²²⁷

In 2020 and 2021, UNHCR supported the Office for Foreigners in managing practical aspects of proceedings during the pandemic.²²⁸

2. Access to NGOs and UNHCR

Indicators: Access to NGOs and UNHCR

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

Applicants are generally informed about legal assistance provided by NGOs by the posters and leaflets in the Office for Foreigners, Office for Foreigners website, reception centres and detention centres as well as by the officers. Despite the ongoing pandemic, NGOs were allowed to access reception centres. According to the Office for Foreigners, as of September 2021 there were 7 NGOs visiting reception centres.²²⁹

Conversely, persons seeking international protection located at the border definitely had problems with access to NGOs and UNHCR as not only the border, but the area near the border zone (surrounding forests and villages) was subject to state of emergency. On the situation at the border see [Access to the territory and push backs](#).

H. Differential treatment of specific nationalities in the procedure

Indicators: Treatment of Specific Nationalities

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

In Poland there is generally no official policy implemented with regard to the nationals of particular countries of origin because every application is examined individually.

In mid- August the group of approximately 1100 Afghans was evacuated from their country and came to Poland. According to the Office for Foreigners, the Office made efforts to prioritize applications of these Afghan nationals as they were considered manifestly well-founded. To the contrary, the Office also tried to prioritize issuing negative decisions towards the applicants from Iraq who irregularly crossed the border from Belarus.²³⁰

²²⁷ Information provided by the Border Guard, 17 January 2020.

²²⁸ Information provided by the Office for Foreigners, 26 January 2021 and 26 January 2022.

²²⁹ Letter of the Office for Foreigners to the Commissioner for Human Rights, 10 September 2021, available (PL) at: <https://bit.ly/3LobRny>.

²³⁰ Letter from the Office for Foreigners to HFHR no BSZ.WKSI.0656.3.2022/RW, 26 January 2022.

Still, the most significant group of persons seeking protection in 2021 were Belarusian citizens. There were 2257 applicants in 2021, while 1148 persons were granted protection (140 refugee status and 1008 subsidiary protection) and only 3 persons were issued a negative decision.

The Government introduced many policies enabling the Belarussians entering Poland as migrants – such as visa facilitations and facilitations in obtaining residence permit. According to the Office for Foreigners, Belarusians constitute the second-largest group of foreigners in Poland, with around 28,000 of them currently holding residence permits as of 2020.

As of 31 December 2021, according to the Border Guard, no returns are carried out to the following countries: **Syria, Eritrea, Venezuela, Afghanistan and Palestine**.²³¹ According to the Border Guard, this list is updated every quarter based on the Eurostat information on international protection and humanitarian protection rate. When the protection rate is higher than 75%, returns are withheld to those countries.²³²

²³¹ Information provided by the Border Guard, 4 March 2022. February 2021.

²³² Information provided by the Border Guard to Nomada NGO, 14 September 2020.

Reception Conditions

Short overview of the reception system

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

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

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

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

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

At the end of 2021, 8 reception centres operated in Poland, offering 1,615 places for asylum seekers. Two centres serve as the first-reception centres (located in **Dębak and Kolonia-Horbów**) and six function as accommodation centres (located in **Białystok, Czerwony Bór, Bezwola, Łuków, Grupa and Linin**). The Head of the Office for Foreigners is responsible for the management of all the centres. This authority can delegate its responsibility for managing the centres to social organisations, associations, private owners, companies etc. Currently 5 reception centres are managed by private contractors. Overcrowding was not an issue reported in practice in 2021. The conditions in the centres have improved in recent years, although certain problems are still being reported such as the remote location of certain centers which impedes the integration process of asylum seekers.

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

The law allows for access to the labour market for asylum seekers after six months from the date of submission of an asylum application if a final decision has not been taken within this time and if the delay is not attributed to any fault of the asylum seeker.

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

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

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

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators: Criteria and Restrictions to Reception Conditions

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

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

2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions? Yes No

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

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

The problems with reception conditions that asylum seekers face in Poland – that are described in this report – were not included to the diagnosis of the Ministry of Interior (except for the lack of a sufficient training for teachers working with foreign pupils).²³³

In summer 2021, a new document 'Polish migration policy – directions of activities 2021-2022' was consulted with civil society. It mentioned that proceedings concerning material reception conditions and medical assistance should be optimized. The proper standard of reception should be maintained and monitored, but the costs should be under control as well. Teachers working with foreign pupils should have access to a proper training.²³⁴ The plans for 2021-2022 as regards reception expressed in that document were considered insufficient by NGOs. The preparation of the 'Polish migration policy' was subsequently suspended, reportedly in connection with the humanitarian crisis at the Polish-Belarusian border.²³⁵

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

Asylum seekers are entitled to material reception conditions during all asylum procedures in Poland. There is no difference between regular, accelerated and admissibility procedures, as well as first appeal.²³⁶ The provision of reception conditions does not depend on the financial situation of asylum seekers.

²³³ Ministry of Interior and Administration, 'Polityka migracyjna Polski – diagnoza stanu wyjściowego', available (in Polish) at: <http://bit.ly/377T5Ov>, 37. See also EMN, 'Polish migration policy – diagnosis of the initial status', 20 January 2021, available at: <http://bit.ly/3piyaOY>.

²³⁴ 'Polityka migracyjna Polski – kierunki działań 2021-2022', available in Polish at: <https://bit.ly/34gKqeG>.

²³⁵ I. Kacprzak, G. Zawadka, 'Prace nad strategią polityki migracyjnej Polski znów odłożone', 26 October 2021, Rzeczpospolita, available in Polish at: <https://bit.ly/3vGf7Fu>.

²³⁶ Article 70 Law on Protection.

Asylum seekers are entitled to material reception conditions after claiming asylum, from the moment they register in the first reception centre. They should register there within two days after applying for asylum, otherwise their procedure is discontinued (unless they declare another place of stay), as was the case in 59 cases in 2021.²³⁷ Only medical assistance can be granted from the moment of claiming asylum (i.e. before registration in a first reception centre) in special situations, i.e. in case of threat to life and health.²³⁸

Exceptionally, the SG is entitled to inform an asylum seeker that it is impossible to apply for asylum the day he/she presents him/herself at the SG unit. In such a situation, the SG registers a declaration of intention to submit the asylum application and determines a later date (no longer than 3 working days, in case of massive influx - 10 working days) and place to officially apply for asylum.²³⁹ In 2021 such later date was given in total in regard to 937 foreigners.²⁴⁰ By law, asylum seekers waiting to officially apply for asylum are not entitled to any form of material reception conditions in Poland. The problem concerns both first-time asylum seekers and rejected asylum seekers who intend to apply for asylum again, but the latter try to avoid a gap in obtaining the assistance by submitting a subsequent application before the entitlement to material reception conditions resulting from a previous asylum procedure elapses.²⁴¹

Reception conditions are provided:²⁴²

- (a) until 2 months after a final positive decision on asylum;
- (b) up until 14 days after a final decision discontinuing the asylum procedure (e.g. in admissibility procedures);
- (c) up until 30 days after a final negative decision on asylum given on the merits by the Office for Foreigners or the Refugee Board.²⁴³

In principle, during the onward appeal procedure before the Voivodeship Administrative Court in Warsaw, asylum seekers are not entitled to material reception conditions.²⁴⁴ In practice, when the court suspends enforcement of the contested decision of the Refugee Board for the duration of the court proceedings, asylum seekers are re-granted material reception conditions to the same extent as during the administrative asylum procedure, until the ruling of the court.²⁴⁵ Despite the fact that this practice has been applied by the Office for Foreigners for years, recently, the Voivodeship Administrative Court in Warsaw in a number of decisions indicated that there is no connection between the provision of material reception conditions and the decision on a suspension.²⁴⁶ However, the Office for Foreigners still declares that it grants material reception conditions, if the court suspends the enforcement of the Refugee Board decision. In 2021, in 50 cases the Court decided to grant suspensive effect and in 37 refused to grant suspensive effect to a negative decision concerning international protection.²⁴⁷ In practice, asylum seekers deal with the problem

²³⁷ Article 40(1)(2) in conjunction with Article 40 (2)(1) Law on Protection. Information provided by the Office for Foreigners, 26 January 2022. This number includes all situations where asylum seekers did not register in the reception centre in 2 days, so both when they did not manage to get there in time and when they did it intentionally (e.g. they left Poland to seek asylum elsewhere).

²³⁸ Article 74(1)(1) Law on Protection.

²³⁹ Article 28(1) Law on Protection.

²⁴⁰ Information provided by the Office for Foreigners, 13 April 2022. In 2019, a later date was given in 165 cases (information from the Office for Foreigners, 22 January 2020) and in 2020 – in 298 cases (information provided by the Office for Foreigners, 26 January 2021).

²⁴¹ Information provided by SIP, 8 January 2020.

²⁴² Article 74(1) Law on Protection; Article 299(6)(1)(b) Law on Foreigners.

²⁴³ It is connected with the obligation to depart from Poland in 30-days after receiving final negative decision on asylum. During the COVID-19 pandemic, the 30-day time-limit was prolonged by law, thus also the provision of material reception conditions for a longer period than 30 days was possible. See also Article 15z⁸ COVID Law.

²⁴⁴ 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.

²⁴⁵ This is the interpretation by the Legal Department of the Office for Foreigners. Information confirmed by the Office for Foreigners, 26 January 2022.

²⁴⁶ M. Sadowska, 'Wstrzymanie wykonania decyzji na czas postępowania sądowo-administracyjnego' in SIP, *Prawa cudzoziemców w Polsce w 2020 roku. Raport*, 2021, available in Polish at: <https://bit.ly/3sGmlXS>, 27-28.

²⁴⁷ Information provided by the Voivodeship Administrative Court on 24 January 2022. However, with regard to some applications for granting suspending effect the outcome of the proceedings was not given.

of the lack of material reception conditions during the court proceedings by submitting subsequent asylum applications.²⁴⁸

Asylum seekers who are subject to a Dublin transfer from Poland are entitled to material reception conditions until the day they should leave Poland.²⁴⁹ Thus, this assistance may be granted for a longer period of time than in other cases when a decision discontinuing the proceedings is issued (it is an exception from the 14 days rule mentioned above). Moreover, Dublin returnees may request an additional assistance. The request has to be made in a specific term (30 days from the moment when the decision on transfer became final). After this time, the demand of the asylum seeker is left without consideration.²⁵⁰ The additional assistance covers travel costs, administrative payments for travel documents or visas and permits, cost of food and medical assistance during the travel.²⁵¹

Some foreigners are not entitled to material reception conditions during the asylum procedure e.g. beneficiaries of subsidiary protection (applying for asylum again),²⁵² foreigners benefiting from humanitarian stay or tolerated stay; foreigners staying in Poland on the basis of temporary stay permit, permanent stay permit or long-term residence permit; foreigners staying in youth care facilities or detention centres or a pre-trial custody or detention for criminal purposes.²⁵³ Beneficiaries of subsidiary protection, foreigners staying in Poland on the basis of a permanent stay permit, long-term residence permit or – in some cases – temporary stay permit are entitled to state benefits (general social assistance system) to the same extent as Polish citizens. Foreigners who were granted humanitarian stay or tolerated stay are entitled to state benefits only in the form of shelter, food, necessary clothing and an allowance for a specified purpose.²⁵⁴

During the COVID-19 pandemic, the abovementioned rules regarding the duration of material reception conditions were changed so as to guarantee that the provision of social and medical assistance do not end during the epidemic state. It was prolonged by 30 days counted from a day when the epidemic state has been revoked.²⁵⁵ That rule has been repealed in April 2022. Thus, the epidemic-related prolongation of the provision of the material reception conditions lasted until 15 May 2022.²⁵⁶

1.2. Obstacles to accessing reception

General obstacles

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

Asylum seekers should register in the first reception centre within two days after applying for asylum, otherwise their procedure will be discontinued (unless they declare another place of stay).²⁵⁷ In practice some asylum seekers have problem to get there in time.²⁵⁸ They are given only the address of the centre and should get there by themselves. A transport is organised by the SG, pursuant to law, only for pregnant women, single parents, elderly and disabled people. In justified cases, food for them should be also

²⁴⁸ Information provided by SIP, 8 January 2020.

²⁴⁹ Article 74(3)(3) Law on Protection.

²⁵⁰ Article 75a(2) in conjunction with Article 75(3) and (3a) Law on Protection.

²⁵¹ Article 75a(2) in conjunction with Article 75(2) Law on Protection.

²⁵² In practice, some foreigners after the end of the asylum procedure, in which they were granted subsidiary protection, apply for asylum again in order to be granted refugee status.

²⁵³ Article 70(2) Law on Protection.

²⁵⁴ Article 5(2) Law of 12 March 2004 on social assistance.

²⁵⁵ Article 15z⁸ COVID Law.

²⁵⁶ Office for Foreigners, 'Zakończenie przedłużonego okresu udzielania pomocy socjalnej', 22.04.2022, available in Polish: <https://bit.ly/3KsCKov>.

²⁵⁷ Article 40(1)(2) in conjunction with Article 40 (2)(1) Law on Protection.

²⁵⁸ See also Pachocka, M. and Sobczak-Szelc K., 'Refugee Protection Poland – Country Report', Multilevel Governance of Mass Migration in Europe and Beyond Project (Horizon2020), January 2020, available at: <https://bit.ly/2WpN0sh>, 57.

provided.²⁵⁹ Other vulnerable asylum seekers cannot benefit from the organised transport, which is considered 'a gap in asylum system'.²⁶⁰ Irrespectively, the Border Guard does not keep comprehensive data on the transports to reception centres that have been carried out in practice; thus, it is unknown to what extent it is in fact provided for pregnant women, single parents, elderly and disabled people.²⁶¹

This problem concerns also formerly detained asylum seekers. Those who have been detained are not entitled to support immediately after being released from the detention centre. They are granted material reception conditions only from the moment of registration in a reception centre, which is very often located far away from the detention centre. As a result, asylum seekers have difficulties to cover the cost of transport to the reception centre. Again, it should be organised by the SG in regard to released pregnant women, single parents, elderly and disabled people.²⁶² However, partial data that were made available show that the respective provision of the Law on Protection was not applied in 2019 and applied in case of merely 7 asylum seekers in 2020, which may suggest that in practice it is interpreted too restrictively or overlooked. In 2021, it was applied in at least 70 cases (as reported by 5 detention centres, but mostly by Kętrzyn detention centre that declared assisting with transport of 64 foreigners).²⁶³ While no case of such a transport was reported in regard to the Krosno Odrzańskie detention centre, it was the only guarded centre that declared assisting released foreigners financially (buying tickets to the reception centre) and cooperating with Caritas to provide them with a place to stay and food.²⁶⁴

Moreover, asylum seekers who change the form of material reception conditions from being accommodated in one of the reception centres to being granted the financial allowance and living in a private accommodation, must leave the reception centre at the end of one month, but should receive their first financial allowance up until 15th day of the next month. They are not entitled to any payments in advance, despite the fact that owners often require paying a first rent or a deposit before they rent an apartment. No support is offered in finding a suitable and affordable private accommodation, even though the asylum seekers most often do not know Polish enough to communicate with owners.²⁶⁵

Lastly, it was reported that asylum seekers in the process of appealing a decision were sometimes not granted social assistance, for the simple reason that the Office for Foreigners' system had no record of their appeal. The Supreme Audit Office's report from 2019 confirmed that some problems with the timely data input to prescribed registries still exceptionally occurred.²⁶⁶

Specific obstacles (2020-2021)

In 2020, due to the COVID-19 pandemic, asylum seekers had problems with accessing asylum proceedings, thus also with obtaining material reception conditions.²⁶⁷ The 'declarations of intention to submit the asylum application' were mostly accepted and registered by the Border Guards at that time. By law, the persons who 'declared the intention to submit the asylum application' are not covered by the

²⁵⁹ Article 30(1)(8) Law on Protection. See also Article 40a of this act, where such transport is guaranteed for Dublin transferees.

²⁶⁰ Pachocka, M. and Sobczak-Szelc K., 'Refugee Protection Poland – Country Report', Multilevel Governance of Mass Migration in Europe and Beyond Project (Horizon2020), January 2020, available at: <https://bit.ly/2WpN0sh>, 73.

²⁶¹ Information provided by the Border Guard every year since 2018.

²⁶² Article 89cb Law on Protection.

²⁶³ Information from different branches of the SG.

²⁶⁴ Information from Chief of the Nadodrzański Branch of Border Guard, 4 February 2022.

²⁶⁵ Lukasiwicz, K., 'Exile to Poverty: Policies and Poverty Among Refugees in Poland', *International Migration Vol. 55* (6) 2017, 64, 66. However, in October 2021, the Office for Foreigners announced a call for volunteers in reception centres that will assist asylum seekers with seeking private accommodation, see Office for Foreigners, 'Wolontariat w ośrodkach dla cudzoziemców', 25 October 2021, available in Polish at: <https://bit.ly/3CfJjZd>.

²⁶⁶ Supreme Audit Office, *Przygotowanie administracji publicznej do obsługi cudzoziemców. Informacja o wynikach kontroli*, 2019, available (in Polish) at: <https://bit.ly/2OrVTwA>, 64.

²⁶⁷ M.K. Nowak, 'Poprosiła o postojowe, zerwano umowe. Uchodźcy dziś nie mają na chłeg, jutro straca mieszkanie,' 30 May 2020, available (in Polish) at: <http://bit.ly/3b1D79R>.

medical and social assistance.²⁶⁸ However, NGOs informed that, in practice, due to the pandemic, some asylum seekers who declared the intention to apply for asylum, but have not yet officially submitted the asylum application, were allowed to access material reception conditions.²⁶⁹ In 2021, the continuing pandemic still impacted the Border Guard's practice. When many foreigners wished to apply for international protection on a particular day, Border Guard preferred accepting declarations of intention to submit the asylum application in order to enable social distancing. In those circumstances, as the Border Guard stipulated, a declaration was taken only when an asylum seeker had a place of stay (e.g. in case of subsequent applications).²⁷⁰ However, one must notice that much more declarations were registered in 2021 in comparison to 2020 (937 in 2021 and 298 in 2020).

The humanitarian crisis at the Polish-Belarusian border in 2021 left many prospective asylum seekers without access to material reception conditions. Foreigners that were stuck on that border or pushed back to Belarus were not allowed to apply for international protection in Poland – against Polish, EU and international law – thus, they could not obtain material reception conditions, including medical assistance, that is available to asylum seekers whose applications have been registered. In those circumstances, humanitarian aid (i.e. food, clothes, blankets) and medical assistance²⁷¹ was provided for months by several local and state authorities (including the Commissioner for Human Rights²⁷²), NGOs and private persons. However, its scope and effectiveness were greatly limited after the introduction of the emergency state.

2. Forms and levels of material reception conditions

Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers as 31 December 2021 (in original currency and in €):

❖ Accommodated, incl. food	50 PLN / 12 €
❖ Private accommodation	775 PLN / 185 €

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

Under the law, the material reception conditions offered in the centre are granted as a rule to all asylum seekers. An asylum seeker can obtain assistance granted outside the centre upon request, examined by the Head of the Office for Foreigners. It can be granted for organisational, safety or family reasons or to prepare asylum seekers for an independent life after they have received any form of protection.²⁷³ Most of the requests are accepted.²⁷⁴ In 2020 and 2021, due to pandemic COVID-19, living outside the centres was encouraged.

All of the abovementioned reception conditions are applied in practice. As of 31 December 2021, 1,076 (compared to 819 in 2020) asylum seekers benefited from material reception conditions in the centres and 4,795 (compared to 2,225 in 2020) asylum seekers were granted assistance outside the centres.²⁷⁵

All asylum seekers (living in and out the reception centre) can:

²⁶⁸ Article 70 (1) Law on Protection.

²⁶⁹ Information provided by SIP, 12 April 2021.

²⁷⁰ Information provided by the Border Guard, 4 March 2022.

²⁷¹ For more, see Health care section below.

²⁷² Commissioner for Human Rights, 'Pomoc materialna RPO dla cudzoziemców i organizacji pomocowych działających przy granicy polsko-białoruskiej', 23 September 2021, available in Polish at: <https://bit.ly/3tnTGG8>.

²⁷³ Article 72(1) Law on Protection.

²⁷⁴ In 2020, 1,053 requests for the social assistance granted outside a centre were registered of which 937 were accepted (89%). In 2021, 2,347 requests were registered and all were accepted. Information from the Office for Foreigners, 26 January 2021 and 26 January 2022.

²⁷⁵ Information provided by the Office for Foreigners, 26 January 2021 and 26 January 2022.

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

Living in the reception centre

For asylum seekers accommodated in reception centres, material conditions include:

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

70 PLN that asylum seekers receive every month (allowances for personal expenses and for hygienic articles or hygienic utilities) is not enough to satisfy their basic needs.²⁷⁶

According to the law, in case an asylum seeker helps in a reception centre (i.e. performs cleaning work for the centre, provides translation or interpretation that facilitates communication between the personnel of the centre and asylum seekers, or provides cultural and educational activities for other asylum seekers who stay in the centre), the amount of the allowance for personal expenses may be raised to PLN 100 (23.24€). In 2021 this raise was applied 386 times.²⁷⁷

Living outside the reception centre

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

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

The amount of financial allowance that asylum seekers receive is generally not sufficient to ensure an adequate standard of living in Poland.²⁷⁸ With only PLN 750-775 (around 160-166 Euros) per month, it is very difficult or even impossible to rent an apartment or even a room in **Warsaw**, where most asylum

²⁷⁶ M. Pachocka, K. Pędziwiatr, K. Sobczak-Szelc, J. Szałańska (2020) 'Reception Policies, Practices and Responses: Poland Country Report', RESPOND Working Papers 2020/45, available at: <http://bit.ly/3jLCvsV>, 64, 84.

²⁷⁷ Information provided by the Office for Foreigners, 26 January 2022.

²⁷⁸ FRA, 'Migration: Key Fundamental Rights Concerns: 1.7.2019-30.9.2019. Quarterly Bulletin', 20, relying on the information from the HFHR and SIP. See also Lukaszewicz, K., 'Exile to Poverty: Policies and Poverty Among Refugees in Poland', International Migration Vol. 55 (6) 2017, 63-64.

seekers stay during the procedure, particularly taking into account that owners are often unwilling to rent an apartment to foreigners, especially asylum seekers, and tend to increase a rent or deposit in such situations.²⁷⁹ As the amount of financial allowance is insufficient for renting separate accommodation, asylum seekers are often forced to live in overcrowded and insecure places. Many of them sleep in overcrowded apartments, where they have to share beds with other people or where living conditions do not provide privacy and personal safety.²⁸⁰ Financial allowance for families of four amounts to PLN 1,500 (around 321 Euros) per month and in practice it may be enough only to rent an apartment, however with a great difficulty. Insufficient social assistance forces asylum seekers to work in Poland illegally in order to maintain and pay the rent.²⁸¹ Situation worsened during the COVID-19 pandemic, as many asylum seekers lost their jobs.²⁸²

The amount of financial allowance is below the so called “social minimum” (indicator which evaluates the cost of living in Poland). The asylum seeker receives 1,5-2 times less than what is essential according to the “social minimum”. The amount of social assistance for asylum seekers has not been raised since 2003,²⁸³ even though the costs of living in Poland have increased significantly since then. As a result, material reception conditions are insufficient to ensure a decent standard of living as highlighted in the CJEU judgment in *Saciri*.²⁸⁴

The financial allowance that asylum seekers receive is not adjusted to their state of health, age or disability, which is incompatible with *Saciri*.²⁸⁵ The system of granting material reception conditions for asylum seekers is separate from the general social assistance rules applicable to nationals. While social assistance for nationals is provided based on individual assessment of particular needs, the level of allowances offered to asylum seekers is generally standardized.

In 2020, SIP submitted a complaint to the European Commission that Poland is not abiding by its obligations stemming from Article 17(2) of the Reception Conditions Directive (2013/33/EU). SIP stressed that the amount of the financial allowance that is granted in Poland does not ‘provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health’. In consequence, asylum seekers may be forced to live in the extreme poverty or even their life can be in danger.²⁸⁶ Seemingly under the Commission’s pressure, the government started a legislative procedure to increase the allowances.

²⁷⁹ ‘List of recommendations to improve housing situation of Beneficiaries of International Protection in Poland – prepared by Refugee Council operating within the NIEM/V4NIEM’, 2021, available at: <https://bit.ly/3Mmsyjl>; W. Goszczyński, R. Baczyński-Sielaczek, J. Suchomska, J. Stankowska and M. Wróblewski, ‘Lokalne systemy integracji uchodźców – badania’ in Fundacja EMIC and Pracownia Zrównoważonego Rozwoju, *Wielogłos. Integracja uchodźców w polskich gminach*, 2016, available (in Polish) at: <https://bit.ly/31srALw>, 81.

²⁸⁰ M. Pachocka, K. Pędziwiatr, K. Sobczak-Szelc, J. Szałańska, ‘Reception Policies, Practices and Responses: Poland Country Report’, 2020, RESPOND Working Papers 2020/45, available at: <http://bit.ly/3jLCvsV>, 56-58; W. Klaus, ‘Rozwiązania prawne stosowane w odniesieniu do osób starających się o ochronę w Polsce’ in A. Górny, H. Grzymała-Moszczyńska, W. Klaus and S. Łodziński, *Uchodźcy w Polsce. Sytuacja prawna, skala napływu i integracja w społeczeństwie polskim oraz rekomendacje*, PAN 2017, available (in Polish) at: <https://bit.ly/2XEsfZ>, 22; Lukaszewicz, K., ‘Exile to Poverty: Policies and Poverty Among Refugees in Poland’, *International Migration* Vol. 55 (6) 2017, 63. Information provided also by SIP, 8 January 2020.

²⁸¹ Stowarzyszenie Interwencji Prawnej, A. Chrzanowska, I. Czerniejewska, ‘Mieszkamy tutaj, bo nie mamy innego wyjścia... Raport z monitoringu warunków mieszkaniowych uchodźców w Polsce, Analizy, raporty, ekspertyzy Nr 2/2015’, available (in Polish) at: <http://bit.ly/1Lq2Hie>, 55. Information provided also by SIP, 8 January 2020.

²⁸² M.K. Nowak, ‘Poprosiła o postojowe, zerwano umowę. Uchodźcy dziś nie mają na chleb, jutro straca mieszkanie,’ 30 May 2020, available (in Polish) at: <http://bit.ly/3b1D79R>; D. Nowok, ‘O pomocy żywnościowej podczas pandemii i lockdownu, 19 January 2021, available in Polish at: <https://bit.ly/3tw3myp>.

²⁸³ W. Klaus, ‘Rozwiązania prawne stosowane w odniesieniu do osób starających się o ochronę w Polsce’ in A. Górny, H. Grzymała-Moszczyńska, W. Klaus and S. Łodziński, *Uchodźcy w Polsce. Sytuacja prawna, skala napływu i integracja w społeczeństwie polskim oraz rekomendacje*, PAN 2017, available (in Polish) at: <http://bit.ly/2DVccfr>, 22.

²⁸⁴ CJEU, Case C-79/13 *Saciri*, Judgment of 27 February 2014.

²⁸⁵ See e.g. the HFHR’s opinion concerning planned increase of financial allowances for asylum seekers, 24 September 2021, available in Polish at: <https://bit.ly/3vD2mv4>.

²⁸⁶ SIP, ‘Skarga do KE: rażąco niskie środki finansowe dla osób ubiegających się o udzielenie ochrony międzynarodowej’, 7 July 2020, available in Polish at: <http://bit.ly/3r1fYjE>.

In 2021, the government announced its plans to increase the financial allowances given to asylum seekers.²⁸⁷ Following changes in law were indicated:

- Allowance for purchase of hygienic articles or hygienic utilities – PLN 30 (instead of PLN 20);
- Equivalent for meals in the centre – PLN 12 (instead of PLN 9) and
- Financial allowance for asylum seekers living outside reception centres – PLN 776 per month (single persons) and PLN 600 (for a person in a family).

HFHR has noticed that the proposed changes are insufficient: PLN 30 is not enough to cover asylum seekers' essential expenses, e.g. diapers, and the financial allowance for asylum seekers staying outside the reception centres is still below 'social minimum' and not adjusted to their special needs.²⁸⁸ The HFHR's comments were not considered justified by the government. Moreover, despite the initial plan to introduce the increase on 1 January 2022, the ordinance in this regard has not been adopted yet (as of 29 April 2022).

3. Reduction or withdrawal of reception conditions

Indicators: Reduction or Withdrawal of Reception Conditions

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

The law provides for the possibility to withdraw material reception conditions, if an asylum seeker grossly violates the rules in the reception centre or acts violently towards employees of the centre or other foreigners staying there.²⁸⁹ The decision on withdrawing reception conditions is issued by the Head of the Office for Foreigners. Material reception conditions can be re-granted to the same extent as previously (upon an asylum seeker's request), but if the violation occurs again, it can be re-granted only in the form of a payment of half of the regular financial allowance provided to asylum seekers.²⁹⁰

Although the abovementioned rules are contradictory to the CJEU's preliminary ruling in the case of *Haqbin*,²⁹¹ they remain in force.²⁹² However, since the judgment was rendered none of the asylum seekers has been deprived reception conditions on this basis.²⁹³ Beforehand, the provision was applied rarely (1-3 cases per year). It must be noted though that, in 2021, two persons were moved by the Office for Foreigners to another reception centre due to the recurrent violations of the rules in the first centre or their violent behaviour.²⁹⁴

Financial allowance can be reduced to a half also in case of a refusal to undergo medical examinations or necessary sanitary treatment of asylum seekers themselves and their clothes.²⁹⁵ This possibility was used once in 2020 in regard to an asylum seeker who refused to undergo medical examination after applying for asylum (epidemiological filter). It was not applied in 2021.²⁹⁶

Moreover, in case an asylum seeker stays outside the reception centre for a period exceeding two days, material reception conditions should be withheld by law until the moment of his return.²⁹⁷

²⁸⁷ The project available in Polish at: <https://bit.ly/3lJrJ2d>.

²⁸⁸ The HFHR's opinion of 24 September 2021 is available in Polish at: <https://bit.ly/3vD2mv4>.

²⁸⁹ Article 76(1) Law on Protection.

²⁹⁰ Articles 76 and 78 Law on Protection.

²⁹¹ CJEU (Grand Chamber), case C-233/18 *Haqbin*, Judgment of 12 November 2019.

²⁹² M. Łysienia, 'Pozbawienie pomocy socjalnej w postępowaniu uchodźczym: Haqbin a prawo polskie', 12 April 2021, Laboratorium Migracji Blog, available in Polish at: https://bit.ly/3CckXiQ_.

²⁹³ Information provided by the Office for Foreigners, 22 January 2020, 26 January 2021 and 26 January 2022.

²⁹⁴ Information provided by the Office for Foreigners, 26 January 2022.

²⁹⁵ Article 81(3) Law on Protection.

²⁹⁶ Information provided by the Office for Foreigners, 26 January and 4 March 2021 as well as 26 January 2022.

²⁹⁷ Article 77 Law on Protection.

Decisions on reduction and withdrawal of reception conditions are made on an individual basis. Asylum seekers have a possibility under the law to appeal against such decision. Free legal assistance is provided by NGOs only under the general scheme. However, the risk of destitution is not assessed under the law or in practice.

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

4. Freedom of movement

Indicators: Freedom of Movement

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

Officially there is no restriction to the freedom of movement of asylum seekers: they can travel around Poland wherever they want. However, when an asylum seeker accommodated in a reception centre stays outside this centre for more than 2 days, the assistance will be withheld by law until the moment of his/hers return.²⁹⁸ Moreover, asylum seekers can leave the centre whenever they want, during the day, but they should be back before 23:00 in the evening.²⁹⁹

The Office for Foreigners decides in which reception centre asylum seekers will be allocated. This decision cannot be formally challenged. In practice, nuclear families generally stay in the same centre. The decisions are made taking into consideration family ties (asylum seekers should be allocated in the same centre as their families), vulnerability (e.g. asylum seekers with special needs can be allocated only to the centres which are adapted to their needs), continuation of medical treatment (when it cannot be continued in other premises), safety of the asylum seeker and capacity of the centres.³⁰⁰

Under the law an asylum seeker staying in one centre can be required to move to another facility if this is justified for organisational reasons.³⁰¹ Polish authorities interpret such rule as applying mostly to transfers from first-reception centres to an accommodation centre. As a result, asylum seekers are expected to move from a first reception centre to the other centres. In practice it can take a few to several days (depending on how long the epidemiological filter procedure lasts and whether the interview is conducted in the first reception centre). Afterwards if they are allocated to one centre they are very rarely moved to another. If so, it happens mostly upon request of the asylum seeker.

In the period of 2016-2018 there were no cases of moving an asylum seeker to another facility without their request. In 2019, one family was moved to another centre on the initiative of the Office for Foreigners in order to stop the conflicts with other foreigners and ensure the security in the centre. In 2020, three similar cases were reported. In 2021, four foreigners were forced to move to another centre (two for organisational reasons, one perpetrator was isolated from the victim of violence, one person was moved due to the recurrent violations of the rules in the first centre).³⁰² Otherwise reasons of public interest and public order do not have any impact on the decision on an asylum seeker's place of stay.

If an asylum seeker submits a request to live in another centre, it is mostly because of the location of the centre he stays in (e.g. it is far from their family or more of his/hers compatriots live in another centre). With the exception of 2020 (due to pandemic), most of the requests for a move to another centre are accepted.

²⁹⁸ Article 77 Law on Protection.

²⁹⁹ Para 12(3) of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

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

³⁰¹ Article 82(1)(6) Law on Protection.

³⁰² Information from the Office for Foreigners, 22 and 27 January 2020, 4 March 2021, 26 January 2022.

In 2021, 60 such requests were submitted and most were decided in favour of the asylum seeker concerned.³⁰³

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation	
1. Number of reception centres: ³⁰⁴	8
2. Total number of places in the reception centres:	1,615
3. Total number of places in private accommodation:	Not applicable
4. Type of accommodation most frequently used in a regular procedure:	
<input checked="" type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input checked="" type="checkbox"/> Private housing <input type="checkbox"/> Other	
5. Type of accommodation most frequently used in an accelerated procedure:	
<input checked="" type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input checked="" type="checkbox"/> Private housing <input type="checkbox"/> Other	

At the end of 2021, Poland had eight reception centres which altogether provided 1,615 places (compared to ten centres in 2020 accommodating 1,962 persons). As of 31 December 2021, 1,076 (compared to 819 in 2020) asylum seekers were residing in the centres. Another 4,795 (compared to 2,225 in 2020) asylum seekers were receiving assistance outside the centres.³⁰⁵

The number of reception centres dropped in 2021. One reception centre – in Warsaw – has been closed (24 August 2021) due to change of the ownership of the land on which the centre was situated. It was the only centre that was intended to accommodate exclusively single women and women with children. Moreover, in 2021, two reception centres were given temporarily under command of the Border Guard. The centres in Biała Podlaska (fully, since 26 July 2021) and in Czerwony Bór (partly – 129 places for the Border Guard's needs and 60 places for the reception centre, since 9 August 2021) are now serving as immigration detention centres (see [Place of detention](#)).³⁰⁶

While the former first reception centre in Biała Podlaska centre became a detention centre, the centre in **Dębak** continues serving as first reception, where asylum seekers are directed after applying for asylum in order to register and carry out medical examinations. Temporarily it is supported in that role by the **Kolonia-Horbów** centre, which now also functions as first reception centre. The remaining six centres are accommodation centres (**Białystok, Czerwony Bór, Bezwola, Łuków, Grupa** and **Linin**).³⁰⁷ The same rules regarding the freedom of movement apply in both kinds of centres.

In 2021, there was no problem of overcrowding in these centres. As of 31 December 2021, the occupancy rate was 58% in **Dębak** and 66% in total in other centres (the highest occupancy rate in Białystok - 93%, and the lowest - 39% - in Linin).³⁰⁸

³⁰³ Information provided by the Office for Foreigners, 26 January 2022.

³⁰⁴ Both accommodation and for first arrivals.

³⁰⁵ Information provided by the Office for Foreigners, 26 January 2021 and 26 January 2022.

³⁰⁶ Information provided by the Office for Foreigners, 26 January 2022. See also B. Chłabicz, P. Nowosielska, 'Granice wytrzymałości. Jak wygląda sytuacja w ośrodkach dla cudzoziemców?', 26 August 2021, *Dziennik Gazeta Prawna*, available in Polish at: <https://bit.ly/3Mohh29>. For more on the Warsaw centre, see [Special reception needs of vulnerable groups](#).

³⁰⁷ Information provided by the Office for Foreigners, 26 January 2022.

³⁰⁸ Information provided by the Office for Foreigners, 26 January 2022.

Centres are located in different parts of Poland. One is located in a city (**Białystok**), but most of them are situated in the countryside. **Bezwola, Dębak, Grupa** and **Linin** are in the woods.³⁰⁹ These centres are therefore not easily accessible. In **Dębak**, until recently, residents had to walk 3km through the woods to access public transport.³¹⁰ However, in 2021 the Office for Foreigners organized a regular bus service (six times per day) from the Dębak centre to the railway station in Otrębusy and back in order to facilitate transport to Warsaw.³¹¹

Spatial exclusion as a result of the present location of the centres is considered the main problem by some NGOs.³¹² Isolation of the centres limits the contact with Polish citizens and Polish institutions, including NGOs. It affects the effectiveness of the integration process.³¹³ In addition, the reception centres are located in areas with a high level of poverty, which hampers the asylum seeker's access to a labour market.³¹⁴

Exceptionally, in 2021, some asylum seekers were also temporarily accommodated in hotels for quarantine purposes. Due to COVID-19 restrictions, Afghans who had been evacuated by Polish authorities from Afghanistan were quarantined in hotels and motels in different parts of Poland. Next, they were transported to reception centres.³¹⁵

2. Conditions in reception facilities

Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places? Yes No
2. What is the average length of stay of asylum seekers in the reception centres? Not available³¹⁶
3. Are unaccompanied children ever accommodated with adults in practice? Yes No

The Head of the Office for Foreigners is responsible for the management of all the centres. This authority can delegate its responsibility for managing the centres to social organisations, associations, private owners, companies, etc.³¹⁷ Currently 5 reception centres are managed by the private contractors, while the remaining ones are directly managed by the Office for Foreigners.

³⁰⁹ Regarding the centre in Linin, see the account of a Tajik asylum seeker living there, in Y. Matusevich, 'Tajik Asylum Seekers Struggle for a Sense of Security', 12 April 2019, available at: <https://bit.ly/2SIIspK>: 'Although Linin is informally referred to as an "open camp," there is nowhere to go within walking distance and Warsaw is extremely difficult to reach by public transportation. The center is surrounded by a wall and the reception center enforces a nightly curfew. Visitors are only allowed upon prior approval from the Polish Ministry of Interior and there is a police van parked outside the main gate around the clock'.

³¹⁰ For the opinions about the centres' distant locations see M. Pachocka, K. Pędziwiatr, K. Sobczak-Szelc, J. Szałańska, 'Reception Policies, Practices and Responses: Poland Country Report', 2020, RESPOND Working Papers 2020/45, available at: <http://bit.ly/3jLCvsV>, 61-63.

³¹¹ Information provided by the Office for Foreigners, 26 January 2022.

³¹² See W. Goszczyński, R. Baczyński-Sielaczek, J. Suchomska, J. Stankowska and M. Wróblewski. 'Lokalne systemy integracji uchodźców – badania' in Fundacja EMIC and Pracownia Zrównoważonego Rozwoju, *Wielogłos. Integracja uchodźców w polskich gminach*, 2016, available (in Polish) at: <https://bit.ly/31uBLiE>, 58. See also M. Baran-Kurasiewicz, 'Uzyskanie statusu uchodźcy i sytuacja uchodźców w Polsce', *Polityka i Społeczeństwo* 3(19)/2021, 17.

³¹³ Institute of Public Affairs, *Analiza przygotowania lokalnych instytucji do przyjęcia uchodźców z programu relokacji i przesiedleń. Raport końcowy z badań fokusowych*, 2016, available (in Polish) at: <http://bit.ly/2GBfKr4>, 12-14; Lukasiwicz, K., 'Exile to Poverty: Policies and Poverty Among Refugees in Poland', *International Migration* Vol. 55 (6) 2017, 65.

³¹⁴ Lukasiwicz, K., 'Exile to Poverty: Policies and Poverty Among Refugees in Poland', *International Migration* Vol. 55 (6) 2017, 61.

³¹⁵ Information provided by the Office for Foreigners, 26 January 2022. See also J. Jasińska-Mrukot, 'Uchodźcy. Był płacz, kiedy wywożono Afgańczyków z Opolszczyzny', 8 September 2021, available in Polish at: <https://bit.ly/3Cc3V4F>.

³¹⁶ The Office for Foreigners does not collect this data.

³¹⁷ Article 79(2) Law on Protection.

The Office for Foreigners monitors the situation in the centres managed by private contractors on a daily basis through the Office's employees working in those centres and through the overall inspections taking place two times a year.³¹⁸

Conditions in the centres managed by the Office for Foreigners are occasionally monitored by other authorities and entities as well, e.g. in 2021, sanitary authorities and the UNHCR. Moreover, in September 2021, the Commissioner for Human Rights conducted an unannounced inspection of the reception centre in Dębak. The inspection was triggered by the recent incident in the centre where two children have died due to mushroom poisoning (see [Overall living conditions](#)). The Commissioner's representative monitored conditions in the centre and the quality of the food served to asylum seekers there. They also spoke with some residents, who assessed the conditions and food as good.³¹⁹

Asylum seekers can complain to the Office for Foreigners on the situation in the centres³²⁰, but until recently they rarely lodged such complaints. In 2019 and 2020, the Office for Foreigners registered 13 and 5 complaints respectively, however all of them concerned medical assistance, not conditions in reception centres.³²¹ In 2021, in total 86 complaints were submitted, including 20 concerning food in the centres – its quality and amounts. Asylum seekers complained also on the performance of the duties by the centres' employees.³²²

2.1. Overall living conditions

Living conditions differ across the reception centres. In the centres managed by private contractors ensuring certain minimum living conditions standards is obligatory on the basis of agreements between these contractors and the Office for Foreigners. Thus, centres have to have furnished rooms for asylum applicants, a separate common room for men and for women, kindergarten, space to practice religion, a recreation area, school rooms, specified number of refrigerators and washing machines. Other conditions are dependent on the willingness and financial capacities of the contractor. Most often, one family stays in one room, without separated bedrooms or kitchen. Moreover, usually the centres do not offer separated bathrooms and kitchens, only the common ones.³²³

None of the centres was built in order to serve as a centre for foreigners. Most of them were used for different purposes before, as army barracks, hostels for workers or holiday resorts.³²⁴

In general, conditions in the reception centres are considered to be better now than in the past years. It results from the greater attention given to the living conditions when a contractor for running a centre is being chosen and the renovations conducted in the recent years in the centres that are managed by the Office for Foreigners.³²⁵ Despite that, some asylum seekers complain about those conditions, mentioning for instance bed bugs in the rooms.³²⁶ According to the NGOs, asylum seekers generally assess the

³¹⁸ Information provided by the Office for Foreigners, 15 January 2019 and 22 January 2020.

³¹⁹ Commissioner for Human Rights, 'Wizytacja RPO w ośrodku dla cudzoziemców w Podkowie Leśnej-Dębaku', 6 September 2021, available in Polish at <https://bit.ly/377Odw1>.

³²⁰ Para 17 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

³²¹ Information provided by the Office for Foreigners, 22 January 2020 and 26 January 2021.

³²² Information provided by the Office for Foreigners, 26 January 2022.

³²³ W. Goszczyński, R. Baczyński-Sielaczek, J. Suchomska, J. Stankowska and M. Wróblewski. 'Lokalne systemy integracji uchodźców – badania' in Fundacja EMIC and Pracownia Zrównoważonego Rozwoju, *Wielogłos. Integracja uchodźców w polskich gminach*, 2016, available (in Polish) at: <https://bit.ly/31uBLiE>, 63, 67.

³²⁴ See Lukaszewicz, K., 'Exile to Poverty: Policies and Poverty Among Refugees in Poland', *International Migration* Vol. 55 (6) 2017, 61.

³²⁵ M. Pachocka, K. Pędziwiatr, K. Sobczak-Szelc, J. Szałańska, 'Reception Policies, Practices and Responses: Poland Country Report', 2020, RESPOND Working Papers 2020/45, available at: <http://bit.ly/3jLCvsV>, 43-44, 60.

³²⁶ With regard to the centres in Warsaw - Targówek and Dębak, see *ibid.*, 44-45, 61.

conditions in the centres rather low.³²⁷ For instance, in the research conducted in the centre in **Grupa** foreigners predominantly complained about the food served in the centre. They assessed the centre's cleanliness, appearance and furnishings mostly as 'average' or 'bad'.³²⁸ Meanwhile, the Office for Foreigners' anonymous survey conducted in January 2020 in 10 reception centres has shown that asylum seekers living there are overall satisfied with the material reception conditions they receive. The survey concerned accommodation (equipment, cleanliness, etc.), food, medical assistance and centres' employees. In most of the centres, the level of satisfaction ranged from 70 to 95%. The centres in **Linin** and **Grupa** have been rated the worst, with 42.75% and 58% levels of satisfactions respectively. Overall, asylum seekers most often complained about food and medical assistance provided in the centres.³²⁹ The survey was repeated in May 2021, results were not made available.³³⁰

In August and September 2021, the food served in the reception centres was in the spotlight due to the mushroom poisoning in the Dębak centre that led to death of two children shortly after their evacuation from Afghanistan. According to some accounts, the children were hungry due to the insufficient amount of food served in the centre and for that reason they ate mushrooms that they picked in the woods surrounding the centre.³³¹ The Commissioner for Human Rights' inspection in the Dębak reception centre confirmed that at that time – since foreigners were quarantined – they were served meals twice a day (instead of three times). Dinners were served together with breakfasts (on two separate plates).³³² The Office for Foreigners firmly denied that there had been not enough food offered in the centre.³³³ However, it should not be overlooked that in 2021, 20 complaints were submitted to the Office for Foreigners concerning quality and amount of food offered in the reception centres.³³⁴ Polskie Forum Migracyjne, noticed, on the one hand, that the reception centres receive less money for asylum seekers' food than public kindergartens, child care homes or hospitals. In consequence, food served in reception centres is not sufficiently diversified and adapted to cultural differences.³³⁵ Thus, asylum seekers may not want to eat it. The NGO pointed out also that there is not enough social workers and interpreters in the reception centres who could guide asylum seekers during their stay there. On the other hand, it acknowledged that the evacuation of Afghans put a lot of strain on Polish asylum reception system in a short period of time.³³⁶ In the aftermath of the tragedy, the children's family was offered psychological assistance and given additional, daily assistance by the designated employee of the centre³³⁷. In the Dębak centre, pictograms in English were hanged explaining that mushrooms and plants that can be found in the nearby forest should not be eaten; a special meeting was also organized to explain the matter to the residents.³³⁸ In December 2021, the criminal proceedings into the death of two brothers have been discontinued. Their death was qualified as unfortunate accident. It was concluded that the Afghan family had access to food in the Dębak centre.³³⁹

³²⁷ See i.a. W. Goszczyński, R. Baczyński-Sielaczek, J. Suchomska, J. Stankowska and M. Wróblewski. 'Lokalne systemy integracji uchodźców – badania' in Fundacja EMIC and Pracownia Zrównoważonego Rozwoju, *Wielogłos. Integracja uchodźców w polskich gminach* (2016), available (in Polish) at: <https://bit.ly/31uBLiE>, 64.

³²⁸ *Ibid.*, 65-67.

³²⁹ Information provided by the Office for Foreigners, 4 March 2021.

³³⁰ Information provided by the Office for Foreigners, 26 January 2022.

³³¹ R. Kowalski, S. Klauziński, 'Dwoje afgańskich dzieci w krytycznym stanie po zatruciu grzybami. W ośrodku brakowało jedzenia', 30 August 2021, available in Polish at: <https://bit.ly/3KfuQ21>.

³³² Commissioner for Human Rights, 'Wizytacja RPO w ośrodku dla cudzoziemców w Podkowie Leśnej-Dębaku', 6 September 2021, available in Polish at: <https://bit.ly/377Odw1>.

³³³ Office for Foreigners, 'Komunikat ws. Zatrucia w ośrodku dla cudzoziemców', available in Polish at: <https://bit.ly/3sQTr7P>.

³³⁴ Information provided by the Office for Foreigners, 26 January 2022.

³³⁵ However, the Office for Foreigners points out that the cultural adaptation of food is in fact required in the centres and monitored by its employees (information provided by the Office for Foreigners, 26 January 2022).

³³⁶ Polskie Forum Migracyjne, 'Zatrucie grzybami w Dębaku – Komentarz PFM', Facebook, 31 August 2021, available in Polish at: <https://bit.ly/3vIX69l>.

³³⁷ *Ibid.*; Office for Foreigners, 'Komunikat ws. zatrucia w ośrodku dla cudzoziemców', available in Polish at: <https://bit.ly/3sQTr7P>; information provided by the Office for Foreigners, 26 January 2022.

³³⁸ Commissioner for Human Rights, 'Wizytacja RPO w ośrodku dla cudzoziemców w Podkowie Leśnej-Dębaku', 6 September 2021, available in Polish at: <https://bit.ly/377Odw1>; information provided by the Office for Foreigners, 26 January 2022.

³³⁹ I. Kacprzak, G. Zawadka, 'Tragiczne grzybobranie Afgańczyków – koniec śledztwa', 3 January 2022, available in Polish at: <https://bit.ly/35UyG20>.

Since 2014, protests or hunger strikes in reception centres were reported only in 2018 and 2020. In 2018 one asylum seeker informed the Office for Foreigners in writing that he has started a hunger strike since his and his wife's asylum procedures had been separated because they had split up. In 2020, women and single mothers staying in the centre in Warsaw opposed the limitations that resulted from the COVID-19 quarantine. According to the Office for Foreigners, thanks to immediate reaction of the Office, medical operator and NGOs, the situation was quickly under control.³⁴⁰

In every centre, there are two kinds of staff: employees of the Office for Foreigners and other employees (as kitchen aids, cleaners etc.). As of December 2021, there were 22 employees of Office for Foreigners working in all the centres and a variable number of other workers.³⁴¹ As regards the staff rate, in 2021, one employee of the Office for Foreigners was in charge of 227 asylum seekers maximum (staying outside and inside centres), including 85 asylum seekers living in the centres.³⁴² Staff in the centre is working from Monday to Friday from 7:00 to 18:00. They are mainly responsible for the administration of the centre, not for a social work with asylum seekers. The number of employees of the Office for Foreigners and the scope of their responsibilities are considered insufficient.³⁴³ At night and on weekends only guards are present in the centre. Security staff is available in all centres around the clock.

2.2. Activities in the centres

Polish language courses are organised in all reception centres, both for children and adults. Those courses are considered the only integration activity provided by the Office for Foreigners.³⁴⁴ See more in [Access to Education](#).

In 2021, NGOs carried out some projects in the centres which aimed at providing:

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

Due to the COVID-19 pandemic, the NGOs' access to the reception centres was limited. Psychological, legal and educational assistance was provided online or by phone in the first half of 2021. NGOs were able to access the reception centres again in the second half of the year.³⁴⁵

Four centres have libraries³⁴⁶ and all centres have access to internet.³⁴⁷

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

³⁴⁰ Information provided by the Office for Foreigners, 15 January 2019 and 26 January 2021.

³⁴¹ Information provided by the Office for Foreigners, 26 January 2022.

³⁴² *Ibid.*

³⁴³ See also SIP, 'Raport nt. przeciwdziałania przemocy wobec kobiet i przemocy domowej', 16 September 2021, available in Polish at: <https://bit.ly/3tyl04y>, mentioning that employees in the reception centres are not social workers and they are not prepared to work with vulnerable persons such as victims of domestic violence. See also M. Pachocka, K. Pędziwiatr, K. Sobczak-Szelc, J. Szałańska 'Reception Policies, Practices and Responses: Poland Country Report', 2020, RESPOND Working Papers 2020/45, available at: <http://bit.ly/3jLCvsV>, 64-65.

³⁴⁴ W. Goszczyński, R. Baczyński-Sielaczek, J. Suchomska, J. Stankowska and M. Wróblewski. 'Lokalne systemy integracji uchodźców – badania' in Fundacja EMIC and Pracownia Zrównoważonego Rozwoju, *Wielogłos. Integracja uchodźców w polskich gminach*, 2016, available (in Polish) at: <https://bit.ly/31uBLiE>, 69.

³⁴⁵ Information provided by the Office for Foreigners, 26 January 2022.

³⁴⁶ Until July 2021 when it was transformed into detention centre, the Biała Podlaska centre also had a library.

³⁴⁷ Information provided by the Office for Foreigners, 26 January 2022.

C. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market

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

The law allows for access to the labour market for asylum seekers after six months from the date of submission of an asylum application if a final decision has not been taken within this time and if the delay is not attributed to any fault of the asylum seeker. The Head of the Office for Foreigners upon the asylum seeker's request, issues a certificate, which accompanied by a temporary ID document entitles the asylum seeker to work in Poland.³⁴⁸ The temporary ID document is valid for 90 days and can be subsequently prolonged for renewable periods of 6 months (during the COVID-19 pandemic, the validity of temporary IDs was prolonged by law). The certificate is valid until the day the decision concerning international protection becomes final.³⁴⁹ However, if the asylum seeker avails himself/herself of a judicial remedy and the court suspends the enforcement of the negative asylum decision, the certificate regains its validity.³⁵⁰

In practice, the issuance of the above-mentioned certificate is not often requested. Most probably it results from the fact that the asylum proceedings often last shorter than 6 months, the asylum seekers leave Poland before they can access labour market or they have no knowledge that they can work in Poland after 6 months. Moreover, there is a relatively high percentage of refusals in this regard. According to the Office for Foreigners, asylum seekers tend to apply for a certificate too early (before 6 months has passed) or too late (the final asylum decision is delivered before the decision on the certificate is reached).³⁵¹

Access to employment is not limited to certain sectors, but can be problematic in practice. Many employers do not know, that the above-mentioned certificate with a temporary ID document gives an asylum seeker a right to work or do not want to employ a person for such a short time (i.e. up to 6 months, as the employers are unaware that the procedure will actually take longer than the validity of a single temporary ID document), which causes that those certificates have no practical significance.³⁵² Moreover, the certificate is valid until the decision on asylum becomes final but employers are not informed that such decision was issued by the Polish authorities, they must trust that the asylum seekers will inform them about it on time.³⁵³ Furthermore, asylum seekers often live in centres which are located far away from big cities and in the areas with a high

³⁴⁸ Article 35 Law on Protection.

³⁴⁹ Article 35 (3) Law on Protection. The Refugee Board's decision is final. If an asylum seeker does not appeal, the decision of the Office for Foreigners, the latter becomes final 14 days following notification of such decision.

³⁵⁰ Information provided by the Office for Foreigners, 4 March 2021.

³⁵¹ M. Pachocka, K. Pędziwiatr, K. Sobczak-Szelc, J. Szałańska, 'Reception Policies, Practices and Responses: Poland Country Report', 2020, RESPOND Working Papers 2020/45, available at: <http://bit.ly/3jLCvsV>, 55.

³⁵² W. Klaus, 'Rozwiązania prawne stosowane w odniesieniu do osób starających się o ochronę w Polsce' in A. Górny, H. Grzymała-Moszczyńska, W. Klaus and S. Łodziński, *Uchodźcy w Polsce. Sytuacja prawna, skala napływu i integracja w społeczeństwie polskim oraz rekomendacje*, PAN 2017, available (in Polish) at: <http://bit.ly/2DVccfr>, 23.

³⁵³ M. Pachocka, K. Pędziwiatr, K. Sobczak-Szelc, J. Szałańska, 'Reception Policies, Practices and Responses: Poland Country Report', 2020, RESPOND Working Papers 2020/45, available at: <http://bit.ly/3jLCvsV>, 82-83.

level of poverty and unemployment in general, which makes it difficult to find a job in practice. Moreover, most asylum seekers do not know Polish well enough to get a job in Poland.³⁵⁴ Asylum seekers also face a problem of a limited recognition of education and skills acquired outside Poland,³⁵⁵ so they are often underemployed. Moreover, foreigners endure a discrimination in employment, e.g. they are offered lower salary than Poles.³⁵⁶

Furthermore, even receiving the above-mentioned certificate may be in some circumstances problematic. Asylum seekers who reached majority during the asylum proceedings that had been initiated by and continued with their parents and who declared that they did not want to apply for asylum separately, are refused a right to work. In order to receive such certificate, they have to initiate asylum proceedings separate from their parents, which is criticised by the NGOs.³⁵⁷

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

2. Access to education

Indicators: Access to Education

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

All children staying in Poland have a constitutional right to education. Education is mandatory until the age of 18. It is provided to asylum-seeking children in regular schools and it is not limited by law. Asylum seekers benefit from education in public schools under the same conditions as Polish citizens until the age of 18 or the completion of higher school.³⁵⁸ In September 2021, 1,160 asylum-seeking children attended 304 public schools in Poland. 353 of them lived in the reception centres.³⁵⁹

There are various obstacles to accessing education in practice³⁶⁰. The biggest problem is a language and cultural barrier. However, asylum-seeking children are supported by:

- Polish language courses that are organised in all reception centres – 410 children benefited from this assistance in 2021. However, courses have been temporarily suspended due to the pandemic COVID-19.³⁶¹
- additional free Polish language classes, that should be organised by the authority managing the school that asylum seekers are attending.³⁶² Those classes are organised as long as it is needed, not less than 2 hours a week but max. five hours per week for one child.
- basic supplies necessary for learning Polish.³⁶³

³⁵⁴ Lukasiwicz, K., 'Exile to Poverty: Policies and Poverty Among Refugees in Poland', *International Migration* Vol. 55 (6) 2017, 61, 66. See also M. Pawlak, 'Zatrudnienie' in A. Górska, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce*, Instytut Spraw Publicznych 2019, 35.

³⁵⁵ The persisting problem with the recognition of non-EU education and qualifications was confirmed and criticized by the Supreme Audit Office in 2021, see Supreme Audit Office, 'Uznawanie kwalifikacji zawodowych cudzoziemców spoza Unii Europejskiej', April 2021, available in Polish at: <https://bit.ly/35AcZ7g>.

³⁵⁶ Lukasiwicz, K., 'Exile to Poverty: Policies and Poverty Among Refugees in Poland', *International Migration* Vol. 55 (6) 2017, 64, 66.

³⁵⁷ O. Dobrowolska, 'Zaświadczenie uprawniające do wykonywania pracy dla pełnoletnich dzieci wnioskodawcy' in SIP, *SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r.*, 2019, available (in Polish) at: <https://bit.ly/39b6qUZ>, 21-22.

³⁵⁸ Article 165 (1) and (2) of Law of 14 December 2016 on education.

³⁵⁹ Information provided by the Office for Foreigners, 26 January 2022.

³⁶⁰ Some problems with late enrollment to schools were reported, see M. Pachocka, K. Pędziwiatr, K. Sobczak-Szelc, J. Szałańska, 'Reception Policies, Practices and Responses: Poland Country Report', 2020, RESPOND Working Papers 2020/45, available at: <http://bit.ly/3jLCvsV>, 73-74.

³⁶¹ Information provided by the Office for Foreigners, 26 January 2022.

³⁶² Article 165 (7) of Law of 14 December 2016 on education.

³⁶³ Article 71(1)(1f) Law on Protection.

Asylum-seeking children can also participate in compensatory classes:

- in reception centres – 84 children benefited from this support in 2021. However, classes have been temporarily suspended due to the pandemic COVID-19.³⁶⁴
- in schools – assistance granted for a maximum of twelve months, max. five hours per week for one child.³⁶⁵

Overall, Polish language and compensatory classes in schools are considered insufficient. They are either not organized at all or organised for an insufficient amount of time (both the limitation to 12 months and to 5 hours a week are being criticised). Moreover, they are not adapted to individual needs of foreign pupils.³⁶⁶

Children have also a right to assistance of a person who knows the language of their country of origin, who can be employed as a teacher's assistant by the director of the school.³⁶⁷ This help is limited to a maximum of twelve months, which is considered not enough.³⁶⁸ There is no uniform system of providing this assistance: in some schools the assistant accompanies foreign pupils at all times, while in others he or she is only available by phone or with regard to particular issues.³⁶⁹ The profession is not standardized, the assistant's status and duties are unclear and it is vague what qualifications should be expected from the assistants.³⁷⁰ Moreover, the remuneration of such assistants is too low.³⁷¹ Despite that, finding financing in order to employ the assistant is difficult for some schools.³⁷² Thus, some NGOs cover the assistant's remuneration in the framework of their projects. Such support is dependent on the NGOs' funding, however. Overall, teacher's assistants hired in schools are insufficient in numbers (it is estimated that it is 60-70 persons in the whole country for all foreign children, not only asylum-seeking ones).³⁷³ Moreover, during the pandemic COVID-19, some assistants were laid off as schools considered their job not needed in the online-schools reality. Those who continued working had to limit their assistance to activities online.³⁷⁴

Furthermore, asylum-seeking children should receive the allowance 'Good start' (300 PLN or around 64 Euros) that according to the law should be granted once a year for every child that begins a school year in Poland. However, SIP informs that asylum seekers have problems with receiving this support.³⁷⁵ In 2020,

³⁶⁴ Information provided by the Office for Foreigners, 26 January 2022.

³⁶⁵ Article 165 (10) of Law of 14 December 2016 on education.

³⁶⁶ J. Kościółek, 'Children with Migration Backgrounds in Polish Schools – Problems and Challenges', *Annales Series Historia et Sociologia* 30, 2020, 4, available at: <https://bit.ly/3vBdl8j>, 607. Cf. K. Sobczak-Szelc, M. Pachocka, K. Pędziwiatr, J. Szałańska, 'Integration Policies, Practices and Responses. Poland – Country Report', *Multilevel Governance of Mass Migration in Europe and Beyond Project* (#770564, Horizon2020), available at: <http://bit.ly/3pjlXtq>, 79.

³⁶⁷ Article 165 (8) of the Law of 14 December 2016 on education.

³⁶⁸ K. Sołtan-Kościelecka, 'Klasy powitalne. Realna szansa na poprawę warunków kształcenia cudzoziemców czy pozorne rozwiązanie?', *Biuletyn Migracyjny* no. 57, June 2018, available (in Polish) at: <http://bit.ly/2EkclF8>.

³⁶⁹ K. Kamler, J. Orlikowska, J. Schmidt and J. Szymańska, 'Młodzi migranci w pandemii COVID-19. Raport z badań jakościowych sytuacji uczniów cudzoziemskich w warszawskich szkołach', 2021, available in Polish at: <https://bit.ly/3HIZLC8>, 13.

³⁷⁰ J. Kościółek, 'Children with Migration Backgrounds in Polish Schools – Problems and Challenges', *Annales Series Historia et Sociologia* 30, 2020, 4, available at: <https://bit.ly/3vBdl8j>, 607-608.

³⁷¹ K. Sołtan-Kościelecka, 'Klasy powitalne. Realna szansa na poprawę warunków kształcenia cudzoziemców czy pozorne rozwiązanie?', *Biuletyn Migracyjny* no. 57, June 2018, available (in Polish) at: <http://bit.ly/2EkclF8>.

³⁷² K. Sobczak-Szelc, M. Pachocka, K. Pędziwiatr, J. Szałańska, 'Integration Policies, Practices and Responses. Poland – Country Report', *Multilevel Governance of Mass Migration in Europe and Beyond Project* (#770564, Horizon2020), available at: <http://bit.ly/3pjlXtq>, 70; K. Potoniec, 'Comparative analysis of instruments supporting the integration of pupils under international protection in the educational systems of the Czech Republic, Poland and Hungary', December 2021, available at: <https://bit.ly/3sHaxVq>, 15.

³⁷³ K. Potoniec, 'Comparative analysis of instruments supporting the integration of pupils under international protection in the educational systems of the Czech Republic, Poland and Hungary', December 2021, available at: <https://bit.ly/3sHaxVq>, 12, 15.

³⁷⁴ K. Kamler, J. Orlikowska, J. Schmidt and J. Szymańska, 'Młodzi migranci w pandemii COVID-19. Raport z badań jakościowych sytuacji uczniów cudzoziemskich w warszawskich szkołach', 2021, available in Polish at: <https://bit.ly/3HIZLC8>, 13.

³⁷⁵ M. Sadowska, 'Świadczenia 'Dobry start' in SIP, *Prawa cudzoziemców w Polsce w 2019 roku. Raport*, 2020, available (in Polish) at: <https://bit.ly/3jT7weM>, 68.

the Supreme Administrative Court confirmed that asylum-seeking children should have access to the 'Good start' allowance. However, in each single case the court proceedings must be initiated for an asylum-seeking child to have a chance to receive such allowance.³⁷⁶ In 2021, SIP informed that the access to the 'Good start' allowance is still very difficult for asylum seekers.³⁷⁷

Schools admitting foreign children often have to cope with a lack of sufficient financial means to organise proper education for this special group of pupils. Moreover, teachers working with foreign children are not receiving sufficient support, like courses and materials.³⁷⁸ However, some training initiatives are taken up by local and governmental authorities.³⁷⁹

Some schools manage to meet those challenges and offer education adapted to foreign pupils' needs. For years, the primary school in Bezwola (near the reception centre) was praised as exemplary in teaching asylum seekers. However, in 2021, despite the protests³⁸⁰, the school was closed. The closure was justified by the growing costs of running the school that accommodated only a small number of pupils (at the beginning of 2021: 22 foreigners and 19 Polish nationals). Subsequently, asylum-seeking minors from Bezwola were enrolled to another school.

If a child cannot enter the regular education system e.g. due to illness, their special needs are supposed to be addressed in special school. At the end of 2021, 7 asylum-seeking children were attending a special school.³⁸¹

NGOs inform that the asylum seekers most often complain about the hate speech that their children encounter in the school, both from their peers and the staff. The Supreme Audit Office informed in 2020 that 23% parents that they interviewed declared that their children have met with intolerance in school once or twice a year, according to 4% of respondents it was occurring often.³⁸²

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

³⁷⁶ SIP, 'Wyrok NSA: świadczenie Dobry Start („300+”) przysługuje osobom ubiegającym się o ochronę międzynarodową', 11 sierpnia 2020, available (in Polish) at: <https://bit.ly/37bWxb8>.

³⁷⁷ M. Sadowska, 'Świadczenie dobry start 300+' in SIP, *Prawa cudzoziemców w Polsce w 2020 roku. Raport*, 2021, available in Polish at: <https://bit.ly/3sGmlXS>, 78-80.

³⁷⁸ See *inter alia* Ministry of Interior and Administration, *Polityka migracyjna Polski – diagnoza stanu wyjściowego*, available in Polish at: <http://bit.ly/377T5Ov>, 40.

³⁷⁹ Ministry of Education, 'Nauka dzieci przybywających z zagranicy w polskim systemie edukacji', available (in Polish) at: <https://bit.ly/31KtY0C>; information confirmed by the Ministry of Education and Science, 26 January 2022. See also K. Potoniec, 'Comparative analysis of instruments supporting the integration of pupils under international protection in the educational systems of the Czech Republic, Poland and Hungary', December 2021, available at: <https://bit.ly/3sHaxVq>, 13.

³⁸⁰ Petition to save the school in Bezwola is available in Polish: <https://bit.ly/3txw6XA>.

³⁸¹ Information from the Office for Foreigners, 26 January 2022.

³⁸² Supreme Audit Office, 'Kształcenie dzieci rodziców powracających do kraju i dzieci cudzoziemców', September 2020, available (in Polish) at: <http://bit.ly/3piaNVR>. See also J. Kościółek, 'Children with Migration Backgrounds in Polish Schools – Problems and Challenges', *Annales Series Historia et Sociologia* 30, 2020, 4, available at: <https://bit.ly/3vBdl8j>, 604.

only incidental ones were organised. Moreover, teachers' training on working with foreign pupils was not sufficiently (or at all) supported by the schools' directors.³⁸³

To sum up, the current education system is not taking into account the special needs of foreign children. As a result, adaptation of the education programme to the needs and abilities of the individual child is dependent on the goodwill and capacity of teachers and directors. Moreover, as a factor impeding effective teaching, schools also report the problem of the big fluctuation of the foreign children as a result of families' migration to Western Europe. As a consequence, asylum-seeking and refugee children are disappearing from Polish education system.³⁸⁴

The COVID-19 pandemic further hampered the access to education.³⁸⁵ Schools were closed for some time and children had to learn online. Not all asylum-seeking children had laptops or computers they could use; thus, they could not attend school for some time. Moreover, they often could not be assisted by their parents who lacked essential digital and linguistic competences.³⁸⁶ Foreign pupils often did not have proper conditions at home to participate in online school (e.g. they shared a room with siblings/parents who learned/worked at the same time). Teacher's assistants who support foreign pupils had to limit their assistance to activities online for some time.³⁸⁷ According to the Office for Foreigners, staff in the reception centres assisted asylum-seeking children and their parents with adjusting to this new situation and motivated them to participate in the school online. In all centres access to Wi-Fi was ensured. Some laptops and mobile equipment were also gathered by the Office for Foreigners, UNHCR, NGOs, schools, private persons and the contractors who manage two reception centres. In 2021, additionally, 40 computers were bought by the Office for Foreigners, inter alia in order to support online education of asylum-seeking children.³⁸⁸ Moreover, NGOs stepped in to provide asylum-seeking children with online Polish language classes and to organize support in online compulsory education.³⁸⁹

In 2021, information materials on educational system in Poland were published in ten languages by the Office for Foreigners.³⁹⁰ Moreover, parents can now contact the Office for Foreigners with their questions concerning school system by e-mail on an address especially created for that purpose.³⁹¹

³⁸³ Supreme Audit Office, 'Kształcenie dzieci rodziców powracających do kraju i dzieci cudzoziemców', September 2020, available (in Polish) at: <http://bit.ly/3piaNVR>.

³⁸⁴ Institute of Public Affairs, *Analiza przygotowania lokalnych instytucji do przyjęcia uchodźców z programu relokacji i przesiedleń. Raport końcowy z badań fokusowych*, 2016, available (in Polish) at: <http://bit.ly/2GBfKr4>, 57-62; Iglicka, Krystyna, 'Chechen's Lesson. Challenges of Integrating Refugee Children in a Transit Country: A Polish Case Study', *Central and Eastern European Migration Review*, Vol. 6, No. 2, 2017, available at: <http://bit.ly/2GPIKiV>, 123, 130.

³⁸⁵ J. Kościółek, 'Children with Migration Backgrounds in Polish Schools – Problems and Challenges', *Annales Series Historia et Sociologia* 30, 2020, 4, available at: <https://bit.ly/3vBdl8j>, 603.

³⁸⁶ Commissioner for Human Rights, 'Sytuacja migrantów i migrantek w czasie pandemii. Stanowisko RPO i Komisji Ekspertów ds. Migrantów', 13 May 2020, available (in Polish) at: <http://bit.ly/2ZeqWkQ>; Commissioner for Human Rights, 'Koronawirus. RPO pyta MEN o ocenę zdalnej edukacji', 24 April 2020, available (in Polish) at: <http://bit.ly/3qkmQ6m>; Polskie Forum Migracyjne, 'Komentarz PFM do spec-ustawy - sytuacja cudzoziemców', available (in Polish) at: <http://bit.ly/3qjlby5>; K. Kamler, J. Orlikowska, J. Schmidt and J. Szymańska, 'Młodzi migranci w pandemii COVID-19. Raport z badań jakościowych sytuacji uczniów cudzoziemskich w warszawskich szkołach', 2021, available in Polish at: <https://bit.ly/3HIZLC8>, 17, 31-33.

³⁸⁷ K. Kamler, J. Orlikowska, J. Schmidt and J. Szymańska, 'Młodzi migranci w pandemii COVID-19. Raport z badań jakościowych sytuacji uczniów cudzoziemskich w warszawskich szkołach', 2021, available in Polish at: <https://bit.ly/3HIZLC8>, 13, 16-17, 35-37; J. Kościółek, 'Children with Migration Backgrounds in Polish Schools – Problems and Challenges', *Annales Series Historia et Sociologia* 30, 2020, 4, available at: <https://bit.ly/3vBdl8j>, 603.

³⁸⁸ Information provided by the Office for Foreigners, 26 January 2021 and 4 March 2021 as well as 26 January 2022.

³⁸⁹ Fundacja Ocalenie, 'Działania dla dzieci: podsumowanie roku szkolnego 2019/20', 2 July 2020, available (in Polish) at: <https://bit.ly/37bwllA>.

³⁹⁰ Office for Foreigners, 'Informacja o edukacji dzieci cudzoziemskich', available at: <https://bit.ly/3IIKFxT>.

³⁹¹ Office for Foreigners, 'Edukacja dzieci w procedurze uchodźczej – kontakt mailowy', 2021, available in Polish at: <https://bit.ly/3hF0J86>.

2.1. Preparatory classes

Since 2016, schools have a possibility to organise preparatory classes for foreign children who do not have sufficient knowledge of the Polish language. A foreign minor can join preparatory classes anytime during the school year. After the end of the school year, his participation in those classes can be prolonged, when needed, for maximum one more year. The preparatory classes last for 20-26 hours a week. Learning Polish as a foreign language can be limited only to 3 hours per week,³⁹² which raise serious doubts concerning the effectiveness of such solution.³⁹³ If a school decides to organise such classes, foreign children are not obliged to participate in regular classes.

Preparatory classes have been met with mixed reactions. In the opinion of the Ministry of Education, the implemented solution enables individual treatment of foreign children and adaptation of the methods and forms of education to their needs. According to the critics of this solution, children are placed exclusively in foreign classes, thus impeding their integration into Polish society and fueling separation.³⁹⁴ Furthermore, the preparatory classes were not designed as 'welcome classes' which have their own program, separate from the regular classes and adapted to foreign minors' needs.³⁹⁵ Teachers are obliged to implement the same curriculum in the preparatory classes as in the regular ones, the only difference is that all children in a class are foreign and a teacher can adapt his method of teaching to their special needs.³⁹⁶ Meanwhile, the program of such classes should concentrate on learning Polish.³⁹⁷ Moreover, one preparatory class can be organised for children of different ages (e.g. children qualifying to classes I to III of primary school can be gathered in one preparatory class), which means that a teacher may be obliged to implement the curriculum even for three classes at once.³⁹⁸ Furthermore, experts point out that there is no system which would prepare teachers to work in preparatory classes with foreigners.³⁹⁹

In the 2020 report of the Supreme Audit Office, it was established that in 5 schools (out of 24 schools controlled) in total 14 preparatory classes were organised in years 2017-2020. In 4 schools, violations of Polish law were found in this regard, i.e. there were too many pupils per class and the curriculum was not adjusted to foreigners' needs and possibilities.⁴⁰⁰

³⁹² Para 16(9) Ordinance of the Ministry of National Education of 23 August 2017 on education of persons without Polish citizenship and Polish citizens who learned in schools in other countries (*w sprawie kształcenia osób niebędących obywatelami polskimi oraz osób będących obywatelami polskimi, które pobierały naukę w szkołach funkcjonujących w systemach oświaty innych państw*).

³⁹³ K. Sołtan-Kościelecka, 'Klasy powitalne. Realna szansa na poprawę warunków kształcenia cudzoziemców czy pozorne rozwiązanie?', Biuletyn Migracyjny no. 57, June 2018, available (in Polish) at: <http://bit.ly/2EkclF8>.

³⁹⁴ Commissioner for Human Rights, *Posiedzenie Komisji Ekspertów ds. Migrantów*, 12 December 2016, available (in Polish) at: <http://bit.ly/2odhX16>. See also K. Kamler, J. Orlikowska, J. Schmidt and J. Szymańska, 'Młodzi migranci w pandemii COVID-19. Raport z badań jakościowych sytuacji uczniów cudzoziemskich w warszawskich szkołach', 2021, available in Polish at: <https://bit.ly/3HIZLC8>, 25-27.

³⁹⁵ K. Sołtan-Kościelecka, 'Klasy powitalne. Realna szansa na poprawę warunków kształcenia cudzoziemców czy pozorne rozwiązanie?', Biuletyn Migracyjny no. 57, June 2018, available (in Polish) at: <http://bit.ly/2EkclF8>.

³⁹⁶ Para 16(3) Ordinance of the Ministry of National Education of 23 August 2017 on education of persons without Polish citizenship and Polish citizens who learned in schools in other countries (*w sprawie kształcenia osób niebędących obywatelami polskimi oraz osób będących obywatelami polskimi, które pobierały naukę w szkołach funkcjonujących w systemach oświaty innych państw*). See also K. Wójcik, 'Więcej cudzoziemców w szkołach', 11 September 2019, available (in Polish) at: <https://bit.ly/2vgizth>.

³⁹⁷ M. Koss-Goryszewska, 'Edukacja' in A. Górska, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce*, Instytut Spraw Publicznych 2019, 50-51.

³⁹⁸ J. Kościółek, 'Children with Migration Backgrounds in Polish Schools – Problems and Challenges', *Annales Series Historia et Sociologia* 30, 2020, 4, available at: <https://bit.ly/3vBdl8j>, 607.

³⁹⁹ M. Koss-Goryszewska, 'Edukacja' in A. Górska, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce*, Instytut Spraw Publicznych 2019, 51.

⁴⁰⁰ Supreme Audit Office, 'Kształcenie dzieci rodziców powracających do kraju i dzieci cudzoziemców', September 2020, available (in Polish) at: <http://bit.ly/3piaNVR>, 47-48.

According to the Ministry of Education, in the school year 2018/2019 approximately 300 foreign minors (number of asylum-seeking pupils is not available) were participating in the preparatory classes.⁴⁰¹ In 2020, 61 preparatory classes were organized accommodating 658 foreign pupils.⁴⁰² Data for 2021 are not available.

2.2. Kindergarten

In all of the reception centres, some form of kindergarten is organised, which is sometimes supported by NGOs.⁴⁰³ This day care is provided minimum 5 times a week for 5 hours a day. In 2021, as in 2020, due to the COVID-19 pandemic, kindergartens were being temporarily closed.⁴⁰⁴

2.3. Educational activities for adults

There is no access to vocational training for asylum seekers provided under the law. It is considered 'one of the biggest shortcomings of the reception system in the area of education'.⁴⁰⁵

The only educational activities that adults have constant access to are courses of Polish language organised in all centres. They are open both for asylum seekers living in the centre and outside. Additionally, since August 2020, Polish language classes for adults are organized in Warsaw for those asylum seekers who receive financial allowance and do not live in a reception centre. In 2021, there was also a possibility to learn Polish online. However, due to the COVID-19 pandemic, Polish language lessons both in and outside reception centres were temporarily suspended in 2020 and 2021.⁴⁰⁶

The Polish language course's level is considered insufficient by some NGOs. Foreigners evaluate those classes in general positively.⁴⁰⁷

The Office for Foreigners indicated that asylum seekers participate in Polish language lessons actively. In total, 336 adults attended such course in 2020 and 388 in 2021.⁴⁰⁸ However, these numbers seem meager when the overall number of asylum seekers is taken into account. The earlier research showed that the low participation rate results, among others, from the fact that asylum seekers are not willing to stay in Poland or are aware that the chances for obtaining international protection in Poland are small so they have no motivation to learn the language. The time of language classes is also not adapted to the needs of working asylum seekers.⁴⁰⁹ Another research showed that asylum seekers were unwilling to attend classes also due to traumatic experiences from the country of origin or the lack of the childcare.⁴¹⁰

Usually, other courses in the centres, including vocational training and integration activities, are organized by NGOs, but in 2020 and 2021 these initiatives have been impacted by the pandemic. Since March 2020, access to the centres of any person whose presence there was not indispensable was excluded. Any

⁴⁰¹ Ministry of Education, 'Nauka dzieci przybywających z zagranicy w polskim systemie edukacji', available (in Polish) at: <https://bit.ly/2vZF5Xr>.

⁴⁰² K. Potoniec, 'Comparative analysis of instruments supporting the integration of pupils under international protection in the educational systems of the Czech Republic, Poland and Hungary', December 2021, available at: <https://bit.ly/3sHaxVq>, 13.

⁴⁰³ In 2020 and 2021, Dialog Foundation organized a day care in the centre in Czerwony Bór (information from the Office for Foreigners, 26 January 2021 and 26 January 2022).

⁴⁰⁴ Information provided by the Office for Foreigners, 26 January 2021 and 26 January 2022.

⁴⁰⁵ M. Pachocka, K. Pędziwiatr, K. Sobczak-Szelc, J. Szałańska, 'Reception Policies, Practices and Responses: Poland Country Report', 2020, RESPOND Working Papers 2020/45, available at: <http://bit.ly/3jLCvsV>, 82.

⁴⁰⁶ Information from the Office for Foreigners, 26 January 2021 and 26 January 2022.

⁴⁰⁷ R. Baczyński-Sielaczek, *Język polski w ośrodkach. Wyniki badania ewaluacyjnego*, Instytut Spraw Publicznych 2016, 19-22, information from the Office for Foreigners, 26 January 2022.

⁴⁰⁸ Information from the Office for Foreigners, 26 January 2021 and 26 January 2022.

⁴⁰⁹ R. Baczyński-Sielaczek, *Język polski w ośrodkach. Wyniki badania ewaluacyjnego*, Instytut Spraw Publicznych 2016, 34.

⁴¹⁰ M. Pachocka, K. Pędziwiatr, K. Sobczak-Szelc, J. Szałańska, 'Reception Policies, Practices and Responses: Poland Country Report', 2020, RESPOND Working Papers 2020/45, available at: <http://bit.ly/3jLCvsV>, 78-80.

assistance was granted only online or by phone. In June-September 2020, NGOs could again access the reception centres, but limitations were reintroduced in November 2020 and continued until the second half of 2021.

D. Health care

Indicators: Health Care

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

Access to health care for asylum seekers is guaranteed in law under the same conditions as for Polish nationals who have health insurance.⁴¹¹ Health care for asylum seekers is publicly funded. If an asylum seeker is deprived of material reception conditions or they are limited, they are still entitled to health care.⁴¹²

Basic health care is organised in medical offices within each of the reception centres. The Office for Foreigners informed that in 2021 the GP in the centres had 6 duty hours per 120 asylum seekers, while the nurse had 20 hours for the same number of possible patients. Both had 3 hours a week extra for every additional 50 asylum seekers. They were present in the centres at least three times a week. Additionally, in every centre the duty hours of a paediatrician were organised at least for 4 hours a week per 50 children, with extra 2 hours of duty for every additional 20 children. A paediatrician was present in the centres at least 2 days a week.⁴¹³

Health care for asylum seekers includes treatment for persons suffering from mental health problems. In 2021, psychologists worked in all centres for at least 4 hours a week for every 120 asylum seekers. This was extended to 1 hour for every additional 50 asylum seekers.⁴¹⁴ Asylum seekers can also be directed to a psychiatrist or a psychiatric hospital. Reportedly, the Office for Foreigners tries to provide the assistance of only one psychologist to a specified asylum seeker, 'so that the person has a sense of security and does not have to discuss his/her situation several times'.⁴¹⁵

The psychological assistance in the reception centres is limited to basic consultations.⁴¹⁶ Moreover, due to pandemic COVID-19, it was not provided in person by psychologists, but by phone⁴¹⁷. Some asylum seekers consider psychologists working in the centre as not neutral enough as they are employed (indirectly) by the Office for Foreigners.⁴¹⁸ Furthermore, according to some experts and many NGOs, specialised treatment for victims of torture or traumatised asylum seekers is not available in practice.⁴¹⁹

⁴¹¹ Article 73(1) Law on Protection.

⁴¹² Articles 76(1) and 70(1) Law on Protection.

⁴¹³ Information provided by the Office for Foreigners, 26 January 2022.

⁴¹⁴ *ibid.*

⁴¹⁵ Pachocka, M. and Sobczak-Szelc K., 'Refugee Protection Poland – Country Report', Multilevel Governance of Mass Migration in Europe and Beyond Project (Horizon2020), January 2020, available at: <https://bit.ly/2U1A9uL>, 80.

⁴¹⁶ See Pachocka, M. and Sobczak-Szelc K., 'Refugee Protection Poland – Country Report', Multilevel Governance of Mass Migration in Europe and Beyond Project (Horizon2020), January 2020, available at: <https://bit.ly/2U1A9uL>, 70. The Office for Foreigners claims that those psychologists' assistance concentrates on psychological support and counselling and also on diagnosis of mental disorders, including PTSD.

⁴¹⁷ Information provided by the Office for Foreigners, 26 January 2022.

⁴¹⁸ M. Pachocka, K. Pędziwiatr, K. Sobczak-Szelc, J. Szałańska, 'Reception Policies, Practices and Responses: Poland Country Report', 2020, RESPOND Working Papers 2020/45, available at: <http://bit.ly/3jLCvsV>, 71.

⁴¹⁹ See e.g. M. Szczepanik, *Right to healthcare and access to medical services for asylum seekers and beneficiaries of international protection in Poland*, May 2017, available at: <http://bit.ly/2CxXokd>. See also

NGOs still point at the lack of proper treatment of persons with PTSD. The available psychological assistance is considered an intervention, not a regular therapy. There is a shortage of psychologists prepared to work with vulnerable and traumatized asylum seekers.⁴²⁰ Moreover, there are only three specialised NGOs that provide psychological consultations and treatment to asylum seekers.⁴²¹ In 2021, some form of psychological support was provided by NGOs, but it was affected by the pandemic (assistance by phone instead of in person).⁴²²

The medical assistance is provided since July 2015 by the private contractor Petra Medica, with whom the Office for Foreigners has signed an agreement to coordinate medical care for asylum seekers. The Office for Foreigners monitors the application of this agreement. The quality of medical assistance provided under this agreement has triggered wide criticism. In particular, access to a specialised medical care worsened⁴²³ and some asylum seekers are refused access to more costly treatments. It happens that only after NGOs' interventions and months of fighting for the access to a proper medical treatment, asylum seekers were able to receive it.

In 2019, SIP described its battle to provide the continuation of the treatment for the asylum-seeking woman that was HIV-positive and had a Hodgkin lymphoma. The woman started the treatment in Germany and afterwards was sent back to Poland under the Dublin III Regulation. In Poland, she faced multiple refusals of the treatment and administrative obstacles to receiving medical assistance from proper doctors and medical facilities. She was not referred to infectious diseases, cardiological nor psychiatric clinics even though the medical documentation from Germany found it was necessary. She was repeatedly misinformed that she is not entitled to the HIV-treatment in Poland. Even though she was in bad health condition, the staff of the centre in Dębak refused calling for the ambulance explaining (falsely) that she was not entitled to it. Moreover, one of the Polish doctors said to her that Poland does not need sick people. Finally, the foreigner received proper treatment in Poland. Thanks to the German doctor who sent her additional medication, she was left without it 'only' for two weeks.⁴²⁴ In 2020, SIP described another battle for access to medical assistance for the asylum seeker diagnosed in 2016 with HCV. In March 2018, he contacted SIP due to recurring difficulties in accessing specialized treatment. He was first sent to improper medical facilities; next the Petra Medica denied financing the treatment. The Office for Foreigners was unable to enforce the Petra Medica to cover the expenses of the medical treatment that the asylum seeker needed. Finally, only in September 2019, the asylum seeker started the necessary treatment, but it required multiple interventions on the SIP's part to enable it.⁴²⁵ In 2021, new instances of refusals of medical treatment were reported. An asylum-seeking woman with acute respiratory infection was repeatedly not admitted to several hospitals due to the uncertainty who would cover the costs of her treatment. Finally, she was admitted to a hospital after paying for the treatment herself. SIP intervened and those costs were reimbursed. Another

Małgorzata Jaźwińska and Magdalena Sadowska, 'Osoby, które doświadczyły przemocy', in SIP, *Prawa cudzoziemców w Polsce w 2019 roku. Raport*, 2020, available in Polish at: <https://bit.ly/3JT7weM>, 13-14, pointing out that persons who were subject to violence are not properly identified.

⁴²⁰ Pachocka, M. and Sobczak-Szelc K., 'Refugee Protection Poland – Country Report', Multilevel Governance of Mass Migration in Europe and Beyond Project (Horizon2020), January 2020, available at: <https://bit.ly/2U1A9uL>, 71.

⁴²¹ M. Szczepanik, *Right to healthcare and access to medical services for asylum seekers and beneficiaries of international protection in Poland*, May 2017, available at: <http://bit.ly/2CxXokd>. The Office for Foreigners mentions three NGOs in 2021: Fundacja Ocalenie, Fundacja EMIC and Fundacja Polskie Forum Migracyjne (information of 26 January 2022).

⁴²² Information provided by the Office for Foreigners, 26 January 2022.

⁴²³ M. Pachocka, K. Pędziwiatr, K. Sobczak-Szelc, J. Szałańska, 'Reception Policies, Practices and Responses: Poland Country Report', 2020, RESPOND Working Papers 2020/45, available at: <http://bit.ly/3jLCvsV>, 70.

⁴²⁴ O. Hilik, 'Leczenie osób zarażonym wirusem HIV w postępowaniu w przedmiocie udzielenia ochrony międzynarodowej' in Stowarzyszenie Interwencji Prawnej (SIP), *SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r.*, 2019, available (in Polish) at: <https://bit.ly/2viZkz5>, 46-48.

⁴²⁵ A. Chrzanowska, 'Dostęp do leczenia wirusowego zapalenia wątroby (WZW)' in SIP, *Prawa cudzoziemców w Polsce w 2019 roku. Raport*, 2020, available (in Polish) at: <https://bit.ly/3JT7weM>, 60-62.

asylum seeker was informed that he cannot continue his cancer treatment as the Petra Medica denied paying for it. Again, only after the SIP's intervention, the treatment was continued.⁴²⁶

One of the biggest obstacles in accessing health care that asylum seekers face is the lack of intercultural competence and knowledge of foreign languages amongst doctors and nurses.⁴²⁷ Petra Medica that is responsible for the provision of medical assistance to asylum seekers is also obliged to ensure interpretation during the medical and psychological consultations, if it is needed. However, NGOs have been expressing concerns in regard to availability and quality of the interpretation provided to asylum seekers in connection with medical consultations. In particular, it is reported that asylum seekers who are not speaking Polish, English or Russian face great difficulties with being provided with medical assistance (they cannot make the needed appointments as the helpline is available only in English and Russian, they cannot understand a doctor during the appointment, etc.).⁴²⁸

Another challenge is the fact that some clinics and hospitals providing medical assistance to asylum seekers are located far away from the reception centres, so an asylum seeker cannot be assisted by the closest medical facility, except for emergency situations. The Office for Foreigners noticed that for those asylum seekers living outside the reception centres health care is provided in voivodeship cities in Poland and that coordination of visits is conducted by the Petra Medica helpline, where the asylum seeker can learn about the time of the visit and ways to get the prescription.⁴²⁹

In 2019-2020, the Office for Foreigners registered 13 and 5 complaints respectively, all of which concerned medical assistance. In 2021, 25 complaints about medical assistance were registered (10 from one asylum seeker).⁴³⁰ They concerned *inter alia*:

- Long waiting times for the specialist consultation,
- Restrictions resulting from the pandemic, including the 'max 5 persons in a waiting room' requirement and the necessity to wait for a doctor's appointment outdoors,
- The behaviour and professional conduct of doctors and nurses providing medical assistance.

Moreover, the medical facility situated in the Office for Foreigners in Warsaw was strongly criticized. SIP informed that due to the limitations resulting from the pandemic (only 5 persons allowed inside), everyday a long queue formed in front of the Office, along the fence surrounding the building. Some asylum seekers needing medical assistance were allowed to come in, but others (less serious cases) were given medical assistance outside, over the fence, with other foreigners being able to hear about their health problems.⁴³¹ The Office for Foreigners explained that this medical facility was particularly burdened due to increased numbers of asylum seekers living in Warsaw in 2021 and the prolongation of social assistance ordered because of the pandemic. In response to the complaints, an additional medical facility was opened for asylum-seeking children in Warsaw.⁴³²

SIP informs that it regularly receives complaints about the Petra Medica's functioning and in practice many asylum seekers give up their right to medical assistance during asylum proceedings due to the problems they had with accessing health care designed for them.⁴³³

⁴²⁶ A. Chrzanowska, 'Dostęp do leczenia osób ubiegających się o ochronę międzynarodową' in SIP, *Prawa cudzoziemców w Polsce w 2020 roku. Raport, 2021*, available in Polish at: <https://bit.ly/3sGmlXS>, 73-74.

⁴²⁷ M. Koss-Goryszewska, 'Służba zdrowia' in A. Górka, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce*, Instytut Spraw Publicznych 2019, 43.

⁴²⁸ A. Chrzanowska, 'Dostęp do leczenia osób ubiegających się o ochronę międzynarodową' in SIP, *Prawa cudzoziemców w Polsce w 2020 roku. Raport, 2021*, available in Polish at: <https://bit.ly/3sGmlXS>, 74-75.

⁴²⁹ Information provided by the Office for Foreigners, 1 February 2017.

⁴³⁰ Information provided by the Office for Foreigners, 22 January 2020, 26 January 2021 and 26 January 2022.

⁴³¹ A. Chrzanowska, 'Dostęp do leczenia osób ubiegających się o ochronę międzynarodową' in SIP, *Prawa cudzoziemców w Polsce w 2020 roku. Raport, 2021*, available in Polish at: <https://bit.ly/3sGmlXS>, 75.

⁴³² Information provided by the Office for Foreigners, 26 January 2022.

⁴³³ A. Chrzanowska, 'Dostęp do leczenia osób ubiegających się o ochronę międzynarodową' in SIP, *Prawa cudzoziemców w Polsce w 2020 roku. Raport, 2021*, available in Polish at: <https://bit.ly/3sGmlXS>, 74.

COVID-19

Due to the COVID-19 pandemic, medical consultations by phone were introduced in 2020 and continued in 2021. Information about that and necessary telephone numbers has been provided in English and Russian online (website of the Office for Foreigners and Petra Medica) and in the reception centres. According to the Office for Foreigners, in every reception centre, isolation rooms with bathrooms were separated. The state of health of ill asylum seekers was monitored daily by medical staff of the centre, they had also direct telephone number to doctors and nurses in case of feeling worse. Food was served to them in isolation rooms. The measures to limit the spread of the COVID-19 in the reception centres were taken up as well: disinfectants and masks were provided, ill asylum seekers were separated, the temperature of every person accessing the centre was checked, the access to the reception centres was significantly limited as well as some educational and integration activities were temporarily suspended. Moreover, asylum seekers were encouraged to live privately instead of in the reception centres.⁴³⁴

Testing for COVID-19 was possible in the reception centres and outside. Tests prescribed by doctors were free of charge and asylum seekers were entitled to the same access to tests as nationals or legally residing third country nationals. Asylum seekers also could ask for a reimbursement of travel costs that they had to cover in order to be tested.⁴³⁵

Overall, 87 asylum seekers were reported positive to COVID-19 in 2020 and 25 in 2021. Only a minority of them was hospitalized (3 persons in 2021).⁴³⁶ In 2020, one reception centre (in **Warsaw** – for single women and mothers with children, 111 residents at the time) was quarantined. 70 asylum seekers living there were tested positive for COVID-19.⁴³⁷ Asylum seekers opposed the limitations that resulted from the COVID-19 quarantine in that centre. According to the Office for Foreigners, thanks to immediate reaction of the Office, medical operator and NGOs, the situation was quickly under control.⁴³⁸

Asylum seekers had the same access to COVID-19 vaccinations as Polish citizens. Vaccinations were administered as a rule in prescribed medical facilities and occasionally in the reception centres (two times in Bezwola, once in Linin). They were free of charge and asylum seekers also could ask for a reimbursement of travel costs that they had to cover in order to be vaccinated. 511 asylum seekers were vaccinated in 2021.⁴³⁹

In 2021, special educational campaigns for asylum seekers were organized quarterly by the Office for foreigners on the COVID-19 prevention and vaccinations. Information about vaccinations was also provided on the boards in the reception centres and by the doctors working there. Asylum seekers living outside the centres received a letter explaining how they could get vaccinated in Poland.⁴⁴⁰

While in principle asylum seekers should have the same access to vaccinations as Polish nationals, obstacles in this regard were reported: referrals for the vaccinations were sometimes refused by doctors, asylum seekers felt disinformed and the assistance with regard to vaccinations in foreign languages was lacking.⁴⁴¹

⁴³⁴ Information provided by the Office for Foreigners, 26 January 2021 and 26 January 2022.

⁴³⁵ Information provided by the Office for Foreigners, 26 January 2022

⁴³⁶ Information provided by the Office for Foreigners, 26 January and 4 March 2021 as well as 26 January 2022.

⁴³⁷ Information provided by the Office for Foreigners, 4 March 2021.

⁴³⁸ Information provided by the Office for Foreigners, 26 January 2021.

⁴³⁹ Information provided by the Office for Foreigners, 26 January 2022.

⁴⁴⁰ Ibid.

⁴⁴¹ Kseniya Homel (ed.), 'The impact of coronavirus country measures on asylum and reception systems in Hungary, Slovakia and Poland', 2021, available at: <https://bit.ly/3sHaxVq>, 35.

Polish-Belarusian border

The humanitarian crisis at the Polish-Belarusian border in 2021 left many prospective asylum seekers without access to material reception conditions, including medical assistance (see [Access to the territory and push backs](#)). In those circumstances, medical assistance was mostly provided by NGOs, activists and groups of doctors. However, its scope and effectiveness were greatly limited after the introduction of the emergency state. Medical staff repeatedly applied to the Government to be allowed to enter the restricted area at the Polish-Belarusian border. The access was not allowed.⁴⁴² Therefore, medical assistance was available only in the woods surrounding the restricted area. In January 2022, Médecins Sans Frontières (MSF) announced that, three months after sending an emergency response team to assist migrants and refugees at the Polish-Belarusian border, it must withdraw MSF teams 'after being repeatedly blocked by Polish authorities from accessing the forested border region, where groups of people are surviving in sub-zero temperatures, in desperate need of medical and humanitarian assistance'.⁴⁴³

Foreigners crossing the Polish-Belarusian border often required medical assistance, in particular in winter. They were starved, dehydrated, freezing (some with hypothermia), suffering from food poisoning, beaten up by – according to their accounts – Polish or Belarusian officers, and with other injuries, *inter alia* foot and leg injuries resulting walking barefoot or climbing through a wired fence.⁴⁴⁴

Medical assistance for those foreigners was provided by doctors, nurses and paramedics from all over Poland, many volunteering their free time to help at the border.⁴⁴⁵ Since 7 October, the temporary group 'Medycy na granicy' (Medics at the Border) assisted foreigners (141 adults and 78 children) in the woods near the Polish-Belarusian border. They acquired funding through public collection.⁴⁴⁶ In November 2021, they ceased their activities and the role was assumed by the Polskie Centrum Pomocy Międzynarodowej (PCPM). Polska Misja Medyczna also decided to support hospitals near the border that were overburdened since the humanitarian crisis started (due to the crisis but also the pandemic).⁴⁴⁷ In the face of the lack of systemic support, hospitals were supported also by other NGOs, activists and local communities.

Asylum seekers were given medical assistance, where possible, in the woods near the border. With regard to those needing hospital treatment, NGOs informed that they struggled with ensuring transport to hospitals, as ambulances were not willing to take such foreigners; the requests to send ambulances were denied or conditioned on the Border Guard's presence. Moreover, after receiving a treatment in the hospitals, some foreigners were deported back to the Belarusian woods by the Polish Border Guard. Some doctors decided to prolong the foreigners' stay in the hospital only to avoid their push-back (that would worsen their medical condition again).⁴⁴⁸ Some foreigners did not agree to call an ambulance – even though it was needed – knowing that afterwards they may be send back to Belarus.⁴⁴⁹

⁴⁴² 'Wypis uchodźców do lasu? To chore – rozmowa z medyczką z Grupy Granica – Przy Słowie', 2 November 2021, available in Polish at: <https://bit.ly/3HI06oV>; D. Borodaj, 'W środku czarnego lasu robimy jej USG. „Zobacz. Tu ma główkę”. Na chwilę gasną igrzyska śmierci', 5 November 2021, Oko.press, available in Polish at: <https://bit.ly/3pChtkN>.

⁴⁴³ MSF leaves Polish border after being blocked from assisting people', 6 January 2022, Press release, available at: <https://bit.ly/3typ6JY>.

⁴⁴⁴ See e.g. M.J. Pietrusińska, N. Gebert, 'Leczymy uchodźców. Raport oparty na relacjach pracowników przygranicznych placówek służby zdrowia', December 2021, available in Polish at: <https://bit.ly/3sFrOhQ>, 15.

⁴⁴⁵ D. Borodaj, 'W środku czarnego lasu robimy jej USG. „Zobacz. Tu ma główkę”. Na chwilę gasną igrzyska śmierci', 5 November 2021, Oko.press, available in Polish at: <https://bit.ly/3pChtkN>.

⁴⁴⁶ J. Ojczyk, K. Redmerska, 'Polacy wspierają medyków pomagających migrantom na granicy', 13 October 2021, available in Polish at: <https://bit.ly/3KeFFI9>.

⁴⁴⁷ D. Zadroga, 'Polska Misja Medyczna pomoże przy granicy polsko-białoruskiej', 3 November 2021, available in Polish at: <https://bit.ly/3txTDYn>.

⁴⁴⁸ Grupa Granica, 'Humanitarian crisis at the Polish-Belarusian border', 1 December 2021, available (EN) at: <https://bit.ly/3uF6jF>, 14, 23; M.J. Pietrusińska, N. Gebert, 'Leczymy uchodźców. Raport oparty na relacjach pracowników przygranicznych placówek służby zdrowia', December 2021, available in Polish at: <https://bit.ly/3sFrOhQ>, 9-11, 21-22, 25, 30; 'Wypis uchodźców do lasu? To chore – rozmowa z medyczką z Grupy Granica – Przy Słowie', 2 November 2021, available in Polish at: <https://bit.ly/3to0CmE>.

⁴⁴⁹ M.J. Pietrusińska, N. Gebert, 'Leczymy uchodźców. Raport oparty na relacjach pracowników przygranicznych placówek służby zdrowia', December 2021, available in Polish at: <https://bit.ly/3sFrOhQ>, 8, 14; Grupa Granica,

Doctors, nurses and paramedics working at the border experienced hostility, threats and violence.⁴⁵⁰ For instance, four cars of the 'Medycy na granicy' group were damaged in November 2021. Earlier that month, the tires of their cars got deflated.⁴⁵¹

In 2021, in numerous interim measures, the European Court of Human Rights indicated that Poland must provide the applicants with food, water, clothing, adequate medical care and, if possible, temporary shelter.⁴⁵²

21 deaths of foreigners were reported at the Polish-Belarusian border in 2021.⁴⁵³

E. Special reception needs of vulnerable groups

Indicators: Special Reception Needs

1. Is there an assessment of special reception needs of vulnerable persons in practice?

Yes

No

Persons who need special treatment are defined particularly as:⁴⁵⁴

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

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

- ❖ Accommodate him or her in a reception centre adapted to the needs of the disabled people or ensuring a single room or designed only for women or women with children;
- ❖ Place him or her in special medical premises (like a hospice);
- ❖ Place him or her in a foster care corresponding to the psychophysical situation of the asylum seeker;
- ❖ Adapt his or her diet to his or her state of health.⁴⁵⁵

If an asylum seeker is a person who needs special treatment, his/her needs concerning accommodation and alimentation are taken into account when providing material reception conditions.⁴⁵⁶ An asylum seeker

'Humanitarian crisis at the Polish-Belarusian border', 1 December 2021, available (EN) at:<https://bit.ly/3uF6jiF>, 23.

⁴⁵⁰ See also 'MSF leaves Polish border after being blocked from assisting people', 6 January 2022, Press release, available at: <https://bit.ly/3typ6JY>.

⁴⁵¹ A Mikulska, 'PILNE. Uszkodzono 4 samochody Medyków na Granicy. Ślady po siekierze. Sprawę bada policja', 14 November 2021, available in Polish at: <https://bit.ly/3sDAZPH>.

⁴⁵² ECtHR, 'Requests for interim measures concerning the situation at the borders with Belarus', 6 December 2021, Press release.

⁴⁵³ IOM via Twitter, 14 December 2021, available at: <https://bit.ly/3hnQeG2>.

⁴⁵⁴ Article 68(1) Law on Protection.

⁴⁵⁵ Article 68(2) Law on Protection.

⁴⁵⁶ Article 69a Law on Protection.

who needs special treatment should be accommodated in the reception centre by taking into account his special needs.⁴⁵⁷

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

The Border Guard ensures transport to the reception centre and – in justified cases – food during the transport after claiming for asylum only to: disabled or elderly people, single parents and pregnant women.⁴⁵⁸ The same groups can benefit from this transport after the Dublin transfer and release from a detention centre.⁴⁵⁹ Other vulnerable asylum seekers cannot benefit from the organised transport, they must get to the reception centre by themselves, which is considered 'a gap in asylum system'.⁴⁶⁰ In practice, the transport for disabled or elderly people, single parents and pregnant women is provided very rarely.

Some of the reception centres are adapted to the needs of disabled asylum seekers. All of the centres managed by the Office for Foreigners have special entry for disabled foreigners and bathrooms adapted to the needs of the asylum seekers on wheelchairs. Other centres (3) have some adaptations for such asylum seekers. There is also a provision of rehabilitation services to this group of persons. The Office for Foreigners declares that it provides the transport for the medical examinations and rehabilitation services as well as specialist equipment, when needed.⁴⁶¹

There are no separate accommodation centres for traumatised asylum seekers, or other vulnerable persons (except women, see below).

1. Reception of women and children

Managed by the private contractor, the centre in Warsaw was designed to host exclusively single women or single women with children. It was closed in August 2021. Its residents were accommodated in Dębak reception centre (in a separate, renovated for that purpose, building within the complex – with 102 places available) or decided to live outside the reception centre. Opening of a new centre for single women and women with children is planned by the Office for Foreigners (a building for that purpose was acquired in 2021, but it needs to be renovated).⁴⁶²

The law facilitates living outside the centre for single women. As the Law on Protection specifies, financial allowance is granted when it is necessary in order to ensure the safety of the asylum seeker, with special consideration given to the situation of single women.⁴⁶³

Since 2008, the Office for Foreigners has a special agreement with the Police, UNHCR, "La Strada" Foundation and Halina Niec Legal Aid Centre aiming to better identify, prevent and respond to gender-based violence in reception centres.⁴⁶⁴ In regard to all reception centres, special teams have been created, consisting of one representative from the Office for Foreigners, the Police and an NGO. Their task is to

⁴⁵⁷ Para 5(3) Annex to the Regulation on rules of stay in the centre for asylum seekers.

⁴⁵⁸ Article 30(1)(8) Law on Protection.

⁴⁵⁹ Article 40a and Article 89cb Law on Protection.

⁴⁶⁰ Pachocka, M. and Sobczak-Szelc K., 'Refugee Protection Poland – Country Report', Multilevel Governance of Mass Migration in Europe and Beyond Project (Horizon2020), January 2020, available at: <https://bit.ly/2U1A9uL>, 73.

⁴⁶¹ Information from the Office for Foreigners, 26 January 2022.

⁴⁶² Information provided by the Office for Foreigners, 26 January 2022.

⁴⁶³ Article 72(1)(1) Law on Protection.

⁴⁶⁴ *Porozumienie w sprawie standardowych procedur postępowania w zakresie rozpoznawania, przeciwdziałania oraz reagowania na przypadki przemocy seksualnej lub przemocy związanej z płcią wobec cudzoziemców przebywających w ośrodkach dla osób ubiegających się o nadanie statusu uchodźcy*, 25 March 2008.

effectively prevent acts of violence in reception centres and quickly respond to any which do occur. There were 28 cases of violence in 2017, 13 in 2018, 14 in 2019, 10 in 2020 and 3 in 2021.⁴⁶⁵ In 2021, the Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) welcomed the tripartite teams, but noticed ‘the low number of reported cases of gender-based violence within reception facilities’. Moreover, it regretted that ‘specialist intervention in cases of domestic violence under the Blue Card procedure is not available to asylum-seeking women under the Law on Combating Family Violence. In practice, it was reported to GREVIO that some reception centres have established cooperation with municipalities to run Blue Card procedures, but this seems to depend on individual initiatives and no data were made available on the number of women seeking asylum covered by such a procedure’.⁴⁶⁶ Moreover, it is being increasingly highlighted that the Office for Foreigners’ employees in the reception centres are not social workers; thus, they are not trained to deal with crisis situations and to work with vulnerable persons such as victims of domestic violence.⁴⁶⁷ However, the Office for Foreigners opposes those claims, pointing to several trainings conducted for the centres’ staff, including cleaners and security services, by NGOs (Fundacja Dajemy dzieciom siłę, La Strada).⁴⁶⁸

In 2020, the suspicion of violence being used against asylum-seeking children staying in the centre in **Warsaw** was reported. The Polish language teacher was dismissed and the case was taken to the court.⁴⁶⁹

2. Reception of unaccompanied children

The only safeguards related to special reception needs of unaccompanied children are those referring to their place of stay. Unaccompanied children are not accommodated in the reception centres. The custody court places them in a youth care facility, so unaccompanied children are not accommodated with adults in practice. Until the court makes a decision on placing a child in a regular youth care facility, an unaccompanied child stays with a professional foster family functioning as emergency shelter or in a youth care facility for crisis situations.⁴⁷⁰

As noticed in the EASO report, amendments introduced to Article 61 of the Law on Protection, ‘now make it possible to submit an application for placement in foster custody immediately after an unaccompanied minor expresses the intention to submit an application for international protection. Per previous practice, this would take place only after an application was submitted’.⁴⁷¹

The law also refers to qualified personnel that should undertake activities in the asylum procedures concerning unaccompanied children (a defined profile of higher education, 2 years of relevant experience).⁴⁷²

When providing material reception conditions to children, the need to safeguard their interests should be taken into account, especially taking into consideration family unity, best interests of the child and their social development, security and protection (particularly if they are a victim of human trafficking) and their opinion according to their age and maturity.⁴⁷³

⁴⁶⁵ Information provided by the Office for Foreigners, 1 February 2017, 1 February 2018, 15 January 2019, 22 January 2020, 26 January 2021 and 26 January 2022.

⁴⁶⁶ GREVIO, ‘(Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) POLAND’, 2021, available at: <https://bit.ly/3IKkly6>, 84.

⁴⁶⁷ SIP, ‘Raport nt. przeciwdziałania przemocy wobec kobiet i przemocy domowej’, 16 September 2021, available in Polish at: <https://bit.ly/3tyl04y>; SIP, ‘Alternative report’, 10 September 2020, available in English at: <https://bit.ly/3HGMtq4>, 6.

⁴⁶⁸ Information provided by the Office for Foreigners, 26 January 2022.

⁴⁶⁹ Information provided by the Office for Foreigners, 4 March 2021.

⁴⁷⁰ Article 62 (2) Law on Protection.

⁴⁷¹ EASO, Annual Report on the Situation of Asylum in the European Union 2018, 2019, available at: <https://bit.ly/31GgGID>, 172.

⁴⁷² Article 66 Law on Protection.

⁴⁷³ Article 69b Law on Protection.

Whereas previously they were mainly placed in a youth care facility in **Warsaw**, currently unaccompanied asylum-seeking children can be placed in youth care facilities throughout the country. In 2021 they were accommodated in:

- Kętrzyn (24 children placed),
- Warsaw (9 children placed),
- Ełk (5 children placed),
- Białystok (4 children placed),
- Rybnik (3 children placed),
- Krasno (2 children placed)
- Ruszków (2 children placed) and
- Białowieża (2 children placed).⁴⁷⁴

F. Information for asylum seekers and access to reception centres

1. Provision of information on reception

The Border Guard, upon admitting the asylum application, has to inform the applicant in a language understandable to him or her and in writing about i.e. the asylum procedure itself, the asylum seeker's rights, obligations, and the legal consequences of not respecting these obligations, as well as the extent of the material reception conditions. It also provides the asylum seeker with the address of the centre to which they have to report.⁴⁷⁵ According to the Border Guard it is provided in 22 languages.⁴⁷⁶

Upon admission to the centre, asylum seekers receive (in writing or in the form of an electronic document, in a language understandable to them) the rules of stay in the centre (set in law), information about their rights and obligations (which includes all the basic information, including on access to the labour market or on their legal status), information on regulations governing the provision of material reception conditions and about procedures used in case of the person has been subjected to violence, especially against minors.⁴⁷⁷ 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.⁴⁷⁸ In the first-reception centres new-coming asylum seekers could also participate in a course on basic information about Poland and the asylum procedure. Since March 2020 though, due to the COVID-19 pandemic, such courses were terminated.⁴⁷⁹

It is not envisaged in the legislation which languages the rules of stay in the centre, information about rights and obligations and on regulations governing the provision of material reception conditions should be translated into. It states that information has to be accessible "in an understandable language". The rules of stay in the centre and above-mentioned information issued on the basis of the current law were translated in practice into English, Russian, Arabic, French, Georgian and Ukrainian.⁴⁸⁰

⁴⁷⁴ Information provided by the Office for Foreigners, 26 January 2022.

⁴⁷⁵ Article 30(1)(5) Law on Protection.

⁴⁷⁶ Information provided by the Border Guard, 11 January 2018.

⁴⁷⁷ Para 3 of the Annex to the Regulation on rules of stay in the centre for asylum seekers. The Office for Foreigners published a guide for asylum seekers "First steps in Poland", which is handed to them upon admission to the centre. Available in English, Arabic, French, Georgian, Polish, Dari and Russian.

⁴⁷⁸ Para 18 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

⁴⁷⁹ Information provided by the Office for Foreigners, 26 January 2021 and 26 January 2022.

⁴⁸⁰ Information provided by the Office for Foreigners, 22 January 2020.

The Office for Foreigners claims that the centres' employees speak English and Russian. Additionally, in 2021, mentors knowing Pashto and Dari were hired. The agreement was also concluded with the translation office.⁴⁸¹ However, NGOs still consider the interpreters' assistance in the reception centres insufficient.

The Supreme Audit Office concluded in 2019 that the Office for Foreigners had provided access to necessary information for asylum seekers at its headquarters, in the centres and through its website. The information concerned asylum procedure, material reception conditions, healthcare, rights and obligations of asylum seekers, appeal proceedings and NGOs' assistance. In the centres, information meetings were organised on a regular basis and asylum seekers could receive leaflets published by NGOs. The Office for Foreigners published its own guides for asylum seekers as well.⁴⁸² However, it must be noted that during pandemic access to information provided in person - in the Office, in NGOs' premises or during information meetings - was limited. Moreover, in 2021, the Office's website has been changed. It is now far less comprehensible and exhaustive. It is available in Polish, English and Russian, but some materials published there are available also in other languages.⁴⁸³

2. Access to reception centres by third parties

Indicators: Access to Reception Centres

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

Asylum seekers staying in the centres have the right to be visited by family members, legal advisers, UNHCR, NGOs, etc. in the rooms intended for that purpose.⁴⁸⁴

Asylum seekers may receive visits in the centre from 9:00 to 16:00 in a place agreed with the employee of the centre. In particularly justified cases the visiting hours in the centre may be prolonged upon permission of the employee of the centre, but not later than 22:00.⁴⁸⁵

Each entry of a non-resident into the premises of the centre requires the permission of:⁴⁸⁶

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

The Head of the Office for Foreigners or an employee of the centre can refuse to give permission to enter the centre or withdraw it, if this is justified regarding the interest of the third country national or necessary to ensure the safety or for epidemiological and sanitary reasons.⁴⁸⁷

The above-mentioned rules do not apply to the representatives of the UNHCR, who may enter the centre anytime provided that the staff of the centre was notified in advance.⁴⁸⁸ As regards NGOs, whose tasks include the provision of assistance to asylum seekers, and entities which provide legal assistance to asylum seekers, the Head of the Office for Foreigners may issue a permit to enter the centre for the period of their activities performed for asylum seekers residing in the centre.⁴⁸⁹

Asylum seekers have access to the information about entities providing free legal assistance. During their stay in the centre, asylum seekers communicate with legal advisers, UNHCR or NGOs mainly by phone,

⁴⁸¹ Information provided by the Office for Foreigners, 26 January 2022.

⁴⁸² Supreme Audit Office, *Przygotowanie administracji publicznej do obsługi cudzoziemców. Informacja o wynikach kontroli*, 2019, available (in Polish) at: <https://bit.ly/2Sej7IT>, 43.

⁴⁸³ See <https://www.gov.pl/web/udsc>.

⁴⁸⁴ Paras 7-9 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

⁴⁸⁵ Para 9 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

⁴⁸⁶ Para 7.2 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

⁴⁸⁷ Para 7.5 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

⁴⁸⁸ Para 7.6 and 7.7 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

⁴⁸⁹ Para 7.4 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

fax, e-mail, etc. (even before the pandemic). Seven out of the eight centres are located in small villages, far away from big cities, where most of the legal advisers, UNHCR and NGOs in Poland have their premises, and accessing them can be an obstacle. As a result, asylum seekers are often contacted only remotely, especially when NGOs do not have the funds for travelling to these centres. Due to the financial problems of NGOs occurring since 2015 (see [Regular Procedure: Legal Assistance](#)),⁴⁹⁰ their presence in the centres continues to be limited.

The COVID-19 pandemic has affected the access to the reception centres. In the periods of March-May and November-December 2020, no permissions to access the reception centres were given and the permissions already given were withdrawn if the presence of persons or organisations in the centre was not indispensable. Giving permissions was resumed only in the second half of 2021 (both to private persons and NGOs). Until then, legal, psychological and educational assistance and activities were continued online or by phone. In the second half of 2021, visitors were allowed to enter the centre if they had no visible symptoms of COVID-19. Their temperature was checked at the entrance.⁴⁹¹

In October 2021, the Office for Foreigners announced a call for volunteers in reception centres. Their duties will include *inter alia* assisting asylum seekers with a contact with public authorities and doctors, seeking accommodation, learning Polish and doing homework.⁴⁹²

G. Differential treatment of specific nationalities in reception

Afghans evacuated by Polish government

After their evacuation, Afghans were first quarantined in either reception centres or other facilities (hotels, motels, e.g. in Poznań). During that time, they had access to organized meals and medical assistance; had telephone contact with interpreters and lawyers/NGOs; and were provided support with shopping online.⁴⁹³

After the quarantine, Afghans staying in hotels/motels were transported by the Office for Foreigners to the reception centres. Later on, the Office for Foreigners provided transport for them, if needed: to hospitals/doctors or to public offices to participate in asylum proceedings, give fingerprints or receive documents.⁴⁹⁴

The Office for Foreigners hired mentors knowing Pashto and Dari languages to enable contact with evacuated Afghans and facilitate their integration. Mentors visit reception centres and are available for foreigners by phone. Their responsibilities include familiarizing foreigners with Polish culture and lifestyle, explaining cultural differences, facilitating contact with Polish authorities (e.g. enrolling to school), supporting foreigners in conflict situations and mediation and their initial integration in Poland.⁴⁹⁵

Materials explaining material reception conditions for asylum seekers staying in Poland were translated to Pashto and Dari and distributed to evacuated Afghans. They included information about: NGOs supporting asylum seekers by *inter alia* providing legal assistance; obligatory vaccinations for children; and Polish education system. The Office for Foreigners distributed also special materials drawn up by the Ministry of

⁴⁹⁰ See also Pachocka, M. and Sobczak-Szelc K., 'Refugee Protection Poland – Country Report', Multilevel Governance of Mass Migration in Europe and Beyond Project (Horizon2020), January 2020, available at: <https://bit.ly/2U1A9uL>, 35-38, 54; ECRE/UNHCR, 'Follow the money II. Assessing the use of EU Asylum, Migration and Integration Fund (AMIF) funding at the national level 2014-2018', January 2019, available at: <https://bit.ly/38h6lin>, 43.

⁴⁹¹ Information provided by the Office for Foreigners, 26 January 2022.

⁴⁹² Office for Foreigners, 'Wolontariat w ośrodkach dla cudzoziemców', 25 October 2021, available in Polish at: <https://bit.ly/3CfJjZd>.

⁴⁹³ Information provided by the Office for Foreigners, 26 January 2022.

⁴⁹⁴ Ibid.

⁴⁹⁵ Ibid.

Family and Social Policy explaining steps to be taken after being granted international protection, including what they need to do in order to start work in Poland, access vocational training, learn Polish, receive the Individual Integration Programme and legal and psychological support.⁴⁹⁶

Polish language classes for evacuated Afghans were organized taking into consideration their particular needs, i.e. the number of classes was increased so as all interested persons can attend. The Office for Foreigners turned to local municipalities to indicate which schools Afghan children are to attend and to organize preparatory classes, hire teacher's assistants as well as ensure additional Polish language and compensatory classes for them.⁴⁹⁷

Evacuated Afghans received also material support: SIM cards with unlimited calls to Afghanistan, school materials, clothes, shoes, hygienic products, diapers, household appliances, strollers and baby food. Material support was most often offered to Afghans by NGOs,⁴⁹⁸ who gathered it from private persons. Polish society willingly offered material support for Afghan evacuees. However, the fact that the support was earmarked for Afghans did lead to some conflicts and tensions with other asylum seekers staying in the reception centres.⁴⁹⁹

Polish Government granted also some funding for NGOs for supporting the integration process of Afghan evacuees.⁵⁰⁰

⁴⁹⁶ All materials available here: <https://bit.ly/3IQkOV6>.

⁴⁹⁷ Information provided by the Office for Foreigners, 26 January 2022.

⁴⁹⁸ Ibid.

⁴⁹⁹ Polskie Forum Migracyjne, Facebook post, 15 September 2021.

⁵⁰⁰ See e.g. Polskie Forum Migracyjne, 'Adaptacja do życia w Polsce obywateli Afganistanu ewakuowanych po przejściu władzy przez Talibów – grupa w Warszawie', project description available in Polish at: <https://bit.ly/3trA7Nr>.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2021:	No data available
2. Number of asylum seekers in detention at the end of 2021:	1,299 (411 children)
3. Number of detention centres:	9
4. Total capacity of detention centres:	2308

Contrary to 2017 (when 246 asylum seekers were detained in total), Border Guard did not collect the data on the number of asylum seekers detained in guarded centres in 2021. In general, 4052 foreigners were placed in detention centres in 2021, including 567 children (486 with parents and 81 unaccompanied children).⁵⁰¹ At least 33 foreigners were released on the basis of health considerations in 2021.⁵⁰² At the end of 2021, 1,737 migrants were detained, of whom 1,299 were asylum seekers.⁵⁰³ As of 1 February 2022, 1,652 foreigners were placed in detention centres, many of whom were children.⁵⁰⁴ The duration of detention was varied. Depending on the place of deprivation of liberty, it ranged from 52 days to over 5 months.

Until August 2021, there were 6 detention centres in Poland, which were generally profiled according to demographics: **Lesznów**, **Białystok**, **Przemyśl**, and **Krosno Odrzańskie** were for men. Women, married couples, and families with children were placed in **Kętrzyn**, **Biała Podlaska** (closed for renovation) and **Przemyśl**. Unaccompanied children were placed in the detention centre in **Kętrzyn**.

Due to the situation at the Polish- Belarusian border, the number of detention centres increased from 6 to 9 and the number of places in detention centres increased from 628 to 2,308 at the end of 2021. In fact, in August 2021, new detention centres were opened in **Czerwony Bór**, **Biała Podlaska**⁵⁰⁵ and in **Wędrzyn** as a result of a cooperation between Border Guards with Head of the Office for Foreigners and Ministry of National Defence (in case of Wędrzyn). Two of the new detention centres had previously served as **reception centres**. Based on the agreement with the Head of the Office for Foreigners in July 2021, the Border Guards adapted the building of the reception centre for foreigners in Biała Podlaska (2 August) and in Czerwony Bór (branch of detention centre in Białystok) (12 August) for the needs of detention centres.

Additionally, foreigners (also families with children) were placed in an open space in the gymnasium (in Kętrzyn) and in containers added to the existing detention centres (Kętrzyn and Lesznów).

Furthermore, Border Guard placed migrants directly stopped at the Polish-Belarusian border in two Border Guards stations (in Dubicze Cerkiewne and Połowce⁵⁰⁶) called as “centres for foreigners’ registration” (Centrum Rejestracyjne Cudzoziemców). These facilities are kind of detention centres where foreigners did not have access to outside world as there was no access to Internet, computers or phones and did not have access to legal assistance as no one could meet with them. Moreover, the living conditions were critical, for example, foreigners were sleeping in one big room on the mattresses on the floor. Foreigners were accommodated there even for 3 -4 weeks.⁵⁰⁷

⁵⁰¹ Information provided by Border Guard Headquarters, Sip, 18 February 2022.

⁵⁰² Information provided by Border Guards, different branches, January-March 2022.

⁵⁰³ Information provided by Border Guard Headquarters to HFHR, 4 March 2022

⁵⁰⁴ Information provided by Border Guards Headquarters, February 2022.

⁵⁰⁵ To prevent confusion, Biała Podlaska detention centre closed for renovation in 2020. In August Border Guard took the charge of the Biała Podlaska reception centre and they reorganized it and opened there a detention centre.

⁵⁰⁶ KMPT ad hoc visit to the Border Guard post in Narewka, available in Polish at <https://bit.ly/3ELyE9Y>.

⁵⁰⁷ Information provided by SIP, April 2022

In 2021 the profiles of the detention centres were changed a couple of times. As of February 2022, men are placed in Wędrzyn, Lesznowola and Krosno Odrzańskie. Biała Podlaska (2 buildings), Czerwony Bór, Białystok, Kętrzyn and Przemyśl are for families with children and single women. In the opinion of Commissioner for Human Rights the conditions in detentions centres were not always adapted to the changed profiles.⁵⁰⁸

On 13 of August 2021 the new amendment was introduced to Ordinance of the Ministry of Interior and Administration of 24 April 2015 on the guarded centres and detention centres for foreigners which allows now to place foreigners in a room for foreigners or in a residential cell the area of which is not less than **2 m²** per foreigner:

- in the case of no vacancies in rooms for foreigners,
- for a specified period of time,
- not longer than 12 months.⁵⁰⁹

This new regulation has caused detention centers to become overcrowded, in particular the Lesznowola, Przemyśl, Wędrzyn, Białystok and Kętrzyn detention centres.⁵¹⁰ Due to the overcrowding in detention centres, the number of social assistants is insufficient in the detention centres. In practice it means that foreigners' right to information on the current status of their proceedings is not respected and foreigners are not aware of their rights and obligations⁵¹¹.

Foreigners are obliged to pay for their stay in a detention centre calculated on the basis of algorithm, set in the Polish law.

It is worth noting that asylum seekers from Syrian and Afghanistan⁵¹², who cross the Polish-Belarusian border against the Polish regulations were often initially placed in detention even though Poland suspended deportations to these countries. Later on, they were released by the Head of the Office for Foreigners from detention centre, despite the fact that in many cases, courts had prolonged their stay there.

The statistics show that only a small number of migrants lodged asylum applications in the Border Guard stations located near the border with Belarus. Furthermore, according to the Head of the Office for Foreigners, all Iraqi citizens who applied for international protection in 2021 submitted their applications in detention centers for foreigners - after they have received a decision on return (mainly in Kętrzyn or Krosno Odrzańskie). According to NGOs, Border Guards at the border ignored the migrants' requests for international protection. In practice it meant that the return procedures were immediately initiated and the migrants were placed in detention centre based on the Act on foreigners instead of Act on granting international protection in Poland. This practice also influenced the period of detention: instead of 6 months, they were detained for longer periods.

According to the Office for Foreigners, the asylum cases of asylum applicants placed in detention are prioritised but it does not mean that they are examined more quickly when the cases are complex.⁵¹³ In practice it means that asylum seekers have only 3-7 days to present additional evidence in their case, before an asylum decision is made. The interview is conducted through videoconference in the presence of a psychologist and interpreter (e.g. in the detention centre in **Kętrzyn**). According to NGOs, psychologists and interpreters are available in the premises of the Head of the Office for Foreigners or in a different place

⁵⁰⁸ Commissioner for Human Rights, Letter to the Regional Courts, 25 January 2022, available at: <https://bit.ly/3HnQZJL>.

⁵⁰⁹ Previously, the minimum was 4 m².

⁵¹⁰ Information provided by Border Guards Headquarters to SIP, February 2022.

⁵¹¹ Commissioner for Human Rights, visit in detention centre in Wędrzyn in October, available at <https://bit.ly/3HrbNQJ>.

⁵¹² Information provided by Nomada Association and Halina Niec Legal Aid Centre, March 2022.

⁵¹³ Information provided by the Office for Foreigners, 26 January 2022.

and not in the centre where the individual is detained. Additionally, asylum seekers complain about poor quality of the videoconferencing, claiming that they could not hear what was being said.⁵¹⁴

In addition, NGOs claim that in the case of detained asylum seekers, the Refugee Board does not conduct evidentiary proceedings, meaning that they do not assess the grounds for applying for international protection.⁵¹⁵ Additionally during the proceedings in second instance asylum seekers have only 3-7 days to present the final evidence in their case.

In 2021, the average time for the Refugee Board to issue a decision in appeal proceedings against refusal of international protection was 203 days for the cases which finished in 2021. The longest processing time in 2021 took 1,697 days (in 2020 it was 1355 days) and the shortest was 6 days. There were no cases (down from 5 in 2020) where the Refugee Board decided to hear the applicant (but the Refugee Board stresses that applicants were also asked for written statements), and there were no cases of hearing a witness in 2021 (just like in 2020).⁵¹⁶

At the end of February 2022 detention centre in Przemyśl was reorganized and foreigners placed there were transferred to detention centre in Biała Podlaska. The foreigners who crossed the border with Ukraine were placed there for id verification process. The Commissioner for Human Rights visited that facility and pointed out that the rooms for foreigners had metal bunk beds without mattresses but only with sleeping pads. The rooms were in disorder, and there was litter on the floor, including pieces of food. Moreover, foreigners complained about food, lack of access to fresh air due to the prohibition to leave the building, lack of information about the duration of the verification procedure, and problems with contacting with the relatives with whom they were separated.⁵¹⁷

B. Legal framework of detention

1. Grounds for detention

Indicators: Grounds for Detention

<p>1. In practice, are most asylum seekers detained</p> <ul style="list-style-type: none"> ❖ on the territory: ❖ at the border: 	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>2. Are asylum seekers detained in practice during the Dublin procedure?</p>	<p><input checked="" type="checkbox"/> Frequently <input type="checkbox"/> Rarely <input type="checkbox"/> Never</p>
<p>3. Are asylum seekers detained during a regular procedure in practice?</p>	<p><input checked="" type="checkbox"/> Frequently <input type="checkbox"/> Rarely <input type="checkbox"/> Never</p>

Asylum seekers are placed in a detention centre if alternatives to detention cannot be used and for the following reasons:⁵¹⁸

1. In order to establish or verify their identity;
2. To gather information, with the asylum seeker’s cooperation, connected with the asylum application, which cannot be obtained without detaining the applicant and where there is a significant risk of absconding;

⁵¹⁴ Information provided by Helsinki Foundation for Human Rights, 21 February 2022.
⁵¹⁵ Information provided by Rule of Law Institute, 20 January 2020.
⁵¹⁶ Information provided by Refugee Board, 21 January 2022.
⁵¹⁷ Representatives of Commissioner for Human Rights Office in the Podkarpackie and Lubelskie voivodeships, 28 February-4 March, available in English at: <https://bit.ly/3v7s6yY>.
⁵¹⁸ Articles 87(1) and 88a(1) Law on Protection.

3. In order to make or execute the return decision, if an asylum seeker had a possibility to claim for asylum previously and there is a justified assumption that he or she claimed asylum to delay or prevent the return;
4. When it is necessary for security reasons;
5. In accordance with Article 28 of the Dublin III Regulation, when there is significant risk of absconding and immediate transfer to another EU country is not possible.

A “risk of absconding” of the asylum seekers exists particularly if they:⁵¹⁹

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

Detention is possible in law and in practice in all asylum procedures, especially in the case of unlawful crossing of the border and transfer under the Dublin Regulation. It was so in a case of migrants who were stopped at the Polish-Belarusian Border. Their requests for asylum were ignored and they were placed in detention centres based on the Act on foreigners. Their asylum applications were registered only in detention centres.

There are concerns that detention is not used as a measure of last resort and is often applied or prolonged automatically.⁵²⁰

2. Alternatives to detention

Indicators: Alternatives to Detention

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

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

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

SG can use more than one alternative in the case of any foreigner.⁵²¹ Alternatives can be applied by the SG which apprehended the asylum seeker concerned or by the court (subsequent to a SG’s decision not to apply alternatives and who have submitted a motion for detention to the court).⁵²² An asylum seeker can be detained only if the alternatives to detention cannot be applied.⁵²³ In practice asylum seekers are placed in detention automatically, and alternatives to detention are not considered, properly justified and

⁵¹⁹ Articles 87(2) and 88a(1) Law on Protection.

⁵²⁰ *ECtHR, CASE OF NIKOGHOSYAN AND OTHERS v. POLAND*, Application no. 14743/17, available at: <https://bit.ly/36062N3>.

⁵²¹ Article 88(3) of the Law on Protection.

⁵²² Articles 88(2) and 88b(2)-(3) Law on Protection.

⁵²³ Article 88a(1) Law on Protection.

explained.⁵²⁴ In 2021, Border Guards/courts issued alternatives to detention to 96 asylum seekers and to 737 foreigners.⁵²⁵

Over the period 2017-2021 alternatives to detention were used as follows for foreigners, including asylum seekers and returnees:⁵²⁶

Alternatives to detention in Poland: 2017-2021					
Type of alternative	2017	2018	2019	2020	2021
Reporting obligations	2,094	1,327	1,603	507	818
Residence in a designated place	1,818	1,058	1,522	476	233
Bail	4	1	3	1	3
Surrendering travel documents	49	29	36	39	343
Total	3,965	2,415	3,164	1,023	1,397

Source: Border Guard: 14 January 2018; Border Guard, 14 and 25 January 2019, 17 January 2020, 5 February 2021, Instytut Nauk Prawnych, 2 February/ Border Guard March 2022.

In the NGOs' assessment, courts examine the possibility of using alternatives to detention in a superficial way. Courts held very often that it is not possible to impose an alternative to detention on the basis of the risk of absconding and that asylum seekers had no money or no place to stay, ignoring the fact that asylum seekers have a right to live and receive a financial assistance in open centres for foreigners managed by the Head of the Office for Foreigners.⁵²⁷

3. Detention of vulnerable applicants

Indicators: Detention of Vulnerable Applicants

- Are unaccompanied asylum-seeking children detained in practice?

Frequently Rarely Never

❖ If frequently or rarely, are they only detained in border/transit zones? Yes No
- Are asylum seeking children in families detained in practice? yes

Frequently Rarely Never

If a decision to release a foreigner from the detention centre is issued and the asylum seeker is a disabled, elderly, pregnant or single parent, the SG is obliged to organise the transport to the reception centre, and – in justified cases – provide food during the transport.⁵²⁸

In 2021, at least 95 (89 in Kętrzyn, 3 in Przemyśl and 3 in Lesznowola) migrants benefited from this transport.⁵²⁹

⁵²⁴ Information provided by Legal Intervention Association Rule of Law Institute and Nomada Association, February 2021,

⁵²⁵ Information provided by Border Guards Headquarters to HFHR, March 2022.

⁵²⁶ In practice, a person may be subject to more than one alternative measure.

⁵²⁷ Commissioner for Child's Rights, 6 March 2018, available (in Polish) at: <https://bit.ly/2GgwX8T>, information provided by HFHR in February 2022.

⁵²⁸ Article 89cb Law on Protection.

⁵²⁹ Information from different branches of the SG: in Kętrzyn, 18 February 2022, in Przemyśl and in Lesznowola.

3.1. Detention of persons with health conditions

According to the law, asylum seekers whose psychophysical state leads to believe that they are victims of violence or have a disability as well as unaccompanied minors cannot be placed in detention centres. This is also applicable to asylum seekers whose detention causes a serious threat to their life or health,⁵³⁰ as under the law, an asylum seeker should be released if further detention constitutes a threat to their life or health.⁵³¹ This means that, for example, children, if they stay in Poland with parents or other legal guardians, can still be detained, as can pregnant women if they are healthy.

The provisions are absolute and do not allow for any exceptions, but according to the Commissioner for Human Rights and NGO the authorities do not always release migrants who suffered the violence in the country of origin⁵³² or at the Polish-Belarusian border.

In the opinion of NGOs and the Commissioner for Human Rights, the problem with identification of victims of torture and violence persists. Identification should be conducted before placing in detention and not in detention. Indeed, a poor mental condition is hardly ever accepted by courts as sufficient ground for not placing in or releasing an asylum seeker from detention.

Additionally, the Border Guard continues to apply an internal algorithm allowing deprivation of liberty of foreigners who have experienced violence ("Principles of Border Guard's Procedure with Aliens Requiring Special Treatment."). The Border Guard updated in 2019 internal algorithm called "Rules of conduct of the Border Guard towards foreigners requiring special treatment". According to these rules, only the foreigner who has evident symptoms suggesting that they were subjected to severe forms of violence, and in a result whose current psychophysical condition is much below the norm, cannot be placed in detention. It means that internal algorithm introduces additional restrictions unknown to the Act of Foreigners and limits the prohibition of detention of violence victims to victims of serious forms of violence, who manifest the symptoms of violence and whose psychophysical state is significantly below the norm. Moreover, the updated algorithm still does not solve the long-standing problem of the lack of an effective system for the identification of victims of violence. This algorithm limits the need to examine detained foreigners to solely foreigners who:

1. had to use first aid assistance during the arrest,
2. may be in a condition that threatens their life or health,
3. have declared that they require permanent or periodic treatment, the interruption of which would endanger their health or life,
4. are suspected of being carriers of an infectious disease.

In practice it means that the foreigners who are placed in detention and stated that they had experienced violence during their detention, are not automatically and immediately subjected to a medical examination.⁵³³ In addition, there are detained foreigners who, despite the evident symptoms of PTSD, have not been identified, or the identification process takes a very long time, and their mental state deteriorates due to their detention.⁵³⁴

According to the Commissioner for Human Rights, before the application to the court to place or prolong the stay of a foreigner, is submitted by the Border Guard, the physicians only issue an opinion whether the

⁵³⁰ Article 88a(3) Law on Protection.

⁵³¹ Article 406(1)(2) Law on Foreigners.

⁵³² Migration: Key fundamental rights concerns – January 2021- June 2021, FRA Bulletin 2, p. 23, available in English at <https://bit.ly/3OoWmgA>.

⁵³³ Legal Intervention Association (SIP), Raport SIP w działaniu, Prawa cudzoziemców w Polsce w 2020 r. [Report SIP in action. Rights of foreigners in Poland in 2020], available (PL) at <https://bit.ly/3pmM6dS>.

⁵³⁴ Foreigners in administrative detention. Results of the KMPT monitoring in guarded centres for foreigners in Poland. March 2021. p. 43 available in Polish at <https://bit.ly/3L0F5YZ>

foreigner's physical health at the time of the examination allows for a stay in the detention centre. This means that the assessment does not include:

-danger to life and health through the risk of deterioration of the current state of health e.g., emerging or worsening of mental disorders due to re-traumatisation and stress caused by detention;

-the state of mental health, as-no psychological or psychiatric examination is carried out;

- the mental state and the physical state in terms of the presumption of being subjected to violence (as there is no psychological or psychiatric examination or medical evaluation of the injuries and their possible causes).

Representatives of the Commissioner for Human Rights met foreigners who informed them at the stage of arrest that they had been subjected to violence or who came from a country with a high likelihood of torture and violence, and yet were not examined in this regard. At the same time, when applying to the court to order detention, the Border Guard stated that there were no contraindications to their stay in the detention center. It happens that foreigners are in good physical condition at the moment of placing in detention, but due to somatic condition and/or traumatic experiences, they risk a breakdown of their health in detention.⁵³⁵

The Commissioner for Human Rights, in his letter addressed to the Presidents of a Regional Courts, expressed his concerns about the cases of foreigners placed in detention who were victims of violence and were in a bad psychophysical condition. Furthermore, it was underlined that the level of medical and psychological care was far from sufficient and the contact with psychologist in detention centre was unavailable, which might lead to deterioration of foreigners' health through secondary victimization.⁵³⁶ For example, in detention centre in Krosno, only one psychologist was hired for 4 hours, 3 times in a week who was responsible for 700 foreigners in Wędrzyn and Krosno Odrzańskie. Despite of these deficiencies, the Border Guards in Kętrzyn, in Wędrzyn and in Lesznowola did not agree for a visit of the NGO who is specializing in providing psychological assistance for foreigners.⁵³⁷

The Commissioner pointed out that the number of hired psychologists and physicians in detention centres is insufficient⁵³⁸ and the psychologists do not know the languages of the migrants which made it difficult or even impossible to establish proper contact with a foreigner. Additionally, it was stated that the serious deficiencies both in psychological and medical care provided to foreigners in detention were diagnosed before the crisis on the Polish-Belarusian border and the overcrowding in detention centers had dramatically worsened the access to psychologists and medical care.⁵³⁹⁵⁴⁰

An analysis of the justifications of the courts' rulings concerning detention leads to the conclusion that in a large number of cases mental health is not considered by judges or there is no reference to the health of the foreigners at all.⁵⁴¹ Additionally, courts do not accept psychological opinions submitted by independent psychologists (e.g. from NGOs),⁵⁴² and they rely on short opinions (very often it is one sentence stating

⁵³⁵ Commissioner for Human Rights, Letter to the Regional Courts, 25 January 2022, available at: <https://bit.ly/3HnQZJL>.

⁵³⁶ Commissioner for Human Rights, Letter to the Regional Courts, 25 January 2022, available at: <https://bit.ly/3HnQZJL>.

⁵³⁷ Information provided by Polish Migration Forum, February 2022.

⁵³⁸ Commissioner for Human Rights, visit in detention centre in Wędrzyn in January 2022, available at <https://bit.ly/3M7oXpx>

⁵³⁹ Commissioner for Human Rights, Letter to the Regional Courts, 25 January 2022, available at: <https://bit.ly/3HnQZJL>

⁵⁴⁰ Commissioner for Human Rights, visit in detention centre in Wędrzyn in January 2022, available at: <https://bit.ly/3M7oXpx>.

⁵⁴¹ Information provided by Legal Intervention Association, January-February 2021.

⁵⁴² Information provided by Legal Intervention Association, January 2021.

there are no obstacles to prolonging the stay in guarded centre) of the physician who works in detention centre.⁵⁴³

If medical or psychological opinions held by the Border Guard indicate that a foreigner has experienced violence, the documentation is not always handed over to the court. This results in illegal placement of people who have experienced violence in detention centres and arrests for foreigners, and consequently leads to their secondary traumatization.⁵⁴⁴

In practice, only courts of higher instance call on experts to determine applicants' mental health state⁵⁴⁵ but this happens very rarely (once in 2021). Practice shows that neither the Border Guard nor the courts take the initiative to assess if an asylum seeker is a victim of violence. In 2021 the court appointed the psychologist as an external consultant only in 1 case.⁵⁴⁶ In 2020, no expert was appointed in any district or regional court in a total of 777 cases.⁵⁴⁷ Additionally, courts do not conduct their own evidentiary proceedings.⁵⁴⁸

In 2018 the Commissioner for Human Rights reminded that the internal algorithm, on the basis of which the identification is performed, does not clearly state that vulnerable persons, once identified, should be immediately released from detention. The Commissioner observes that lack of accessible treatment and therapy in the detention centres deepens the trauma.⁵⁴⁹ Torture survivors stay in detention centres and even if they are identified at a later stage, they are not released from detention. Medical staff and psychologists in the detention centres lack expertise and proper knowledge of Istanbul Protocol.⁵⁵⁰

After the visit in the detention centre in Biala Podlaska in 2018, the Commissioner for Human Rights again confirmed that the Border Guard's guidelines on how to deal with persons requiring special treatment should clearly state that the person identified as a victim of violence should be released from detention (as required by the law) and not only offered treatment in detention.⁵⁵¹

In its 2019 concluding observations, the UN Committee against Torture stated that in Poland there is insufficient capacity to identify asylum seekers who are victims of torture and lack of adequate protection and care for survivors of sexual and gender-based violence. In the opinion of CAT, Poland should introduce a principle to law that detention of asylum-seekers, and in particular children and vulnerable persons, should be a measure of last resort, for as short a period as possible and in facilities appropriate for their status. Furthermore, CAT recommended that Polish authorities refrain from placing asylum seekers and in particular children in guarded centres and ensure the fast and appropriate identification of vulnerable persons including survivors of torture and ill-treatment, as well as sexual and gender-based violence, and provide them with adequate access to health care and psychological services.⁵⁵²

⁵⁴³ Legal Intervention Association (SIP), Raport SIP w działaniu, Prawa cudzoziemców w Polsce w 2020 r. [Report SIP in action. Rights of foreigners in Poland in 2020], available (PL) at <https://bit.ly/3pmM6dS>.

⁵⁴⁴ Legal Intervention Association (SIP), Raport SIP w działaniu, Prawa cudzoziemców w Polsce w 2020 r. [Report SIP in action. Rights of foreigners in Poland in 2020], available (PL) at <https://bit.ly/3pmM6dS>.

⁵⁴⁵ UN Committee against Torture, Concluding observations on the seventh periodic report of Poland, 22-24 July 2019, available at: <https://bit.ly/36kr8Qv>

⁵⁴⁶ Information provided by Regional Court in Olsztyn to SIP, 21 January 2022.

⁵⁴⁷ Legal Intervention Association (SIP), Raport SIP w działaniu, Prawa cudzoziemców w Polsce w 2020 r. [Report SIP in action. Rights of foreigners in Poland in 2020], available (PL) at <https://bit.ly/3pmM6dS>.

⁵⁴⁸ SIP, interview, January 2021.

⁵⁴⁹ Commissioner for Human Rights, *Raport Krajowego Mechanizmu Prewencji Tortur z wizytacji Strzeżonego Ośrodka dla Cudzoziemców w Białej Podlaskiej*, 7 January 2019, available (in Polish) at: <http://bit.ly/2BU7ej5>.

⁵⁵⁰ Conference presentation of the representative of the National Mechanism for the Prevention of Torture, 3 December 2018, Milano, information available (in Polish) at: <http://bit.ly/2T5YvE7>.

⁵⁵¹ Commissioner for Human Rights, *Raport Krajowego Mechanizmu Prewencji Tortur z wizytacji Strzeżonego Ośrodka dla Cudzoziemców w Białej Podlaskiej*, 7 January 2019, available (in Polish) at: <http://bit.ly/2BU7ej5>, 7.

⁵⁵² Commissioner for Human Rights, 'Uwagi końcowe Komitetu Przeciwko Torturom wobec Polski' available at: <https://bit.ly/36jgfhN>.

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

In July 2017, the Regional Court of Przemyśl released a family from the detention centre in Przemyśl who had been detained for 10 months. The family was placed in the detention centre in October 2016, after multiple attempts to apply for asylum at the border crossing point in Medyka on the Ukrainian border. During their stay, the mother was diagnosed with adaptation and depressive disorders related to violence and torture at a police station in her country of origin and detention in Poland which had a negative impact on her and her children. In June 2017 she tried to commit suicide. Although her and her children's poor mental state was confirmed in successive psychological and psychiatric assessment reports, Border Guards refused to release her and her family. HFHR filed a complaint to the ECtHR on her behalf.⁵⁵³ On 8 January 2018 the European Court of Human Rights communicated the case of *M.Z and Others against Poland*.⁵⁵⁴ On 22 July 2021 the case was struck out of the list due to Government's declaration regarding the complaints under Article 5 §§ 1 and 4 and Article 8 of the Convention, and detailing the arrangements for ensuring compliance with these provisions. The Court also declared the remainder of the application inadmissible.

On 25 June 2019 District Court in **Przemyśl** released from the detention centre a rejected asylum seeker who was a victim of torture. The court appointed an independent expert- a psychologist who examined the applicant. The opinion confirmed that he was a victim of violence and suffered from PTSD. The court stated that the Border Guards should properly assess state of health of the foreigner if he claimed that experienced torture in his country of origin. In addition, court noted that the opinion of the Border Guards' physicians may be questioned as it cannot be treated as independent expert opinion.⁵⁵⁵

On 2 November 2020, the Regional Court in **Olsztyn** released an asylum seeker who was a victim of violence. The court stated that a foreigner had to be released regardless of the reason of placing him in the detention centre; type of the experienced violence; and the place and circumstances foreigner suffered from violence. The court indicated that foreigners cannot be placed in detention centre if there are merely grounds for reasonably suspecting that he/she is a victim of violence. Furthermore, the court shared the concerns raised by SIP regarding the internal algorithm on the basis of which the identification of violence victims is carried out and stated that releasing the foreigners who suffered from violence and whose treatment is not possible in detention centre is against the Polish law.⁵⁵⁶ In this case, Border Guard knew that an asylum seeker had a number of gunshot wounds and was in a situation posing a real threat of serious injury or death. However, they denied releasing him from detention centre because in their opinion there was no evidence that he was subject to violence. The foreigner's mental health had deteriorated during 8-month detention.

In two other cases in 2020 and in 2021 the national courts granted compensation for unlawful detention of foreigners. In one of the cases the Regional Court in **Olsztyn** stated that a person who experienced violence cannot be detained regardless of a form of violence and identity of the perpetrator.⁵⁵⁷ In 2021 – in the first case which concerned unlawful detention of the family, the court granted 90,000 PLN (around 19,600

⁵⁵³ HFHR, 'Torture victim released after 10 months in immigration custody', 12 July 2017, available at: <http://bit.ly/2ocUY6q>.

⁵⁵⁴ ECtHR, *M.Z. and Others against Poland*, Application No 79752/16, lodged on 25 April 2017, available at: <https://bit.ly/3aAYhL9>.

⁵⁵⁵ SIP, 'Victims of violence in guarded centres - judgment of Regional Court in Przemyśl', judgment of 25.06.2019, II Kz 91/19, available at: <https://bit.ly/2RiD29a>.

⁵⁵⁶ SIP, "Regional Court in Olsztyn: a victim of violence may not be put in a detention center", judgment of 2 November 2020, VII KZ 420/20.

⁵⁵⁷ SIP, 'Victim of violence cannot be deprived of liberty for migration reasons', judgment of 29.07.2019 II Ko 280/18, available at: <https://bit.ly/2Ro8OBT>.

Euros) and in the other which concerned the detention of victim of torture – 39,000 PLN (around 8,500 Euros).

On 18 January 2020, the European Court of Human Rights communicated the case of *A.A. against Poland*.⁵⁵⁸ The case concerned an asylum seeker from Burundi, who came to Poland in January 2019 with a fake Swiss ID. The applicant was detained and placed in a detention centre in **Kętrzyn** despite of the fact that she was a victim of rape, suffered from that traumatic experience and had permanent scars. During her stay in the guarded centre, she was examined by two psychologists. The first expert, the employee of the detention centre, issued an opinion according to which she did not suffer from PTSD, but she needed psychological treatment. The second psychologist found out that she was a victim of violence and that her emotional state had worsened. In addition, expert recommended psychiatric consultation and treatment. However, the courts prolonged her detention and stated that she represented a risk of absconding and was not diagnosed with PTSD syndrome and that the guarded centre provide her with adequate living conditions and medical care. Additionally, she was not allowed to participate in court hearings concerning her appeals against the placement and prolongation of her detention. Moreover, her appeal against the extension of detention was examined only after 50 days. On 29 September 2020 the Court decided to strike the application out of the list of cases due to unilateral declaration that the applicant was deprived of her liberty in breach of Article 5 § 1 (f) of the Convention and that she did not have at her disposal an effective procedure by which she could challenge the lawfulness of her detention, as required by Article 5 § 4 of the Convention. Poland undertook to pay the applicant the amount of EUR 9,000.

3.2. Detention of children

According to the law, unaccompanied asylum-seeking children should not be detained,⁵⁵⁹ but in practice it happens when there are doubts as to their age or if they were placed in detention as irregular migrants (which is possible under the law) and only then applied for international protection. Asylum-seeking children who are with members of their family can be placed in detention centres together with accompanying adults.⁵⁶⁰

Families with children are placed in detention centres in Białystok, Czerwony Bór, Biała Podlaska (two detention centres, one was adapted from reception centre), Przemyśl, and Kętrzyn. Families are placed in buildings and containers. The number of containers is insufficient in detention centre in Kętrzyn, which in practice meant that two families could be placed together in one container.

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

According to NGOs, the conditions in these centres are not adequate for children: in some detention centres there is no children friendly space as playgrounds or social rooms.⁵⁶¹

⁵⁵⁸ ECtHR, “A.A. against Poland” Application, no. 47888/19, lodged on 29 August 2019, available at: <https://bit.ly/2TPp6Fp>.

⁵⁵⁹ Article 88a(3) Law on Protection.

⁵⁶⁰ Although it happens in practice that some members of the family are placed in the reception centre and some in the detention centre. See for instance, T. Sieniow, ‘Wnioski z monitoringu wraz z rekomendacjami’, 59.

⁵⁶¹ Legal Intervention Association (SIP), Raport SIP w działaniu, Prawa cudzoziemców w Polsce w 2021 r. [Report SIP in action. Rights of foreigners in Poland in 2021], available (PL) at <https://bit.ly/3pmM6dS>.

Children in detention centres: 2021			
Centre	Number of children detained in 2021 in total ⁵⁶²	Number of UAMs in 2021	Average Length of detention in 2021
Kętrzyn	330	81	75 days
Przemyśl	87	-	5 months
Lesznowola	81	-	52 days
Biała Podlaska	92	-	56
Białystok/Czerwony Bór	223	-	-

Source: Information provided by Border Guards Headquarters, March 2022, Border Guard in Kętrzyn, February 2022, in Przemyśl, 2022, in Białystok, 2022, Centre in Lesznowola in 2022, Report from periodic visitation in the detention Centre for Foreigners in Kętrzyn, conducted by penitentiary judge of the District Court in Olsztyn, on 24.11.2021 for the period from 1 November 2019 to 1 November 2021.

In 2021 the number of detained children has increased up to 567 in total, whereas in 2020 only 101 children were deprived of their liberty. As of 1 February 2022, 416 children were placed in detention centres in Poland, out of a total of 1,652 detainees.

In 2020 courts accepted all applications of the Border Guard for prolonging the detention of unaccompanied minors. Furthermore, none of the guardians representing an unaccompanied child filed complaint. According to SIP, Border Guards and Courts violate children's rights as the current system allows for months of unlawful deprivation of liberty of a person who should receive special care from the state, i.e. a child who is in Poland without parents or legal guardians.⁵⁶³ In 2021 the problem with ensuring legal representation for unaccompanied children was still existing.⁵⁶⁴

In 2018, the policy of protection of children in detention was put in place. The new algorithm was introduced- "Intervention procedures in case of hurting children in guarded centres for aliens". Within the framework of that policy, the employees of guarded centres were trained in the new rules and identification of a behavior which should be considered an abuse.⁵⁶⁵ In 2021 there were 2 cases of abuse against children, including one in Kętrzyn and one in Biała Podlaska.⁵⁶⁶

In March 2018 the Commissioner for Child Rights sent a list of recent international recommendations concerning decisions on placing children in detention centers for foreigners to the presidents of courts of appeal (*prezesa sądów apelacyjnych*). Moreover, the Commissioner underlined that placing children in detention is never in the best interest of a child,⁵⁶⁷ always against their fundamental rights and could have a negative impact on their psycho-physical development. In addition, in the Commissioner's assessment, courts check the possibility of using alternatives to detention in a superficial way. Courts held very often that it is not possible to impose an alternative to detention on the basis that asylum seekers have no place

⁵⁶² The numbers for specific centres do not add to the total number of children detained in 2021 because families were transferred between the centres.

⁵⁶³ Legal Intervention Association (SIP), Raport SIP w działaniu, Prawa cudzoziemców w Polsce w 2020 r. [Report SIP in action. Rights of foreigners in Poland in 2020], available (PL) at <https://bit.ly/3pmM6dS>.

⁵⁶³ Legal Intervention Association (SIP), Raport SIP w działaniu, Prawa cudzoziemców w Polsce w 2020 available (PL) at <https://bit.ly/3pmM6dS>.

⁵⁶⁴ Migration: Key fundamental rights concerns - January 2021- June 2021, FRA Bulletin 2, p. 23, available in English at <https://bit.ly/3OoWmgA>.

⁵⁶⁵ Communication from Poland concerning the case *Bistieva and others v. Poland* (application No. 75157/14), 14 June 2019, available at: <https://bit.ly/2RzjAVU>.

⁵⁶⁶ Information provided by different Border Guard Units in Białystok, Kętrzyn, Przemyśl, Lesznowola and FIPP, 2022.

⁵⁶⁷ Commissioner for Child's Rights, *Wystąpienie do Prezesa Rady Ministrów*, 3 December 2018, available (in Polish) at: <https://bit.ly/2TCZ45d>.

to stay ignoring the fact that asylum seekers have a right to live in open centres for foreigners managed by the Head of the Office for Foreigners.⁵⁶⁸

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

In August 2019, the UN Committee against Torture (CAT) expressed its concern regarding the detention of families with children and unaccompanied minors over 15 years old. According to CAT conditions in detention centres require improvements and Poland should refrain from placing asylum seekers and in particular children in guarded centres for foreigners.⁵⁶⁹ In addition, Poland should introduce a principle to the law that detention of asylum-seekers, and in particular children and vulnerable persons, should be a measure of last resort, for as short a period as possible and in facilities appropriate for their status. Furthermore, CAT recommended that Polish authorities refrain from placing asylum seekers and in particular children in guarded centres and ensure the fast and appropriate identification of vulnerable persons including survivors of torture and ill-treatment, as well as sexual and gender-based violence, and provide them with adequate access to health care and psychological services.⁵⁷⁰

In January 2022 the Commissioner for Human Rights in his letter to the Presidents of the Regional Courts (*Prezesów Sądów Okręgowych*) expressed among other his concerns regarding the detention of families with children. He underlined that none of the detention centres was an appropriate place for children. According to him, detention may have a negative and irreversible impact on development and psychophysical condition of a child, especially with a traumatic migration experience, as these facilities are not suitable places for children. According to the Commissioner Border Guard rarely release children whose mental health deteriorated sharply after being placed in a detention centre and justified the hospitalization.

The Commissioner also pointed out that none of the detention centre guarantees the proper implementation of the children's constitutional right to education because the content and the form of the didactic and educational activities do not implement a minimal scope of the teaching program.

He also pointed out that in the temporary detention centre in **Czerwony Bór** there are no common social rooms for foreigners, which forced them to spend most of the day in the staircase. Additionally, there is a lack of appropriate rooms adapted to the needs of children detained in the facility. Ombudsman noted that in a detention centre in **Kętrzyn** families are placed in containers that do not have sanitary facilities. The sanitary facilities are located several hundred meters away, which due to weather conditions may endanger their health. Moreover, the number of sanitary containers is too small compared to the number of foreigners placed in the detention centre. It was also noted that two families are placed in one container which did not respect their right to privacy and forced the migrants to separate their parts of living space with sheets and blankets.⁵⁷¹

In the opinion of the Commissioner for Human Rights, the Commissioner for Children Rights,⁵⁷² HFHR and other NGOs in Poland, child detention should be forbidden by law in all cases because detention, regardless of children's migration status and their parents' decisions, can never be in the best interest of a child, violates the children' rights and may have a negative effect on children and their further development.⁵⁷³

⁵⁶⁸ Commissioner for Child's Rights, 6 March 2018, available in Polish at: <https://bit.ly/2GgwX8T>.

⁵⁶⁹ UN Committee against Torture, Concluding observations on the seventh periodic report of Poland, 22-24 July 2019, available at: <https://bit.ly/36qh3BL>.

⁵⁷⁰ Commissioner for Human Rights, "Uwagi końcowe Komitetu Przeciwko Torturom wobec Polski" available at: <https://bit.ly/2GmKzNP>.

⁵⁷¹ Commissioner for Human Rights, Letter to the Regional Courts, 25 January 2022, available at: <https://bit.ly/3HnQZJL>.

⁵⁷² Commissioner for Child's Rights, "Wystąpienie do Prezesa Rady Ministrów, 3 December 2018, available (in Polish) at: <https://bit.ly/2TCZ45d>.

⁵⁷³ HFHR, "Rights of persons deprived of liberty-fundamental legal and practical issues. HFHR perspective", July 2018, available at: <https://bit.ly/2SktNaF>.

As of 2021 detention decisions still did not consider the best interest of the child or did not consider the individual situation of the child.⁵⁷⁴ When placing a child in a guarded centre together with parents, the courts do not mention children in a justification of the detention decision.⁵⁷⁵ In addition, the courts place families in guarded centres for a maximum period of time, rather than for the shortest period.⁵⁷⁶ Further, courts did not order any further medical or psychological examination in 2020 and did not interview children⁵⁷⁷ but instead relied on the documents presented by the Border Guards. Children detention is ordered automatically, without individual assessment of their situation and needs. Furthermore, justifications of the courts' decisions were adapted from the BG application for prolonging the detention. Moreover, some courts treated detention as a form of punishment for crossing the border illegally.⁵⁷⁸

In October 2020 the Regional Court in **Olsztyn** released an unaccompanied child who applied for asylum in Poland. In this case, Border Guard assumed that his friend (not related) with whom he was travelling was his legal guardian. During his 8 months detention in detention centre in **Kętrzyn**, Border Guards did not examine the relations between these two boys.⁵⁷⁹

On 23 February 2021 the European Court of Human Rights communicated the case of *Z.E. and Others against Poland*.⁵⁸⁰ The application was lodged on 17 January 2017 and concerned a single mother with four children from Chechnya, victims of domestic violence, placed in the detention centre in Kętrzyn for more than 10 months.⁵⁸¹ The applicants complained that their right to private and family life, freedom from torture, unlawful detention had been violated. The prolonged deprivation of liberty had in fact a negative impact on the psychological state of the children. Moreover, according to Polish law, the woman should not have been placed in a guarded centre at all due to her experience of domestic violence. Other measures could have been applied to the family to ensure the proper course of the proceedings involving them, which did not involve deprivation of liberty. However, this had not been adequately taken into account. The family also claimed that their procedural rights had been violated. They had not received a request to extend their detention and had not been provided with ex officio legal aid, and their case had been considered by the court with considerable delay. The case was struck out of the list on 1 of July 2022, as the friendly settlement was reached.

On 8 January 2018 the European Court of Human Rights communicated the case of *M.Z. and Others against Poland*.⁵⁸² The application was lodged on 25 April 2017 and concerned a family with two children from Tajikistan, placed in the detention centre in **Przemysł** for more than 8 months. During their detention, the mental state of the applicant was worsening and she suffered from depression and showed symptoms of adjustment disorder. She tried to commit suicide and she was in psychiatric hospital a few times. The applicants complained that their detention resulted in inhuman and degrading treatment; was arbitrary and contrary to the domestic law. Moreover, the situation of children was not considered and the length of detention had an impact on their family life. An application for a compensation for unlawful detention of the family was submitted and will be considered by the Regional Court in Warsaw. The motion was based, among others, on the fact that the family was deprived of liberty, despite of the fact that the applicant's

⁵⁷⁴ Information provided by HFHR and SIP, February 2021.

⁵⁷⁵ HFHR, Poland submissions on ending immigration detention of children to the UN Special Rapporteur on the human Rights of Migrants, May 2020, available at: <https://bit.ly/30luthr>.

⁵⁷⁶ HFHR, „Prawa osób pozbawionych wolność”, May 2017, available (in Polish) at: <http://bit.ly/2GTFPAX>.

⁵⁷⁷ Legal Intervention Association (SIP), Raport SIP w działaniu, Prawa cudzoziemców w Polsce w 2020 r. [Report SIP in action. Rights of foreigners in Poland in 2020], available (PL) at <https://bit.ly/3pmM6dS>.

⁵⁷⁷ Legal Intervention Association (SIP), Raport SIP w działaniu, Prawa cudzoziemców w Polsce w 2020

⁵⁷⁸ HFHR, “Research on the applicability of the best interests of the child principle as the primary consideration in detention decisions as well as the alternatives to detention, Marta Górczyńska, Daniel Witko, 2017.

⁵⁷⁹ Regional Court in Olsztyn, VII KZz 420/20, 30 October 2020.

⁵⁸⁰ ECtHR, *M.Z. and Others against Poland*, Application No 79752/16, lodged on 25 April 2017, available at: <https://bit.ly/3aAVOAJ>.

⁵⁸¹ *Z.E. and Others against Poland*, Application no. 4457/18 available in English at <https://bit.ly/39bqig4>.

⁵⁸² ECtHR, *M.Z. and Others against Poland*, Application No 79752/16, lodged on 25 April 2017, available at: <https://bit.ly/3aAVOAJ>.

psychophysical condition indicated that she was a victim of violence and that her health deteriorated because of detention. The application also emphasized that impact on minor children was not investigated properly when deciding on detention.⁵⁸³ On 22 July 2021 the case was struck out of the list due to Government's declaration concerning the complaints under Article 5 §§ 1 and 4 and Article 8 of the Convention, as regards the arrangements for ensuring compliance with the undertakings under these provisions. The Court also declared the remainder of the application inadmissible.

On 10 April 2018, the European Court of Human Rights issued a judgment in the case of *Bistieva and others against Poland*. The case concerned a family of five, placed in the detention centre in Kętrzyn for almost 6 months. The court ruled that their right to family life was violated, and Polish authorities did not assess the impact of the detention on the family, did not consider alternatives to detention and did not view detention as a measure of a last resort. Furthermore, the court held that no sufficient reason was provided to justify the detention and the best interest of the child was not taken into account. The court held that the family was in the detention centre for too long and the preceding asylum procedure concerning a family with children should be conducted faster and with greater diligence. Proceedings of execution of that judgment take place before the CoE Committee of Ministers. In June 2019 the government presented an Action Report on the implementation of the judgment in this case. According to the government, alternatives to detention are taken into account in cases of families with children, detention procedures are standardized, identification system of vulnerable groups is developed and implemented, and asylum cases persons in detention are treated with priority by the asylum authorities. Moreover, the guarded centres are adjusted to the needs of minors, children have access to education and medical care. Additionally, the *Bistieva* judgment has been translated into Polish, published on the Ministry of Justice website and disseminated among asylum authorities and Border Guard. Hence, Polish government stated that general measures adopted are sufficient and Poland fulfilled its obligations. In the opinion of Border Guard, that judgment does not impact prolongation of a foreigners' stay in detention centres.⁵⁸⁴ On the other hand, according to HFHR, the general measures taken by Poland are not sufficient because the amendments in Polish law are not always applied in practice and Polish courts, placing children in detention centre, do not refer to the child's best interest and do not treat children as a part of the proceedings, ignoring their presence. Furthermore, the courts rely on the information provided by the Border Guard and disregard independent psychological opinion on the negative impact of detention on children. Detention is not applied as a measure of last resort but rather it is maintained for the maximum period.⁵⁸⁵

On 29 January 2019 the European Court of Human Rights communicated the case *R.M. and Others against Poland*. The application was lodged on 26 February 2018 and concerned family with three minor children, placed in the detention centre in Kętrzyn for almost eight months. Family was transferred to Poland under Dublin III regulation. Detention was prolonged despite the psychological problems of one of the children. The applicants presented an expert opinion but the courts extended their detention. The applicant complains that the detention of her children, then aged eleven and three years, constituted treatment contrary to Article 3 of the ECHR and her detention was also arbitrary, unjustified and unnecessary. The applicant also stated that placing and continuation of their detention had violated Article 5(4) of the ECHR as she had not received Border Guard motions on prolongation of their detention. Additionally, she complained that detention was a disproportionate interference with their right to respect for their family life.⁵⁸⁶ The case is pending as of April 2022.

On 6 September 2019, the Polish government submitted a unilateral declaration in the case of *Bilalova against Poland* and acknowledged a violation of Article 8 of the ECHR. The case was communicated in 2014 and concerned administrative detention of a mother with five minor children aged between 4 and 10

⁵⁸³ HFHR, *Warsaw court to rule on moral damages for family's wrongful immigration detention*, 6 February 2019, available at: <https://bit.ly/3aEq50Y>.

⁵⁸⁴ Information provided by Border Guard, 5 February 2021.

⁵⁸⁵ Information provided by the Helsinki Foundation for Human Rights, 7 January 2021.

⁵⁸⁶ ECtHR, *M.R and others against Poland*, Application No 11247/18, lodged on 26 February 2018, available at: <https://bit.ly/30TcvCz>.

for three months. The applicant complained that Polish authorities never assesses the child's best interest and the alternatives to detention were not considered. On 25 March 2020, the European Court of Human Rights published its judgment and found that the detention of the children amounted to a violation of Article 5 (1) (f).⁵⁸⁷ In the opinion of the Court, the conditions at the detention centre were similar to penitentiary institution, and therefore the court found the detention unlawful. Additionally, the Court noted that Polish authorities had not treated detention as a measure of last resort and did not assess the possibility of applying alternatives to detention. The Court also found that their stay in the guarded centre was too long.⁵⁸⁸

In June 2020, the court issued a third judgment on children detention in Poland in cases of *A.B. and Others*.⁵⁸⁹ The ECtHR found a violation of the right to family life of the child because the Polish authorities did not examine the child's best interest when deciding on detention of a family, did not treat detention as a measure of last resort and did not examine the possibility of applying alternatives to detention. The Court stated that this violation had occurred even if there were grounds to believe that the family would leave Poland after applying for asylum in Poland.⁵⁹⁰

On 3 March 2022 the European Court of Human Rights issued a judgment in the case of *Nikoghosyan and others v. Poland*. The case concerned the family of six from Armenia and their automatic detention for six-months without an individualised assessment of their particular situation and needs. The applicants complained also that the authorities had automatically relied on the information provided by the border guards. In its judgment the Court reiterated its finding that the domestic courts which extended the applicants' detention, did not give sufficiently thorough and individualized consideration to the applicants' situation. The decision concerning the second applicant, issued on 5 January 2017 by the Biała Podlaska District Court contained a number of errors, such as the fact that the second applicant was referred to using a masculine form or as "the son of ... In the opinion of the Court the decision can be seen as not based on a throughout assessment of the applicants' individual situation. Additionally, the Court highlighted that the domestic courts ignored the fact that the first applicant was accompanied by his three minor children and did not give any consideration when placing them in detention. Furthermore, the domestic courts did not refer to the fact that, while in detention, the second applicant had given birth to her fourth child.

Court reiterated that the child's best interests cannot be confined to keeping the family together and that the authorities must take all the necessary steps to limit, as far as possible, the detention of families accompanied by children and effectively preserve the right to family life.

Finally, the Court concluded that in this case, the detention of both the adult and the child applicants, for a period of almost six months, was not a measure of last resort for which no alternative was available, and the national authorities had to act with greater speed and diligence. In this case the Court ruled there was a violation of Article 5 § 1 (f) of the Convention.⁵⁹¹

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

⁵⁸⁷ ECtHR, *Dagmara BILALOVA against Poland*, Application No 23685/14, lodged on 25 March 2014, available at: <https://bit.ly/37kQJu3>.

⁵⁸⁸ HFHR, *Kolejny wyrok ETPCz w sprawie detencji*, available at: <http://bit.ly/2MMmpDk>.

⁵⁸⁹ ECtHR, *cases of A.B. AND OTHERS against Poland*, Applications No 15845/15 and 56300/15, lodged on 4 November 2015, available at: <http://bit.ly/3kJFTFm>.

⁵⁹⁰ HFHR, *ETPC po raz trzeci stwierdził bezprawność detencji dzieci uchodźców w Polsce*, available at: <http://bit.ly/3kLijl8/>.

⁵⁹¹ ECtHR, *CASE OF NIKOGHOSYAN AND OTHERS v. POLAND*, Application no. 14743/17, available at: <https://bit.ly/36062N3>.

February 2021 the case was communicated to the Polish government.⁵⁹²The case is still pending as of April 2022.

4. Duration of detention

Indicators: Duration of Detention

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

The decision to detain an asylum seeker is issued for a period up to 60 days by a court, upon the motion of the SG.⁵⁹³ If a foreigner claims asylum during the stay in the detention centre, the period of detention is prolonged only if the **Grounds for Detention** of an asylum seeker mentioned before are met. If so, then the applicant's stay in the detention centre is prolonged for up to 90 days from the day of filing the asylum application.⁵⁹⁴ The period of a stay in a detention centre can also be prolonged if before the end of the previous period of detention, the final decision concerning international protection was not issued and the reasons to detain the applicant still exist. In this case, detention can be prolonged by a court for a specified period of time. There are no timeframes set in law other than the maximum total period of asylum seekers' detention, which is 6 months for asylum seekers and 12 to 18 months for persons facing removal.⁵⁹⁵ Prolongation is not possible if the procedure concerning reasons of detention is still ongoing e.g. the identity of the asylum seeker still is not verified, and this delay cannot be attributed to any fault on the part of the applicant.⁵⁹⁶

In 2021, the average length of detention of asylum seekers was:⁵⁹⁷

- **Przemyśl**: 5 months,
- **Lesznowola**: 52 days,
- **Kętrzyn**: 75 days,
- **Biała Podlaska**: 56 days.⁵⁹⁸

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

⁵⁹² HFHR, Pierwsza sprawa z Polski dotycząca detencji cudzoziemców przed Komitetem Praw Człowieka ONZ, available at: <http://bit.ly/2MOh8v3>.

⁵⁹³ Article 89(1) Law on Protection.

⁵⁹⁴ Article 89(2)-(3) Law on Protection.

⁵⁹⁵ Article 89(4)-(5) Law on Protection; Article 404(5) Law on Foreigners.

⁵⁹⁶ Article 89(4a) Law on Protection.

⁵⁹⁷ Biała Podlaska: 41 days at the beginning of 2020, 137 days as of 30 June 2020, 59 at the end of 2020.

⁵⁹⁸ Information provided by different branches of Border Guard, January -March 2022.

C. Detention conditions

1. Place of detention

Indicators: Place of Detention

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

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

All detention centres are for migration-related purposes and the Border Guard is in charge of their management. Asylum seekers are never placed in regular prisons with ordinary prisoners but are detained together with migrants in an irregular situation in a guarded centre or rigorous detention centre. There is no special facility where only asylum seekers are detained.

The design and layout of some of the centres create the impression of a very prison-like environment: thick walls, bars in the windows (Krosno until 2025, Białystok, Przemyśl) and on the corridors. In addition, all centres are surrounded by high walls topped with barbed wire.

1.1. Guarded centres

Until August 2021, there were 6 guarded detention centres in Poland, which were generally profiled according to demographics: **Lesznówola**, **Białystok**, **Przemyśl**, and **Krosno Odrzańskie** were for men. Women, married couples, and families with children were placed in **Kętrzyn**, **Biała Podlaska** (closed for renovation) and **Przemyśl**. Unaccompanied children are placed in the detention centre in **Kętrzyn**.

Due to the situation at the Polish- Belarusian border, the number of guarded detention centres increased up to 9 and the number of places there increased up to 2,256 (compared to 595 in 2020, 494 in 2019, 590 in 2018 and 608 in 2017).

Detention centres for foreigners are located in:

Capacity and occupancy of detention centres: –2019 - 2021					
Centre	Maximum capacity in 2020	Occupancy end 2019	Occupancy end 2020	Maximum capacity in 2021	Occupancy end 2021
Biała Podlaska	130	19	0	188	0
Biała Podlaska (adopted open centre)				200	152
Białystok	122	69	40	141	134
Czerwony Bór				147	122
Lesznowola	73	33	38	192	147
Kętrzyn	120	11	69	478	392
Krosno	64	32	39	80	74
Odrzańskie				700	612
Wędrzyn					
Przemyśl (guarded centre)	86	14	62	145	81
Przemyśl (Arrest for Foreigners)				37	23
Total	595	178	248	2,308	1,737

Source: Border Guard, 1 February 2022, 29 March 2022

The profiles of detention centres were changed a couple of times. Currently, as of February 2022 in four detention centres (**Wędrzyn, Krosno Odrzańskie, Lesznowola, Białystok**⁵⁹⁹) only men are held and in (**Białystok, Czerwony Bór, Kętrzyn, Biała Podlaska, Przemyśl**) only families and single women are detained. Families are placed together in one room or in containers⁶⁰⁰ in Kętrzyn but due to overcrowding two families are placed in one container which violates their right to privacy.⁶⁰¹ In detention centre in Kętrzyn there is also a separate part for unaccompanied irregular migrant children⁶⁰² and 2 places (1 room) for individuals with a certificate of disability.

Generally, single men were placed in rooms according to their nationality or preferences, except for Wędrzyn. According to Border Guards, there is a possibility to change a room on a foreigner's justified demand and availability of the rooms.⁶⁰³

The Polish authorities decided to remove bars in the windows in some detention centres and installed special secure windows in **Lesznowola, Kętrzyn and Biała Podlaska** (in a reopened detention centre).⁶⁰⁴

⁵⁹⁹ In Białystok, in the past there was also an arrest for foreigners which was closed as there were not so many "dangerous migrants. Since August this arrest was reopened for single men as a temporary place of detention for single men stopped at the border. It means that migrants are placed there for some weeks and transported to men detention centres.

⁶⁰⁰ HFHR and Association for Legal Intervention, *Wciąż za kratami*, 2014, available (in Polish) at: <http://bit.ly/1JBxxXm>, 17. Information provided by the Border Guard, 14 and 25 January 2019.

⁶⁰¹ Commissioner for Human Rights, Letter to the Regional Courts, 25 January 2022, available at: <https://bit.ly/3HnQZJL>.

⁶⁰² Information provided by the Border Guard, 14 and 25 January 2019; Article 414(4) Law on Foreigners.

⁶⁰³ Information provided by the Border Guard, 18 January 2020.

⁶⁰⁴ Information provided by Border Guard, 5 February 2021.

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

The term, literally translated as “arrests for foreigners”, replaced that of “pre-removal centres” as of 1 May 2014. These facilities impose more rigorous conditions of detention than guarded centres.⁶⁰⁵ Until December 2012 there were 5 such centres. Currently, there is centre with a capacity of 37 in **Przemyśl** for men and women, which is a single unit with a separate entrance.⁶⁰⁶ In February 2022, 30 foreigners were placed in the Przemyśl arrest for foreigners⁶⁰⁷ and 142 in total in 2021⁶⁰⁸.

An asylum seeker can be placed in a more rigorous detention centre for foreigners only if there is a risk that they will not obey the rules in force in a guarded centre or the applicant has already disobeyed these rules.⁶⁰⁹ These detention centres are more prison-like than guarded centres. An asylum seeker placed in such a centre cannot freely move around (he or she is closed in the ward), cannot go outside for a walk whenever he or she wants except for two hours per day etc.⁶¹⁰ The foreigners have a limited access to internet and to the phone.

According to the Commissioner for Human Rights, sanitary and living conditions are sufficient and meeting the provisions of the law in this respect. Foreigners have a right to use two walking yards, twice a day by one hour. On the other hand, in the opinion of the representatives of the Commissioner, health condition of foreigners placed in this facility was justifying their release from detention. Furthermore, there were, among others, 6 citizens of Afghanistan, who were not placed in detention centre for foreigners before.⁶¹¹

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities

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

The Law on Foreigners contains a section on detention conditions, rights and obligations of foreigners.⁶¹² Some practices relating to the functioning of the centres have now been framed into the legal provisions. Below we present how the conditions are in practice.

2.1. Overall conditions

Nine centres (**Białystok, Czerwony Bór, Kętrzyn, Biała Podlaska, Przemyśl, Lesznowola, Wędrzyn** and **Krosno Odrzańskie**) are relatively new and in good condition (they were built after 2008), **Krosno Odrzańskie, Białystok, Lesznowola, Przemyśl, Biała Podlaska** have been renovated in recent years.

Detention centres in **Czerwony Bór** and **Lesznowola** are located in woods and far from any public transportation which is a problem in case of foreigners released from detention centres. The temporary detention centre in **Wędrzyn** is located on an active military range where military manoeuvres take place and the explosions happen.⁶¹³ Foreigners released from Wędrzyn are taken to the closest city by the

⁶⁰⁵ Order No 23 of the Ministry of Interior of 1 July 2014 on the designation of areas in which the arrest for foreigners is executed.

⁶⁰⁶ Information provided by the Border Guard, 14 and 25 January 2019.

⁶⁰⁷ Information provided by Association for Legal Intervention, February 2021.

⁶⁰⁸ Information provided by Border Guards for SIP, 18 February 2022.

⁶⁰⁹ Article 88a(2) Law on Protection.

⁶¹⁰ Centrum Pomocy Prawnej im. Haliny Nieć, K. Przybysławska (Ed.), *Monitoring of Forced Returns from Poland July 2014-June 2015*, 35-36.

⁶¹¹ Commissioner for Human Rights, Visit in detention centre in Przemyśl, available at: <https://bit.ly/3pm3PSA>.

⁶¹² Articles 410-427 Law on Foreigners.

⁶¹³ Commissioner for Human Rights, Visit in detention centre in Wędrzyn in October 2021, <https://bit.ly/3HrbNQJ>.

Border Guards. Very often foreigners are left alone without any assistance and information where they should go or how they should reach the reception centre in Dębak.⁶¹⁴

There were cases of overcrowding in detention centres in 2022: in Lesznowola, Przemyśl, Wędrzyn, Białystok and in Kętrzyn.⁶¹⁵

Generally, the foreigners are accommodated in rooms, which cannot be locked at night as for security matters⁶¹⁶. But on the other hand, from August to the beginning of December 2021, approximately 100 foreigners, mainly families with children, from different countries and religions were placed in a sport hall in Kętrzyn⁶¹⁷, which was a large open space, without any portable screen or a partition. The foreigners had only beds and tables at their disposal and the access to Internet, phones and legal assistance was very restricted.⁶¹⁸ According to the penitentiary judge the sport hall did not meet any the standards set up in Regulations on conditions in detention centres. Additionally, the foreigners (120) are placed in containers in detention centre in Lesznowola and Kętrzyn, even two families in one container.

There were no rules in placing foreigners in detention centres in Wędrzyn, Czerwony Bór and Kętrzyn, which means that people of different nationalities and religions (or those who gave up their religion) were placed in the same facilities which increases tense atmosphere and insecurity. As a result, there were conflicts between foreigners and the use of violence (including fights).

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

In some detention centres, the food is provided by external providers (Biała Podlaska, Wędrzyn), while in others it is prepared in the centres (e.g. in **Białystok**). There are several specific diets e.g., vegetarian, vegan, adapted to Muslims, adapted to pregnant or breastfeeding women or diabetics. Other diets can be respected on prescription of the physician.⁶¹⁹ Generally foreigners complained about the food in 2021 as it was not the kind of food they were used to eat.⁶²⁰

The main equipment in a room in detention centre consists of beds, small wardrobes and a small table. If detainees cannot have all their belongings in their room, they have to place them in external storage space in the centre. Some of their belongings are also placed there for safety reasons and can be accessed only upon request. In addition, in **Lesznowola**⁶²¹ there is a television in each room (also in **Krosno Odrzańskie**), gym and outdoor pitch. In a detention centre in Biała Podlaska there is air condition in each room.

According to the Commissioner for Human Rights, the automatic detention of foreigners who crossed the Polish-Belarusian border limited the role of those facilities to the isolation function only. Furthermore, poor living and sanitary conditions, improper exercise of the rights of migrants and the length of stay in isolation may reach the threshold of inhuman and degrading treatment. Moreover, level of medical and psychological

⁶¹⁴ Commissioner for Human Rights, meeting with the Commander-in-Chief of the Border Guard, available at: <https://bit.ly/3vp4yqa>.

⁶¹⁵ Information provided by Border Guards Headquarters for SIP, 18 February 2022.

⁶¹⁶ CPT Report 2018, available at: <https://bit.ly/2HVZltc>.

⁶¹⁷ REPORT from periodic visitation of the detention Centre for Foreigners in Kętrzyn, conducted by penitentiary judge of the District Court in Olsztyn on 24.11.2021 for the period from 1 November 2019 to 1 November 2021.

⁶¹⁸ Remarks to the Committee of Prevention of Torture, Association for Legal Intervention, March 2022, available in English at <https://bit.ly/3vVzbSP>.

⁶¹⁹ Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Przemyślu*, 7 February 2018, available (in Polish) at: <http://bit.ly/2EXIR4y>.

⁶²⁰ Report of the National Torture Prevention Mechanism on the visit detention centre for foreigners in Białystok on the implementation of the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the recommendations of the KMPT from the visit of the facility in 2018 available at: <https://bit.ly/3Mjx5n9>.

⁶²¹ Commissioner for Human Rights, visit in detention centre in Lesznowola on 8 February 2022, available at: <https://bit.ly/3pm3PSA>.

care provided in detention centre is insufficient and as a result the health of foreigners who were victims of torture could deteriorate through the secondary victimization.⁶²² Furthermore, the detention centres look like prisons and detention centres in **Krosno Odrzańskie**, **Białystok**, and **Przemysł** have rooms with barred windows.⁶²³

The temporary detention centre in Wędrzyn, which is a branch of detention centre of Krosno Odrzańskie, was located in military barracks, on an active military range where military maneuvers take place, and the explosions happen on a regular basis. That facility was adapted to detention centre in 5 days and its capacity is 700 places. The detention centre and small walking areas are surrounded by a concertina razor wire. Foreigners are placed in several buildings, 150 people in each. Foreigners are accommodated in multi-bedrooms with the capacity of up to 24 which makes it impossible in practice to create conditions ensuring at least minimum privacy. At the end of 2021, 599 foreigners were placed in the Wędrzyn facility and its capacity will be increased to 900 places.

According to the Commissioner for Human Rights, that facility does not fulfil any of the basic guarantees preventing inhuman and degrading treatment of persons deprived of liberty. The material conditions are not acceptable in the light of the minimum standards of protection of the rights of foreigners in detention and they do not fulfil the standards of decent treatment of persons deprived of liberty.

Since the very beginning of the functioning of the centre in Wędrzyn, the biggest and persistent problem is overcrowding of that facility. During the visit of the representatives of Commissioner for Human Rights, the number of foreigners detained exceeded the maximum capacity which makes it impossible in practice to exercise a number of rights of foreigners detained in the centre. Furthermore, the windows were covered with toilet paper due to lack of the blinds there is no furniture other than tables and stools in rooms, clothes are stored on the floor or in plastic bags. Foreigners have had very limited access to the outside world, as access to the computers, scanners, printers and Internet is restricted, which causes problems with getting in touch with lawyers or non-governmental organizations⁶²⁴ and difficulties in complying with the deadline for filing the appeals in asylum and detention procedures. There is no offer of recreational and sports activities.

Furthermore, in November 2021 there was a riot in the Wędrzyn detention centre.⁶²⁵ Later in January and in February 2022 foreigners organized hunger strikes several times due to poor conditions in that facility and prolonging detention⁶²⁶. According to the Commissioner for Human Rights there is a high risk of another riot.

The Commissioner for Human Rights pointed out in his recommendations, issued after one of visits to the detention centre in Wędrzyn, that Border Guard should remind officers of the security division of their basic obligation to treat foreigners with respect. The representatives of the Commissioner received alarming signals about the use of uncensored terms by Border Guard officers in relation to foreigners. Additionally, Border Guards address the foreigner by identification numbers.⁶²⁷

Representatives of the Commissioner for Human Rights conducted also inspections of detention centre in **Przemysł**. They pointed out that bars are still installed in the windows which emphasize the penitentiary

⁶²² Commissioner for Human Rights, Letter to the Regional Courts, 25 January 2022, available at: <https://bit.ly/3HnQZJL>.

⁶²³ Information provided by the Border Guards, 5 February 2021, Commissioner for Human Rights, *Wyciąg, Strzeżony Ośrodek dla Cudzoziemców w Białej Podlaskiej*, 18-19 July 2018, available (in Polish) at: <https://bit.ly/2TBZ3OY>.

⁶²⁴ Commissioner for Human Rights, visit in detention centre in Wędrzyn in October, available at <https://bit.ly/3HrbNQJ>.

⁶²⁵ Commissioner for Human Right, Riot in detention centre in Wędrzyn, in 2021, <https://bit.ly/3C1C2w6>.

⁶²⁶ Hunger strike in Wędrzyn. Dr. Machinska: "The center is below the prison standard; it needs to be liquidated". January 2022, available at: <https://bit.ly/340szZ>.

⁶²⁷ Information provided by Nomada Association, February 2022.

image of the facility. Additionally, in many rooms, the foreigners had to hang blankets over the windows to limit sunlight during the day.⁶²⁸

2.2. Activities and education

As it was mentioned earlier, the profile of detention centres was changed in 2021 for example the families with children are detained in detention centres where in the past only men were detained. In practice this means that the infrastructure is not adjusted to the needs of minors, for example there are no playgrounds.

Moreover, not in all guarded centres there is a sport and recreation space, e.g. in Wędrzyn, Białystok, Kętrzyn, and Biała Podlaska⁶²⁹ there are no recreational and sports activities organized for the foreigners.⁶³⁰ On the other hand, in some detention centres the open-air space is of adequate size and sufficient recreational facilities are provided (e.g. playing field for volleyball or basketball in Lesznowola). In practice the detainees have the possibility to take part in outdoor exercises on a regular basis. Detainees can watch television without any limitations, even until late at night.⁶³¹

Not in all centres there was access to the internet (e.g. in Wędrzyn, Czerwony Bór) and the number of computers used by foreigners is not sufficient. The access to printers and scanner was also restricted in some detention centres, in e.g. Wędrzyn. It is worth noting that foreigners are under constant supervision of the Border Guard officer who additionally records the personal data and the exact time of their use of internet.⁶³² Furthermore, the Border Guard Chief Commander ordered on 27 January 2017 the blocking of sites with presumed terrorist-related and extremist content, social media and instant messaging platforms. New technologies such as VoIP (Voice over Internet Protocol) are also forbidden for security reasons even though the CPT recommended this kind of communication to be available for use by the foreigners in detention centres.⁶³³ Clearance of the internet usage was also introduced but on the other hand, foreigners placed in detention centres have a possibility to use Skype after signing up for the list.⁶³⁴

Not all foreigners have phones or SIM cards and there are no public telephones. They can request to use a traditional cell phone in a disposal of Border Guards.

Not all of the detainees have access to reading and leisure materials. However, in some centres there are libraries with a number of books and newspapers in several languages, for example in Russian, English, and French. They also have popular games to play (e.g. chess, cards). Concerts and sport competitions are organised for adults and children in **Kętrzyn** (but only until August) and **Przemyśl**. On the other hand, according to UNHCR and Commissioner for Human Rights,⁶³⁵ foreigners complained that additional activities are rarely organized and that they feel bored.

Detention centres provide rooms for religious practices.

In all centres, in the corridors of each floor there are boards which provide information in at least 1 or 2 main foreign languages (Russian and/or English). They provide information on the asylum applicants' rights

⁶²⁸ Commissioner for Human Rights, Visit in detention centre in Przemyśl in February 2022, <https://bit.ly/3pm3PSA>.

⁶²⁹ Paras 2 and 9 Regulation on detention centres.

⁶³⁰ Commissioner for Human Rights, visit in detention centre in Wędrzyn in January 2022, <https://bit.ly/3M7oXpx>.

⁶³¹ Information provided by the Border Guard, 18 August 2015.

⁶³² Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Krośnie Odrzańskim*, 30 January 2018, available (in Polish) at: <http://bit.ly/2F2ptCr>.

⁶³³ CPT Report 2018, 28; available at: <https://bit.ly/2HVZlTc>. See also Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Białej Podlaskiej*, 7 January 2019, available (in Polish) at: <https://bit.ly/2TBZ3OY>.

⁶³⁴ Information provided by the Border Guard, 14 and 25 January 2019.

⁶³⁵ Commissioner for Human Rights, Letter to the Regional Courts, 25 January 2022, available at: <https://bit.ly/3HnQZJL>.

and/or the rules of stay in the detention centre, meal times, and contact details of NGOs, UNHCR and – depending on the centre – on access to the doctor and psychologist.

In all centres each asylum applicant and irregular migrant has an officer appointed to their case with a scheduled meeting to discuss their case. Unfortunately, the number of the officers in 2021 was not sufficient.

The rules of stay in the detention centres are available in 17 languages: Arabic, English, Ukrainian, Russian, French, Armenian, Chinese, Georgian, Hindi, Spanish, Mongolian, Persian, Turkish, Farsi, Urdu, Bengali and Vietnamese.⁶³⁶ Depending on the centre they are available on each floor of the detention centre or in the common rooms, etc.

Children staying in the guarded centres are – like all other children staying on the territory of Poland – subject to obligatory education until they are 18. However, this obligation, set in the Polish Constitution, is not fulfilled in the case of children staying in guarded centres.⁶³⁷⁶³⁸ None of the children staying there attends school. Schools near the detention centres in **Kętrzyn** and **Biała Podlaska** delegate teachers to work in detention facilities. Special classrooms are prepared in these centres. This is the result of agreements between the Border Guard, educational institutions and local authorities.⁶³⁹

Due to COVID-19, children implement schooling obligation on-line on the same terms as Polish pupils, which caused lots of problems as parent did not receive any support in explaining the task from school in Polish.

2.3. Special needs and health care in detention

According to the law, all detainees have access to regular health care.⁶⁴⁰ Unfortunately, in some detention centres access to the physician (Wędrzyn) and psychologist (Krosno, Białystok, Kętrzyn, Biała Podlaska) is very restricted.

In some detention centres nurses are present on a daily basis from 7.30 a.m. till 9.30 p.m. In case of an emergency or the need for a specialist (e.g. gynecologist), detainees are transferred to hospitals or clinics. Since March 2018, Border Guard officers trained in first aid should be present during night shifts in all guarded centres.

In September 2015, the Border Guard prepared a document entitled “Rules of SG proceedings with foreigners who need special treatment (algorithm)” because there is no definition of persons who need special treatment and there are no methods for their identification set out in law. The algorithm consists of: (i) a definition of foreigners who are in need of special treatment, (ii) a list of persons involved in identification, (iii) a set of solutions which simplify identification, (iv) a procedure which should be implemented before a foreigner is placed in detention centre and (v) a procedure when a foreigner is already in detention. However, early identification of victims of torture and violence is not carried out during the preliminary examination of a foreigner on admission in practice. This document was modified in June 2019, based on merely internal consultation at Border Guards. In the opinion of SIP, still this document needs to be improved.⁶⁴¹

⁶³⁶ Information provided by the Border Guard, 18 August 2015.

⁶³⁷ Foreigners in administrative detention. Results of the KMPT monitoring in guarded centres for foreigners in Poland, March 2021, available in Polish at <https://bit.ly/3L0F5YZ>, Commissioner for Human Rights, Letter to the Regional Courts, 25 January 2022, available at: <https://bit.ly/3HnQZJL>.

⁶³⁸ HFHR and Association for Legal Intervention, *Wciąż za kratami*, 2014, available (in Polish) at: <http://bit.ly/1JBxxXm>, 46.

⁶³⁹ Regulation on education foreigners and Polish citizens who were learning abroad, 23 August 2017, available (in Polish) at: <https://bit.ly/2XkPupP>.

⁶⁴⁰ Articles 415(1)(5) and 417 Law on Foreigners.

⁶⁴¹ SIP, Annual Report 2019, April 2020, available in Polish at: <https://bit.ly/3sloolp>.

In the opinion of the Commissioner for Human Rights,⁶⁴² and the Commissioner for Child Rights,⁶⁴³ the algorithm used by Border Guard to identify victims of violence is inconsistent with Polish law, the Istanbul Protocol and other international standards. This algorithm does not allow for the immediate release of foreigners who are alleged victims of violence from the guarded centre. According to the Commissioner for Child Rights, the available treatment and therapy in the detention centre for identified victims of torture only exacerbate their mental trauma. The Commissioner called on the Minister of Interior and Administration to oblige the SG to develop new set of rules regarding foreigners whose mental state demonstrates that they were violence victims.⁶⁴⁴

According to the HFHR, the Polish authorities (SG and courts on own motion) do not identify victims of violence in an effective way. Such identification should be done at the earliest possible stage while deciding on whether the person should be placed in detention. Additionally, the SG and courts should on their own motion exclude the use of detention. Asylum seekers who in their asylum application declare that they were torture victims, are in practice sometimes placed in detention centres. Moreover, some courts placed victims in detention centres stating that there is no objection to placing a victim in detention because they will have access to psychological assistance in the guarded centre. The same opinion is presented in the SG guidelines, according to which, a foreigner will not be released if a psychological assistance can be provided in the guarded centre.⁶⁴⁵

In practice there is a limited access to psychological care. In 2021 in guarded centre in **Kętrzyn**, the psychologist-Border Guard officer was available 5 days a week from 8 a.m. to 3 p.m., additionally in September 2021, a further psychologist, employed in the health department in Border Guard Unit was referred to detention centre, while in this centre 791 foreigners were placed in total in 2021.⁶⁴⁶

In **Krosno** external psychologist was present only for 4 hours 3 times a week. She is also responsible for foreigners detained in detention centre in Wędrzyn, which capacity is 700 foreigners.⁶⁴⁷ Additionally, in Wędrzyn, foreigners did not have a direct access to the psychologist as her room was outside of the detention centre, behind the barbed fence. In **Przemysł**, two psychologists for foreigners are available 100 hours a month. In Biała Podlaska detention centre there are two psychologist: A civil worker and the other one was border guard officer. Additionally, the external psychologist was hired for 4-8 hours a week, who in principle provides psychological consultations.⁶⁴⁸

Additionally, the Border Guards refused to allow psychologists to hold meetings with specific foreigners in 2021 in detention centres in Wędrzyn and Lesznowola, saying that the foreigners have access to the psychological care in detention centres. In Lesznowola two psychologist were hired and they were available twice a week, 4-8 hours in total and on call, while the capacity of that detention centre is 192 places.⁶⁴⁹

The Commissioner for Human Rights reported lots of irregularities in psychological assistance and underlined that the number, the frequency and the description of the consultations showed that these consultations only consisted of preliminary interviews and diagnosis. Long-term psychological support was not provided. Additionally, the Commissioner pointed out that the fact that only one psychologist provides psychological assistance in detention centres, limits the availability of psychological support. There is a

⁶⁴² Commissioner for Human Rights, *Wystąpienie do Komendanta Głównego Straży Granicznej w sprawie identyfikacji ofiar tortur*, 4 July 2017, available (in Polish) at: <https://bit.ly/2SvtzZJ>.

⁶⁴³ Commissioner for Child Rights, *Wystąpienie do Ministra spraw Wewnętrznych*, 5 September 2018, available (in Polish) at: <https://bit.ly/2GAvObC>.

⁶⁴⁴ *Ibid.*

⁶⁴⁵ HFHR, Rights of persons deprived of liberty-fundamental legal and practical issues. HFHR perspective, July 2018, available at: <https://bit.ly/2SktNaF>.

⁶⁴⁶ Information provided by Border Guard in Kętrzyn, 18 February 2022.

⁶⁴⁷ Border Guard Commander, Krosno Odrzańskie, information, 3 February 2021.

⁶⁴⁸ Information provided by Border guard Unit in Biała Podlaska, 29 March 2022.

⁶⁴⁹ Information provided by Border Guards, 28 January 2022.

high risk that this psychologist will not be available when the support during a foreigner’s mental crisis is needed and there will be no one who could substitute her/him and provide psychological assistance. Moreover, foreigners should have the possibility to choose a psychologist. Otherwise, a detainee who is unable to trust an available psychologist, will not have access to effective psychological support. Moreover, Commissioner pointed out that a person who does not feel comfortable in the presence of a particular psychologist, he/she will not take advantage of the support. Regardless of their competence, a psychologist may not be the right person to provide support in a particular case because of his/her age, gender, appearance or even the way of speaking. In a situation of a multicultural population in detention centres, the human factor plays an even more important role and the more difficult it can be to build trust. Therefore, it is very important to be able to get psychological help from more than one person. When there is no alternative, when a person is not able to trust the only psychologist providing support in a given centre, psychological care will not be longer realistically available.⁶⁵⁰

Furthermore, the access to the medical healthcare in some detention centres was very restricted, particularly in Wędrzyn. NGO and Commissioner for Human Rights received multiple complaints about the access to an adequate medical healthcare.⁶⁵¹

3. Access to detention facilities

Indicators: Access to Detention Facilities

1. Is access to detention centres allowed to

❖	Lawyers:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Limited	<input type="checkbox"/> No
❖	NGOs:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Limited	<input type="checkbox"/> No
❖	UNHCR:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Limited	<input type="checkbox"/> No
❖	Family members:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Limited	<input type="checkbox"/> No

The law allows lawyers, NGOs and UNHCR to have access to detention centres.⁶⁵² Detained asylum seekers are entitled to maintain contact with UNHCR, attorney, relatives and organisations dealing with asylum issues or granting assistance (directly and by means of correspondence and telephone calls). Direct contact with UNHCR and organisations can be limited or restricted completely by the head of the detention centre if it is necessary to ensure safety and public order or to observe the rules of stay in the detention centre. The decision of the head of the centre is final.⁶⁵³ The Head of the Office for Foreigners and UNHCR should be informed about it.⁶⁵⁴ On the other hand, the direct contact with NGO by foreigners who are detained and have not applied for international protection, cannot be restricted according to law.⁶⁵⁵

In practice until January 2022, NGO could not visit detention centre in **Wędrzyn** due to national security and safety reasons.

Due to the coronavirus situation, all visits in detention centres were suspended from October 2020 to 21 May 2021 but foreigners could meet with lawyers and members of their family and friends remotely via Skype. The visits were suspended also in individual detention centres due to quarantine. At the end of January 2022 all personal visits were again suspended due to coronavirus situation in Poland till 28 February 2022.

⁶⁵⁰ Foreigners in administrative detention. Results of the KMPT monitoring in guarded centres for foreigners in Poland, March 2021, available in Polish at <https://bit.ly/3L0F5YZ>.

⁶⁵¹ Remarks to the Committee of Prevention of Torture, Association for Legal Intervention, March 2022, available in <https://bit.ly/3vVzbSP>.

⁶⁵² Article 415(1)(2), (3) and (19) Law on Foreigners and Article 89a(1)(2) Law on Protection.

⁶⁵³ According to the Law on Protection, it will be a possibility only to limit such contact.

⁶⁵⁴ Article 89a(1) and (2) Law on Protection.

⁶⁵⁵ Article 415(1a) Law on Foreigners.

NGOs provided legal assistance, but unfortunately not on a regular basis in 2021. NGOs had to narrow their assistance, including legal assistance, in the detention centres, due to lack of financial means as a result of delay in the implementation of AMIF; delay in the announcement of the call for proposals and delay in publishing the results co-financed by AMIF.⁶⁵⁶ Moreover, there is no systemic legal assistance to foreigners granted by law.⁶⁵⁷

As a general rule, NGOs have to ask for the consent of a manager of the detention centre to meet with a specific asylum seeker. Lawyers, family members and relatives or NGOs can meet with a detainee during visiting hours. Although in 2021 the unrelated persons faced problems with meeting detained foreigners as border guards informed that law does not allow them to meet with them.

There are no limitations concerning the frequency of such visits. UNHCR Poland notes that they are not limited in accessing detention centres. The journalists and politicians have access to detention centres under general rules, they have to ask for the consent of the SG unit managing the detention centre. On the other hand, the access to detention centre in Wędrzyn was more restricted than to other centres.

In practice, NGOs which want to meet with more than one or with unspecified asylum seekers, monitor conditions in a detention centre etc. must ask the SG Commander in Chief in writing for permission to visit a detention centre. Since 2017 permission is authorized by the Border Guard Headquarters. Nevertheless, visits are generally not limited to visiting hours. On the other hand, in 2021 and 2022 (as of April) NGOs, which provided psychological assistance started to face problems in accessing the detention centres, i.e., in **Wędrzyn**, **Lesznówola** or **Kętrzyn**.

Furthermore, in 2021 NGOs faced lots of problems in contacting the detainees in Wędrzyn as they have no or restricted access to Internet and phones.

Visits from relatives or religious representatives are authorized. Any visit should not last more than 90 minutes, but it can be prolonged in justified cases by the manager of the centre. Two adults have a right to take part in the meeting. The number of children is not limited.⁶⁵⁸ Non-scheduled visitors as a rule do not have a possibility to meet with the asylum applicant (but the manager of the detention centre can make exceptions from the above-mentioned rules, especially when it is needed to maintain family ties and care over a children).⁶⁵⁹

Unfortunately, not all detainees were able to maintain regular contact with people outside the centre in 2021. Although there is no limitation in using cell phones (without video recording system), the foreigners in detention centre in **Wędrzyn** and **Czerwony Bór** faced problems in cell phone range or did not have access to the SIM cards and phones. Only in some detention centre, i.e. in Białystok and Lesznówola the SG's have several hundreds of substitute cell phones without a camera which they provide to foreigners in case they only have smartphones. The cell phones are handed over for the whole day for free. On the other hand, detainees themselves pay for the calls if they have a financial means. If the asylum applicant does not have money to buy a SIM card, there is a possibility of using the SG's equipment in justifiable cases.

in 2021 the detainees in detention centres especially in **Wędrzyn**, Lesznówola, **Czerwony Bór** had no or restricted access to the internet and Skype. In **Wędrzyn** detention centre the migrants could use computers 30 minutes every 3 days. There were also brakes in Internet access. The foreigners in **Lesznówola**,

⁶⁵⁶ W Klaus, E Ostaszewska-Żuk and M Szczepanik, *The role of European Funds in supporting the integration of migrants in Poland*, September 2017, available at: <http://bit.ly/2EVdxxq>.

⁶⁵⁷ Foreigners in administrative detention. Results of the KMPT monitoring in guarded centres for foreigners in Poland, March 2021, available in Polish at <https://bit.ly/3L0F5YZ>.

⁶⁵⁸ Para 21 of the Rules of foreigners' stay in guarded centre and arrest for foreigners (Annex to the Regulation on detention centres).

⁶⁵⁹ Para 23 of the Rules of foreigners' stay in guarded centre and arrest for foreigners (Annex to the Regulation on detention centres).

Wędrzyn and **Kętrzyn** detention centre complained regularly that they do not have access to scanner or printer.

The Law on Foreigners foresees a legal possibility to impose sanction on a detainee who does not obey the rules in the detention centre. There are two possibilities: banning participation in sport and leisure activities (except for using the library); or banning the purchase of food and cigarettes from outside the centre.⁶⁶⁰

When deciding upon the application of either of these two sanctions, the SG Regional Commander takes into account the general behaviour of the detainee, the level of disobedience, cultural background, etc. Before adopting the law, such punishments were applied in practice without any legal basis. In 2021, such punishment was used 6 times in **Przemyśl** for 7 days.⁶⁶¹

The Border Guard officers go and do shopping for detainees usually twice a week. On the other hand, the detainees cannot receive any food or liquid things in packets from other people.

D. Procedural safeguards

1. Judicial review of the detention order

Indicators: Judicial Review of Detention

- | | | |
|---|---|-----------------------------|
| 1. Is there an automatic review of the lawfulness of detention? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. If yes, at what interval is the detention order reviewed? | No data | |

Detention is ordered by the District Court upon request of the SG. Prolongation of the detention is also ordered by the District Court upon request of the SG. Asylum seekers stay in the detention centre can be prolonged if before the end of the previous period of the detention, the final decision concerning the application for international protection is not issued and the reasons to detain the applicant still exist.⁶⁶²

Asylum seekers are informed of the reasons of their detention, legal remedies and their rights. Information on the reasons for detention is given first in the court, orally, translated into a language understandable for the asylum applicant. The court has a clear obligation to hear the person concerned before rendering a decision.⁶⁶³ However due to migration situation at the Polish -Belarusian border, the foreigners were not transported to the courts but they took part in court proceedings online. The foreigners claimed that they did not understand the court procedure and the interpreter who translated the judge.

In all guarded centres, when the person arrives at the centre, there should be a meeting during which a detainee receives information about the centre. Although, in practice asylum seekers do not understand the reasons of their detention and have basic information on their rights.⁶⁶⁴ For example it has happened that asylum seekers supported the SG requests to detain them which is surprising, especially in the light of the fact that later in some of these cases foreigners-initiated appeal proceedings. In one of such cases, during the detention hearing a foreigner reportedly supported the SG request to detain him despite the fact that his child had epilepsy.

⁶⁶⁰ Article 421(2) Law on Foreigners.

⁶⁶¹ Information provided by the Border Guard in Przemyśl, 2022.

⁶⁶² Article 89(4) Law on Protection.

⁶⁶³ Article 88b(1) Law on Protection.

⁶⁶⁴ CPT Report 2018, available at: <https://bit.ly/2HVZltc>, 20.

The law provides for judicial review of the lawfulness of detention.⁶⁶⁵ Asylum seekers can appeal against a District Court ruling to the Regional Court within 7 calendar days from the day the ruling is pronounced. In prolongation cases it is 7 days from the notification of the ruling to an asylum seeker.⁶⁶⁶ In this appeal the detainee can dispute the grounds for their detention. The Law on Foreigners envisages 7 days for the examination of the appeal.⁶⁶⁷

Asylum seekers receive rulings in the language they should understand; a literal translation of a ruling rendered in Polish. Unfortunately, the information about the deadline for appeal is not translated at all. In practice it means that the foreigners are not aware that they are obliged to submit it in 7-day period.

SIP reported that in 2020, one of their clients received a court decision only in Polish and the other one received it only in foreigner's language, which influenced their access to the legal assistance.

Due to restricted access to the Internet, phones, printers and scanners, very often the foreigner could not fill in time the appeal. Additionally, in Wędrzyn, the appeals issued by foreigners to the administration of a detention centres in time, were registered by Border Guards with a delay, which meant that their complaints would not be examined by the court.

The court procedure concerning detention orders is not considered effective. Courts often decide on detention of asylum seekers without an in-depth analysis of their personal situation, and reasons for detention mentioned in the judgment are indicated very generally - without direct reference to a personal situation. Courts do not conduct evidentiary proceedings on best interests of the child and on torture victims.⁶⁶⁸

In the appeal procedure, foreigners do not know that they can ask the court to be present during examinations of their appeal against detention, so they cannot present their standpoint. In 2021 none of the Regional Courts decided to bring a foreigner for the second instance court hearing.⁶⁶⁹ At the same time, foreigners are not informed about the reasons for prolonging their stay in a detention centre by the Border Guard, such as for example in Kętrzyn and Białystok.⁶⁷⁰ Furthermore, the appeal has to be prepared in Polish, so foreigners are dependent on NGOs which provide only limited legal assistance due to limited access to funds and the situation at the Polish-Belarusian border.

According to SIP, roughly all of Border Guard's applications for placing or extending the detention were accepted by the courts. In only 7 cases out of 132, the courts of second instance overruled or changed the decisions which is about 5.5% of cases.⁶⁷¹

According to SIP, in 2020 foreigners received court decisions on extension of their stay in a detention centre only after the time for which they were placed in centre had expired or just before it expired.⁶⁷²

⁶⁶⁵ Article 88b(3) Law on Protection; Article 403(8) Law on Foreigners.

⁶⁶⁶ Courts interpret differently the law in this matter – some claim that 7 days should be counted from the day of the pronouncement of the court ruling about placing the foreigner in the detention centre, some that it should be counted from the day the translated ruling is delivered to a foreigner in writing – T. Sieniow, *op. cit.*, 54.

⁶⁶⁷ Article 88b(3) Law on Protection; Article 403(8) Law on Foreigners.

⁶⁶⁸ Only in one case in Regional Court in Olsztyn appointed a psychologist in a detention case, Information provided by the Regional Court in Olsztyn January 2022.

⁶⁶⁹ Information provided by Regional Court in Białystok for SIP, 21 January 2022, Regional Court in Olsztyn, 21 January 2022, Regional Court in Lublin 17 January 2022, in Radom 19 January 2022, in Zielona Góra Warszawa Praga Południe 21 January 2022, Warszawa 21 January 2022,

⁶⁷⁰ Information provided by the Association for Legal Intervention, February 2021.

⁶⁷¹ Legal Intervention Association (SIP), Raport SIP w działaniu, Prawa cudzoziemców w Polsce w 2020 r. [Report SIP in action. Rights of foreigners in Poland in 2020], available (PL) at <https://bit.ly/3pmM6dS>.

⁶⁷² Legal Intervention Association (SIP), Raport SIP w działaniu, Prawa cudzoziemców w Polsce w 2020 r. [Report SIP in action. Rights of foreigners in Poland in 2020], available (PL) at <https://bit.ly/3pmM6dS>.

Previously the Border Guard had been requested by the District Court of **Biała Podlaska** to submit motions for prolongation of detention in due time. In 2021 the Border Guard complied with this requirement and motions were submitted at least seven days -two weeks before the end day of detention.⁶⁷³

Every person is entitled to compensation and redress for wrongful detention from the State Treasury.⁶⁷⁴ In 2020, SIP represented two families and a man whose cases are pending before the Regional Court of Warsaw and Olsztyn.⁶⁷⁵ In one of these cases, Court granted a compensation to the victim of violence in the amount of 90,000 PLN (around 19,600 Euros). The HFHR had two such cases in the Regional Court of Warsaw (pending as of February 2021) and in Radom. In the latter case, the foreigner, citizen of **Congo** was detained despite the fact that Border Guards identified him as a victim of violence from the very beginning. He was released from detention centre on the base of the court decision 3 months later. The court granted a compensation of 39,000 PLN (8,500 Euros) based on the documents presented with the compensation motion.⁶⁷⁶ The judgment was upheld in February 2021.

2. Legal assistance for review of detention

Indicators: Legal Assistance for Review of Detention

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

The law provides for access to free legal assistance for the review of detention before the courts, but it is hardly ever exercised in practice.⁶⁷⁷ 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.⁶⁷⁸ The court has a clear obligation to inform asylum seekers in a language understandable to them about the right to ask for legal assistance.⁶⁷⁹ However, this happens rarely in practice. Most asylum seekers are not aware of this possibility and in practice they are not represented by a legal advisor in the District or Regional Court.

In addition, their right to defence is not observed when the court decides on the extension of their detention. Foreigners are either not informed about the day of the court proceedings or they are informed (in Polish) on the short notice - on the same day. As a result, they are unable to submit a request for the lawyer on time.⁶⁸⁰ Moreover, the application on prolonging their stay in detention is not delivered to them.

In the regional courts in Lublin, Zielona Góra, Białystok and Przemyśl no attorney was appointed in the cases of foreigners in 2020 and positive outcome of complains ranged from 0 to approx. 3.5%.⁶⁸¹

As a result, they are dependent on legal assistance granted by NGO lawyers, most of whom are not entitled to represent them before courts. Due to limited funds from AMIF, since 2015 all NGOs have limited their activities and do not visit detention centres on a regular basis to provide such assistance whenever needed. This has not been improved in 2021. Situation even worsened due to situation at the Polish-Belarusian Border.

⁶⁷³ Information provided by different branches of Border Guard, letter, January -February 2022.

⁶⁷⁴ Article 407 Law on Foreigners.

⁶⁷⁵ Information provided by the Association for Legal Intervention, February 2021.

⁶⁷⁶ Regional Court in Radom, II Ko 23/16

⁶⁷⁷ Articles 78 and 87a Law of 6 June 1997 on the Code of Criminal Procedure, available at: <http://bit.ly/1UcUEO3>.

⁶⁷⁸ Article 78 and 87a Code of Criminal Procedure.

⁶⁷⁹ Article 88b(4) Law on Protection.

⁶⁸⁰ SIP, Annual Report 2019, April 2020, available in Polish at: <https://bit.ly/3sloopl>.

⁶⁸¹ Legal Intervention Association (SIP), Raport SIP w działaniu, Prawa cudzoziemców w Polsce w 2020 r. [Report SIP in action. Rights of foreigners in Poland in 2020], available (PL) at <https://bit.ly/3pmM6dS>.

The law foresees a state legal aid system which includes lawyers' visits to the detention centres if necessary and it concerns only preparing the appeal of a negative asylum decision. In practice only some foreigners decide to look for a legal representative, i.e., an advocate or a legal advisor.

E. Differential treatment of specific nationalities in detention

There is no differential treatment of specific nationalities in detention in Poland. Although the citizens of Afghanistan and Syria were released from detention centres, based on a decision of Head of the Office for Foreigners.

Content of International Protection

A. Status and residence

1. Residence permit

Indicators: Residence Permit

1. What is the duration of residence permits granted to beneficiaries of protection?
 - ❖ Refugee status 3 years
 - ❖ Subsidiary protection 2 years
 - ❖ Humanitarian protection 2 years

Refugee status is granted for an unlimited period of time. Recognised refugees obtain a 3-year residence card (*karta pobytu*).⁶⁸² The first card is issued *ex officio*⁶⁸³ and is renewed after this period for another 3 years upon request.⁶⁸⁴

Subsidiary protection is also granted for an unlimited period of time. Subsidiary protection beneficiaries obtain a 2-year residence card (*karta pobytu*).⁶⁸⁵ The first card is also issued *ex officio*,⁶⁸⁶ and is renewed after this period for another 2 years upon request.⁶⁸⁷

Humanitarian protection (*zgoda na pobyt ze względów humanitarnych*) is granted for an unlimited period of time. The beneficiary of humanitarian protection obtains a 2-year residence card (*karta pobytu*).⁶⁸⁸ The card will be renewed after this period for another 2 years.⁶⁸⁹ The first and subsequent card are issued on the foreigner's demand.⁶⁹⁰

As of 1 January 2022, there were 1,565 persons holding a valid residence card for refugees, 2,239 persons holding a valid residence card granted to subsidiary protection beneficiaries and 1,750 persons under the humanitarian protection scheme.⁶⁹¹

During the COVID-19 pandemic, the validity of those residence cards was prolonged by law until 30 days after the end of the epidemiological state in Poland.

An application for the renewal of the residence card should be submitted 30 days before the expiration date of the current residence card.⁶⁹² Foreigners are often not aware of this rule.

The issuance of the residence card is paid and costs 50 PLN / 11 € for the card.⁶⁹³ Only the first residence card is issued free of charge.⁶⁹⁴ The fee can be diminished by 50% if a beneficiary is in difficult material

⁶⁸² Article 89i(1) Law on Protection.

⁶⁸³ Article 229(2) Law on Foreigners.

⁶⁸⁴ Article 89i(2a) Law on Protection.

⁶⁸⁵ Article 89i(2) Law on Protection.

⁶⁸⁶ Article 229(2) Law on Foreigners.

⁶⁸⁷ Article 89i(2a) Law on Protection.

⁶⁸⁸ Article 243(1)(4) Law on Foreigners.

⁶⁸⁹ Article 243(2)(3) Law on Foreigners.

⁶⁹⁰ Article 229(1) and Article 229(4)(3) Law on Foreigners.

⁶⁹¹ Information provided by the Office for Foreigners, 26 January 2022.

⁶⁹² Article 230(2) Law on Foreigners.

⁶⁹³ Article 235(1) Law on Foreigners.

⁶⁹⁴ Article 236(1)(a)-(c) Law on Foreigners.

situation (only if he or she obtains social assistance benefits) or is a minor up to 16 years old.⁶⁹⁵ There is no possibility of full exoneration from the payment. The obligation to pay even only 25 PLN / €5 sometimes prevents foreigners from obtaining a new residence card. Moreover, in case of culpable loss or damage of the card, a new one will be issued subject to a higher fee of no more than 150 PLN / €32.⁶⁹⁶

The Office for Foreigners, which is responsible for the issuance and renewal of the residence cards for refugees and subsidiary protection beneficiaries,⁶⁹⁷ is situated in **Warsaw**. In the case of humanitarian protection beneficiaries, an authority responsible for a residence card renewal is a Border Guard unit having jurisdiction over the foreigner's current place of stay.⁶⁹⁸

The residence card has to be received in person. A card for a child under the age of 13 should be received in person by his or her legal representative.⁶⁹⁹ There is no possibility to receive a card by other representative or by post. Moreover, foreigners are obliged to give their fingerprints any time they renew a residence card.⁷⁰⁰ If they refuse to give their fingerprints, the residence card will not be issued.⁷⁰¹ The obligation to give fingerprints and mandatory personal presence to pick up the card means that every time the foreigner has to obtain a new card, he or she has to travel to **Warsaw** in case of refugees and subsidiary protection beneficiaries, or another town in case of humanitarian protection beneficiaries, twice, even if he or she lives far away. This can be time-consuming and costly. The Office for Foreigners informed, however, that in case of a serious illness the obligation to collect fingerprints from an applicant is lifted, but it happens rarely (1-2 times a year, no such cases in 2021 though).⁷⁰² The lack of a legal possibility to exempt the foreigner fully from the abovementioned payment, the obligation of personal presence twice – upon application and collecting the document, and the possibility to be issued a residence card only in one place may postpone the receipt of new residence cards by foreigners.

During the pandemic COVID-19, refugees and beneficiaries of subsidiary protection had to make appointment in advance (by phone or e-mail) in order to give fingerprints and pick up the residence card.⁷⁰³

Failure to renew a residence card can be punished by fine,⁷⁰⁴ but this does not happen in practice. There have been no such cases in 2015-2021.⁷⁰⁵

Moreover, Polish law requires presenting – as a condition to issue or renew the residence card – recent photographs. Photos presenting face with covered hair are not allowed (hair has to be visible on the picture), which is often problematic for Muslim women.⁷⁰⁶

By law, all residence cards should have the annotation “access to the labour market”, if the foreigner is entitled to work in Poland.⁷⁰⁷ In practice, cards issued for refugees as well as humanitarian and subsidiary protection beneficiaries do not have such an annotation, which can impede their access to labour market and to some social benefits, such as the ones in the framework of the “Family 500+” programme.⁷⁰⁸

⁶⁹⁵ Article 237(1) and (2) Law on Foreigners.

⁶⁹⁶ Article 238 Law on Foreigners.

⁶⁹⁷ Article 89n(2) Law on Protection.

⁶⁹⁸ Article 245(4)-(5) Law on Foreigners.

⁶⁹⁹ Article 248(1)-(2) Law on Foreigners.

⁷⁰⁰ Article 246(2) Law on Foreigners.

⁷⁰¹ Article 247 Law on Foreigners.

⁷⁰² Information provided by the Office for Foreigners, inter alia 26 January 2022.

⁷⁰³ Information provided by the Office for Foreigners, 26 January 2021.

⁷⁰⁴ Article 465(4) Law on Foreigners.

⁷⁰⁵ Information provided by the Office for Foreigners, i.e. 26 January 2022.

⁷⁰⁶ Ordinance of the Minister of Interior of 29 April 2014 on the documents issued for foreigners, available (in Polish) at: <https://bit.ly/3LFYMp6>.

⁷⁰⁷ Article 244(1)(11) Law on Foreigners.

⁷⁰⁸ European Website on Integration, ‘Poland: social benefit ‘500 PLN per child’ not for refugees?’ 29 February 2016, available at: <http://bit.ly/2ILCBFK>. M. Sadowska, “Świadczenia ‘Dobry start’” in Stowarzyszenie Interwencji Prawnej (SIP), *SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r.*, 2019, available (in Polish) at: <https://bit.ly/31HyL2O>, 52.

However, the Supreme Administrative Court as well as the Voivodeship Administrative Court in Warsaw held that such lack of annotation cannot be interpreted as excluding the foreigner from receiving social assistance, if he is in fact entitled to work in Poland.⁷⁰⁹ Consequently, the Polish authorities changed their practice and no longer refuse the special financial support under the 500+ Programme on that basis.

2. Civil registration

Every child born in Poland, regardless of the nationality of their parents, must be registered in the Civil Registry Office (*Urząd Stanu Cywilnego*). The birth of a child must be reported to the Civil Registry Office territorially competent for the place of birth of the child.⁷¹⁰ The documents necessary for the preparation of a birth certificate include:

- Written statement of birth issued by a doctor, midwife or health care facility;
- Copy of the marriage certificate if the child's parents are married;
- Birth certificate of the mother, marriage certificate with an entry noting divorce, an abridged copy of the death certificate of the spouse; if the child's mother is single, divorced or widowed, respectively.

The Civil Registry Office which prepared a birth certificate applies for a PESEL (Universal Electronic System for Registration of the Population) number for a child, which is then entered into the registry as well. The PESEL number is crucial in many areas of life including in the provision of health care, hence its registration is initiated by reporting a child's birth.

Marriage is concluded in the Civil Registry Office of the choice of the persons concerned. The documents required to enter into a marriage in Poland are:

- Valid identity document;
- Birth certificate and a marriage certificate together with the annotation of divorce, if the person concerned was married before;
- Certificate issued by the country of origin that the person concerned has the capacity to enter into a marriage under the law of their country.

If the latter document cannot be obtained, the person concerned can apply to the court to be exempt from this obligation.

Generally foreign documents have to be legalised or authenticated by apostille. As a general rule, all documents presented in the Civil Registry Office should be translated by a sworn interpreter and a foreigner who does not speak Polish needs to complete all the formalities (including the marriage ceremony itself) accompanied by a sworn interpreter of a language they speak fluently. Certificates are drawn up immediately.

Problems occur when documents from the country of origin have to be submitted. However, the court procedure to exempt beneficiaries of international protection from this obligation is applied rather efficiently.

3. Long-term residence

Indicators: Long-Term Residence

1. Number of long-term residence permits issued to beneficiaries in 2021: Not available

⁷⁰⁹ See judgments of Voivodeship Administrative Court in Warsaw No I SA/Wa 1997/16, 7 October 2016, available (in Polish) at: <http://bit.ly/2l8Mj26> and of the Supreme Administrative Court no. I OSK 1164/16, 14 March 2018.

⁷¹⁰ Law of 28 November 2014 on civil registration certificates.

The EU long-term residence permit (*zezwozenie na pobyt rezydenta dlugoterminowego UE*) is issued on a foreigner's demand if he or she:⁷¹¹

1. Resides in Poland legally and continuously for at least five years immediately prior to the submission of the application for the EU long-term residence permit,
2. Has stable and regular resources which are sufficient to maintain him or herself and the dependent family members;
3. Has appropriate medical insurance;
4. Knows Polish language at least on level B1 (the documents confirming having this knowledge are required).⁷¹²

Resources are considered sufficient, if for 3 years immediately prior to the submission of the application a foreigner had income higher than the income threshold for obtaining social assistance in Poland.⁷¹³ For the language requirement, see problems mentioned in [Naturalisation](#).

The entire period of a refugee's stay in Poland during the asylum procedure is taken into account in the calculation of the 5-year period, if the asylum procedure lasted more than 18 months. In other cases, half of this period is taken into account.⁷¹⁴ If the previous asylum procedure ended with refusal of the international protection, the period of this procedure is not taken into account at all.⁷¹⁵ A procedure for an EU long-term residence permit cannot be initiated if a foreigner is a humanitarian protection beneficiary or is seeking asylum.⁷¹⁶

Refugees and beneficiaries of subsidiary protection may also apply for a permanent residence permit (*zezwozenie na pobyt staly*), if they continuously stay in Poland for at least 5 years immediately before the submission of the application. The asylum procedure is taken into account in this calculation.⁷¹⁷ The same rules apply to beneficiaries of humanitarian protection but the asylum procedure is not counted to the 5 years period.

The fee for an EU long-term residence permit and a permanent residence permit is 640 PLN / 137 €. The 2019 report published by the Institute of Public Affairs emphasized that 'Poland represents the country with the least favourable conditions, applying high fees and costs which constitute burdensome obstacles for BIPs given the very low level of social assistance benefits. BIPs are subject to costs of issuing a residence permit and initiating a procedure for permanent/ long-term residence that are higher than 50% of the minimum amount of the monthly social assistance benefit'.⁷¹⁸

The authority responsible for issuance of the EU long-term residence permit and a permanent residence permit is Voivode having jurisdiction over the current place of stay of the applicant.⁷¹⁹ The Office for Foreigners is a second instance administrative body competent to handle appeals against first instance decisions. Since 29 January 2022, the procedure should last 6 months (instead of 3) at the first instance and additionally maximum 3 months (instead of 2) if an appeal was lodged.⁷²⁰ The prolongation of the time-limits resulted from the fact that in practice Polish authorities were not able to issue decisions in 3 and 2 months and hence excessive delays in decision-making were regularly reported.⁷²¹

⁷¹¹ Article 211(1) Law on Foreigners.

⁷¹² Article 211(1)(3) and (3) Law on Foreigners.

⁷¹³ Article 211(2) Law on Foreigners.

⁷¹⁴ Article 212(1) (2) and (3c) Law on Foreigners.

⁷¹⁵ Article 212(2)(8) Law on Foreigners.

⁷¹⁶ Article 213(1)(e)-(f) Law on Foreigners.

⁷¹⁷ Article 195(1)(6) and Article 195(3) Law on Foreigners.

⁷¹⁸ A. Wolffhardt, C. Conte, T. Huddleston, *The European Benchmark for Refugee Integration: A Comparative Analysis of the National Integration Evaluation Mechanism in 14 EU Countries* (Institute of Public Affairs, Warsaw, 2019), available at: <https://bit.ly/39rQCNS>, 62.

⁷¹⁹ Articles 201 and 218(1) Law on Foreigners.

⁷²⁰ Articles 210 and 223 Law on Foreigners.

In 2016, 23 beneficiaries were granted EU long-term resident status. No data were made available for 2017-2021. Data concerning only beneficiaries of international protection who were granted permanent residence permits was also not made available.

4. Naturalisation

Indicators: Naturalisation

1. What is the waiting period for obtaining citizenship?	
❖ Refugee status	7 years
❖ Subsidiary protection	7-10 years
2. Number of citizenship grants to beneficiaries in 2021:	Not available

Polish citizenship can be obtained through two procedures. Firstly, citizenship can be granted by the Polish President.⁷²² Any foreigner can apply to President to be granted Polish citizenship; there are no specific conditions and criteria for obtaining citizenship in this procedure. A foreigner only has to submit a form with information about him or herself and justification, why he/she applies for Polish citizenship, to a Consul or a Voivode, who hands on the application to the President.⁷²³ Knowledge of Polish language is not required. The citizenship is granted free of charge. The President's refusal is a final decision and cannot be appealed.

Secondly, a foreigner can be declared as a Polish citizen if he or she fulfils criteria specified in law.⁷²⁴ Both refugees and subsidiary protection beneficiaries have to obtain first a permanent residence permit (*zezwoleńie na pobyt stały*) or EU long-term residence permit in Poland.

A refugee who has been granted permanent residence permit and stays continuously on this basis in Poland for 2 more years can be declared as a Polish citizen.⁷²⁵ In 2019 at least 20 and in 2020 at least 9 refugees were declared as Polish citizens. In 2021, at least 12 refugees were declared as Polish citizens.⁷²⁶ There is no similar rule concerning subsidiary protection beneficiaries. To be declared as Polish citizens, they have to fulfil the same criteria as any other foreigner who obtained permanent residence permit or EU long-term residence permit in Poland (i.e. 2-3 years stay in Poland on this basis or 10 years of legal stay in Poland independently of the basis of the stay, stable and regular resources, legal entitlement to stay in a residential property or marriage with Polish citizen).⁷²⁷

Both, refugees and subsidiary protection beneficiaries, to be declared as a Polish citizen, have to prove that they know Polish language.⁷²⁸ Foreigners should present a document confirming that they have graduated from a Polish school or that they have passed the State exam for Polish language as a foreign language (B1 at least). Those examinations are organised rarely (in 2016-2019, only twice-three times a year) and they are costly.⁷²⁹ To take an exam, foreigners often have to travel to another city, so bear the costs not only of the exam itself, but also of transportation and hotel,⁷³⁰ which may constitute an obstacle to naturalisation. During the COVID-19 pandemic, access to the exams was hampered even more as many exam sessions were cancelled. In 2020, the Polish Commissioner for Human Rights intervened before the Ministry of Education, pointing on the foreigners' problems with the access to the exams (exams organised too rarely, not enough places for all interested persons). The Ministry answered that they are working on

⁷²² Article 18 Law of 2 April 2009 on Polish citizenship.

⁷²³ Article 19-21 Law on Polish citizenship.

⁷²⁴ Article 30 Law on Polish citizenship.

⁷²⁵ Article 30(1)(3) Law on Polish citizenship.

⁷²⁶ Information provided by the Ministry of Interior and Administration, 10 January 2020, 20 January 2021 ad 25 January 2022. The Ministry informed that those data may be incomplete as the decisions on declaration as Polish citizen are sometimes registered by the Voivode Offices with a delay.

⁷²⁷ Article 30(1)(1), (2) and (6) Law on Polish citizenship.

⁷²⁸ Article 30(2) Law on Polish citizenship.

⁷²⁹ Information from the official exams' website, available (in Polish) at: <https://bit.ly/2uBSEMw>.

⁷³⁰ P. Kaźmierkiewicz, 'Obywatelstwo' in A. Górská, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), 25.

the improvements in this regard, however it concluded that the present system was generally sufficient.⁷³¹ In 2021, the Ministry continued this work (the amendments to the Polish Language Act were devised and discussed, the idea of online State exams was tried out)⁷³², but it was inconclusive. In 2021, the exams were organized on four different dates.

Other obstacles to naturalisation through a declaration as a Polish citizen are particularly the difficulties with providing a legal entitlement to stay in a residential property in writing (e.g. owners often do not want to sign a rental agreement, prefer oral agreements) and civil registration documents from a country of origin.⁷³³

The beneficiary of international protection submits the application for declaration as a Polish citizen to Voivode who has jurisdiction over their current place of stay.⁷³⁴ The fee for obtaining citizenship is 219 PLN/47 EUR. The Voivode decision can be appealed to the Minister of Interior.⁷³⁵ The procedure should last one month or two, if it is a complicated case. In practice though it lasts often longer.⁷³⁶

5. Cessation and review of protection status

Indicators: Cessation

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the cessation procedure? Yes No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure? Yes No
3. Do beneficiaries have access to free legal assistance at first instance in practice? Yes With difficulty No

Poland has a single procedure (“deprivation”) for the cessation and/or withdrawal of international protection. Refugee status is ceased if a foreigner:⁷³⁷

- a. Has voluntarily settled in the country, which he or she had left for fear of persecution;
- b. Has voluntarily accepted protection of a country he or she is a citizen of;
- c. Has voluntarily accepted the citizenship of the country of origin, which he or she had lost before;
- d. Has acquired new citizenship and he or she is under the protection of the state whose citizen he or she has become;
- e. Can no longer refuse to accept the protection of the country of origin, because the reasons why he or she was granted a refugee status no longer exist, and he or she did not present convincing arguments as to why he or she cannot accept this protection. The same applies to countries of habitual residence for stateless persons.

Subsidiary protection is ceased, if the circumstances which were the reason for granting subsidiary protection no longer exist or have changed in such a way that a foreigner no longer requires protection.⁷³⁸

⁷³¹ Commissioner for Human Rights, ‘Utrudniony dostęp cudzoziemców do egzaminów z jęz. polskiego’, 9 July 2020, available in Polish at: <http://bit.ly/3b09h5L>.

⁷³² Information provided by the Ministry of Education and Science, 26 January 2022.

⁷³³ P. Kaźmierkiewicz, ‘Obywatelstwo’ in A. Górka, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), 23-24.

⁷³⁴ Article 36(1) Law on Polish Citizenship.

⁷³⁵ Article 10(4) Law on Polish Citizenship.

⁷³⁶ Information provided by the President’s Office, 19 January 2017.

⁷³⁷ Article 21(1) Law on Protection.

⁷³⁸ Article 22(1) Law on Protection.

The cessation procedure is initiated by the Head of the Office for Foreigners *ex officio* or on other authorities' demand.⁷³⁹ Asylum seeker should be informed about the initiation of the respective proceedings as soon as they started. The procedure should last no longer than 6 months.⁷⁴⁰ During the procedure a refugee or a subsidiary protection beneficiary should be interviewed, particularly in order to present reasons as to why he or she should not be deprived of the protection. A foreigner can also present arguments in writing.⁷⁴¹

A decision on deprivation of international protection is issued by the Head of the Office for Foreigners and can be appealed to the Refugee Board with suspensive effect. A foreigner should leave Poland within 30 days from the day of the delivery of the Refugee Board's decision on cessation of international protection. In the same period, he or she can make the complaint to the Voivodeship Administrative Court in Warsaw. This onward appeal does not entail automatic suspensive effect but a foreigner can request the court to suspend final decision on deprivation of international protection. However, it takes sometimes even a couple of months to suspend the decision by court on the foreigner's demand. During that period a foreigner stays irregularly in Poland, so return proceedings may be initiated against him/her and a removal may be enforced.

Only some refugees and subsidiary protection beneficiaries are entitled to free legal assistance in cessation proceedings, namely those whose income is not higher than 100% of the criteria qualifying them to social assistance.⁷⁴² Free legal assistance is only provided in the appeal proceedings; it does not include the first-instance procedure.⁷⁴³ Before the court, the foreigner can apply for free legal assistance by lawyer following the general rules (see [Legal assistance](#)).

A foreigner who was deprived of international protection is obliged to return the residence card immediately to the Head of the Office for Foreigners, no later than 14 days from the moment when a decision concerning cessation of the international protection becomes final.⁷⁴⁴

There is a single procedure in Poland that includes the cessation and withdrawal of international protection. In consequence, the beneficiary may receive a decision on a deprivation of international protection, as it is called in Poland, which can be issued on the grounds justifying only a cessation or only a withdrawal or both. The Office for Foreigners shares the data on a general number of 'deprivations' and how often the exact legal basis was used in the respective decisions. From 2017 to 2021, the total number of persons deprived international protection as a result of a cessation or withdrawal procedure was as follows:

Number of persons deprived of international protection (ceased and/or withdrawn)					
	2017	2018	2019	2020	2021
Deprivation of refugee status	0	11	6	12	4
Deprivation of subsidiary protection	80	157	100	95	32

Source: Office for Foreigners.

The above figures do not distinguish between cessation and withdrawal procedures as both fall under the category "deprivation of international protection" in the statistics shared by the OFF. Nevertheless, based on an analysis of the grounds used to deprive international protection, cessation and withdrawal procedures seem to have been applied in recent years as follows: in 2018, 11 foreigners (incl. 9 citizens of Russia) had their refugee status ceased (10 refugees) or withdrawn (1 person) and 157 (incl. 154 citizens of Russia)

⁷³⁹ Article 54b Law on Protection.

⁷⁴⁰ Article 54a Law on Protection.

⁷⁴¹ Article 54d(1) Law on Protection.

⁷⁴² Article 69d(2) Law on Protection.

⁷⁴³ Article 69d Law on Protection.

⁷⁴⁴ Article 89l(1) and (3) Law on Protection.

had their subsidiary protection ceased (153 beneficiaries) and/or withdrawn (13).⁷⁴⁵ In 2019, 6 decisions on a cessation of a refugee status were issued (incl. 5 citizens of Russia) and 100 (all concerning citizens of Russia) – on deprivation of subsidiary protection (97 ceased and 11 withdrawn).⁷⁴⁶ In 2020, 95 Russian citizens had their subsidiary protection ceased (94) and/or withdrawn (4). In 12 cases the refugee status was ceased (11 Russian citizens, 1 Sri Lankan national).⁷⁴⁷ In 2021, 32 Russian citizens had their subsidiary protection ceased (28) and/or withdrawn (4). In 4 cases the refugee status was ceased (all Russian citizens).⁷⁴⁸

As regards the grounds for depriving international protection, the following cessation grounds were applied in 2021:

Grounds for cessation of international protection in 2021	
Cessation of refugee status	
The beneficiary voluntarily settled in the country, which he or she had left for fear of persecution.	0
The beneficiary voluntarily accepted protection of a country he or she is a citizen of	4 (Russia)
The beneficiary can no longer refuse to accept the protection of the country of origin, because the reasons why he or she was granted a refugee status no longer exist, and he or she did not present convincing arguments as to why he or she cannot accept this protection. The same applies to countries of habitual residence for stateless persons.	0
Cessation of subsidiary protection	
The circumstances which were the reason for granting subsidiary protection no longer exist or have changed in such a way that a foreigner no longer requires protection	28 (Russia)

Source: Authors of this report based on an analysis of the statistics shared by the Office for Foreigners.

As mentioned above, the OFF does not distinguish between cessation and withdrawal procedures. The table above was thus created by the authors of this report based on an analysis of the grounds used by the OFF to deprive international protection with the aim to provide an overview of the most applied grounds in practice.

These figures reveal that mostly **Russian Federation** citizens are deprived of international protection in Poland. Cessation is not systematically applied to them, however. 89 Russian citizens obtained international protection in Poland in 2021, 66 in 2020, 76 in 2019, 70 in 2018, 86 in 2017 and 67 in 2016.⁷⁴⁹ In 2018-2021 Russian citizens were deprived of refugee status predominantly because of the fact that they have voluntarily accepted protection of the Russian Federation. They were deprived of subsidiary protection predominantly due to the fact that the circumstances which were the reason for granting subsidiary protection no longer existed or have changed in such a way that a foreigner no longer required protection (in 150 cases in 2018, 97 in 2019, 94 in 2020 and 28 in 2021).⁷⁵⁰ HFHR concludes that Russian citizens have mostly been deprived of protection as a result of travel to their country of origin after they obtained

⁷⁴⁵ Information provided by the Office for Foreigners, 15 January 2019.

⁷⁴⁶ Information provided by the Office for Foreigners, 22 January 2020.

⁷⁴⁷ Information provided by the Office for Foreigners, 26 January 2021.

⁷⁴⁸ Information provided by the Office for Foreigners, 26 January 2022.

⁷⁴⁹ Information provided by the Office for Foreigners, 1 February 2018, 15 January 2019, 22 January 2020, 26 January 2021 and 26 January 2022.

⁷⁵⁰ Information provided by the Office for Foreigners, 15 January 2019, 22 January 2020 and 26 January 2021.

international protection.⁷⁵¹ The finding is confirmed by the SIP. According to this NGO, returning to the country of origin – even only in order to obtain needed documents or to take care of ill family members – is a reason to deprive refugees and beneficiaries of subsidiary protection of their status. The same effect may be entailed by obtaining a passport in the embassy of the country of origin. SIP also points out that beneficiaries of international protection are deprived protection due to a changed situation in Chechnya. However, in its opinion, both individual and general circumstances of those cases are not scrutinized sufficiently by Polish authorities.⁷⁵²

In 2018-2021 some Russian citizens were also deprived subsidiary protection because they were considered a security threat or there were serious grounds to believe that they committed a crime (see [Withdrawal of protection status](#)).⁷⁵³

In 2019, only one foreigner submitted a complaint to the Voivodeship Administrative Court in Warsaw against a decision depriving him refugee status. His complaint was rejected.⁷⁵⁴ Eleven foreigners complained to the court in 2019 against deprivation of subsidiary protection. The court dismissed 5 such complaints. None of the complaints in this regard was considered justified in 2019.⁷⁵⁵ No data were made available for 2020. In 2021, only four foreigners complained on depriving them subsidiary protection. The court considered 13 cases concerning deprivation of international protection. Only in one, the court revoked the first- and second-instance decisions, in the remaining cases it dismissed the beneficiaries' complaints.⁷⁵⁶

In the judgment of 9 June 2017 (II OSK 904/17), the Supreme Administrative Court held that the administrative authorities entitled to cease or withdraw the refugee status cannot in those proceedings assess whether a foreigner should be granted subsidiary protection instead. In consequence, even when the authorities are aware of the reasons to grant subsidiary protection, they cannot do it *ex officio*, they can only deprive a foreigner of a refugee status, indirectly accepting that he may be send back to danger.⁷⁵⁷

6. Withdrawal of protection status

Indicators: Withdrawal

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the withdrawal procedure? Yes No
2. Does the law provide for an appeal against the withdrawal decision? Yes No
3. Do beneficiaries have access to free legal assistance at first instance in practice? Yes With difficulty No

Refugee status is withdrawn (“revoked”) where the person:⁷⁵⁸

⁷⁵¹ This reasoning was confirmed by the Supreme Administrative Court in Decision No II OSK 1493/14, 23 February 2016: Lex.pl, ‘NSA: uchodźcy z Czeczenii muszą wrócić do kraju’, 26 February 2016, available (in Polish) at: <https://bit.ly/2w3JQiM>.

⁷⁵² M. Sadowska, ‘Pozbawienie cudzoziemca ochrony międzynarodowej w Polsce’ in SIP, *Prawa cudzoziemców w Polsce w 2019 roku. Raport*, 2020, available (in Polish) at: <https://bit.ly/3jT7weM>, 24-25; A. Pulchny, ‘Pozbawienie cudzoziemca ochrony międzynarodowej w Polsce’ in Stowarzyszenie Interwencji Prawnej (SIP), *SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r.* (2019), available (in Polish) at: <https://bit.ly/2w3KcpC>, 24-25.

⁷⁵³ Information provided by the Office for Foreigners, 15 January 2019, 22 January 2020 and 26 January 2021.

⁷⁵⁴ Information provided by the Voivodeship Administrative Court in Warsaw, 15 January 2020.

⁷⁵⁵ *Ibid.*

⁷⁵⁶ Information provided by the Voivodeship Administrative Court in Warsaw, 24 January 2022.

⁷⁵⁷ A. Pulchny, ‘Pozbawienie cudzoziemca ochrony międzynarodowej w Polsce’ in Stowarzyszenie Interwencji Prawnej (SIP), *SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r.* (2019), available (in Polish) at: <https://bit.ly/2w3KcpC>, 25.

⁷⁵⁸ Article 21(1) Law on Protection.

- a. Has withheld information or documents, or presented false information or documents of significance for the asylum proceedings;
- b. Has committed a crime against peace, a war crime or a crime against humanity, as understood by international law;
- c. Is guilty of the acts contrary to aims and principles of the United Nations, as specified in Preamble and Articles 1 and 2 of the UN Charter.

Subsidiary protection is withdrawn where:⁷⁵⁹

- a. It has been revealed that a foreigner has withheld information or documents or presented false information or documents of significance for the asylum proceedings;
- b. There are serious grounds to believe that a foreigner has committed a crime against peace, a war crime or a crime against humanity, as understood by international law;
- c. There are serious grounds to believe that a foreigner is guilty of the acts contrary to aims and principles of the United Nations, as specified in Preamble and article 1 and 2 of the UN Charter;
- d. There are serious grounds to believe that a foreigner has committed a crime in Poland or an act outside Poland which is a crime according to Polish law;
- e. There are serious reasons to believe that a foreigner poses a threat to state security or to the safety of the society.

Subsidiary protection may also be revoked if, after a foreigner has been granted subsidiary protection, it has been revealed that the beneficiary had committed a crime under Polish law punishable by prison sentence and had left his or her home country for the sole purpose of avoiding punishment.⁷⁶⁰

There is a single procedure in Poland that includes the cessation and withdrawal of international protection. In consequence, the beneficiary may receive a decision on a deprivation of international protection, as it is called in Poland, which can be issued on the grounds justifying only a cessation or only a withdrawal or both. The Office for Foreigners shares the data on a general number of 'deprivations' and how often the exact legal basis was used in the respective decisions.

In general, the international protection is rather ceased than withdrawn. In 2018, 11 foreigners (incl. 9 citizens of Russia) had their refugee status ceased (10 refugees) or withdrawn (1 person) and 157 (incl. 154 citizens of Russia) had their subsidiary protection ceased (153 beneficiaries) and/or withdrawn (13).⁷⁶¹ In 2019, 6 decisions on cessation of a refugee status were issued (incl. 5 citizens of Russia) and 100 (all concerning citizens of Russia) – on deprivation of subsidiary protection (97 ceased and 11 withdrawn).⁷⁶² In 2020, 95 Russian citizens had their subsidiary protection ceased (94) and/or withdrawn (4). In 12 cases the refugee status was ceased (11 Russian citizens, 1 Sri Lankan national), none was withdrawn.⁷⁶³ In 2021, 32 Russian citizens had their subsidiary protection ceased (28) and/or withdrawn (4). In 4 cases the refugee status was ceased (all Russian citizens).⁷⁶⁴

Grounds for withdrawal of international protection in 2021	
Withdrawal of refugee status	0
Withdrawal of subsidiary protection	
There are serious reasons to believe that a foreigner poses a threat to state security or to the safety of the society.	4 (Russia)

Source: Authors of this report based on an analysis of the statistics shared by the Office for Foreigners.

⁷⁵⁹ Article 22(1) Law on Protection.

⁷⁶⁰ Article 22(4) Law on Protection.

⁷⁶¹ Information provided by the Office for Foreigners, 15 January 2019.

⁷⁶² Information provided by the Office for Foreigners, 22 January 2020.

⁷⁶³ Information provided by the Office for Foreigners, 26 January 2021.

⁷⁶⁴ Information provided by the Office for Foreigners, 26 January 2022.

The “deprivation” procedure in case of withdrawal is the same as in case of cessation and it is described in the section on [Cessation](#).

B. Family reunification

1. Criteria and conditions

Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification?
 Yes No
❖ If yes, what is the waiting period?
2. Does the law set a maximum time limit for submitting a family reunification application?
Simplified procedure Yes No
❖ If yes, what is the time limit?
6 months
3. Does the law set a minimum income requirement? Yes No

The procedure of family reunification is governed by Article 159 of the Law on Foreigners. Family members who are eligible to reunite with the beneficiary are:

- spouse (marriage has to be recognised under the Polish law, but does not have to be concluded before the beneficiary’s entry to Poland);
- minor child (biological or adopted) of the family member dependent on them and under their parental authority
- minor child (biological or adopted) of the beneficiary and his or her spouse dependent on them and under their parental authority

In case of a minor beneficiary of international protection, family members who can reunite with them are not only parents but also grandparents or other responsible adult under Polish law (e.g. legal guardians). A beneficiary can also apply for a residence permit for a family member, who already stayed in Poland without permit when the beneficiary had applied for protection. In such a case they have to prove that family has already existed in the country of origin.

There is no waiting period for family reunification in Poland, nor is there a time limit. Foreigners who have obtained refugee status or subsidiary protection are eligible for a simplified family reunification procedure, but still it is very complicated and expensive procedure. If they submit a relevant application with a Voivode of proper venue within 6 months from the date of obtaining protection within the territory of Poland, they are not obliged to comply with the conditions of having health insurance, a stable source of income or accommodation in Poland. It must, nonetheless, be remembered that when the residence permit is granted, the beneficiary’s family residing outside Poland is obliged to obtain a visa from a Polish consulate. The requirements under which a visa is obtained, in turn, include having adequate financial means and health insurance.⁷⁶⁵

There are no differences between refugees and beneficiaries of subsidiary protection as to the family reunification conditions. The beneficiary is not required to know Polish, is not subject to DNA tests, but has to present original documents certifying the family ties, translated into Polish by a sworn translator.

⁷⁶⁵ HFHR, *Family Reunification of Foreigners in Poland, Law and Practice*, June 2016, available at: <http://bit.ly/2ILG11B>, 19-20.

Data on family reunification of beneficiaries of international protection are generally not disaggregated by the authorities.⁷⁶⁶ However, for 2021 the Office for Foreigners shared that 91 family members applied for family reunification with the beneficiary, which led to 62 decisions granting this permit.⁷⁶⁷ The main challenges for beneficiaries of international protection to be reunited with their family members are: a narrow definition of family members (e.g. civil partners are excluded), lengthy and complicated and costly procedure (submitting and translating official documents, journey to Poland, to Polish consulate, paying several visits to the consulate).⁷⁶⁸

2. Status and rights of family members

Family members may be granted a temporary residence permit, if they are not in Poland or if they do not apply for an asylum after the arrival. The temporary residence permit in order to facilitate family reunification of beneficiaries of international protection is granted up to 3 years. It happens that temporary stay is issued for only one year. The foreigner is then issued a residence card upon arrival to Poland with an expiry date conforming to the expiry date of the permit that was granted. The card contains the foreigner's personal data, residence address, annotation confirming the right to be employed in Poland, and the expiry date.

Foreigners who have been granted a residence permit under family reunification procedure may take employment in Poland without the need to apply separately for a work permit, and children under 18 years of age are entitled to free education in Polish schools. Family members of foreigners granted refugee status or of subsidiary protection are also entitled to social benefits. They also are entitled to be covered by the Individual Integration Programme provided that a relevant application is submitted with one of the Poviats Family Support Centres (*powiatowe centra pomocy rodzinie*). Such an application must be submitted within 60 days from the date when the temporary residence permit is granted.

C. Movement and mobility

1. Freedom of movement

Refugees and subsidiary protection beneficiaries have full freedom of movement in Poland. They can freely choose a place where they want to live, authorities do not require from them to live in some particular areas of the country.

There are no specific facilities for refugees and subsidiary protection beneficiaries in Poland. They are entitled to stay in reception centres up until 2 months after the decision on the asylum application becomes final. Afterwards they have to organize all living conditions themselves.

Beneficiaries are obliged to reside in a place (within the specified voivodeship) agreed with the authorities during the 12-month period of the Individual Integration Programme (IPI) (see [Social welfare](#)).⁷⁶⁹ In general, change of a place of residence is equated with the termination of the programme. However, a change of residence is allowed in particularly justified cases, e.g. in case of:

- 1) finding a job in another region with a possibility of accommodation;
- 2) obtaining an accommodation in another region;
- 3) family reunification, when the possibility to live together exists;
- 4) medical reasons justifying a move.

⁷⁶⁶ A. Kulesa, 'Łączenie rodzin' in A. Górską, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), 9.

⁷⁶⁷ Information from the Office for Foreigners, 26 January 2022.

⁷⁶⁸ *Ibidem*, 21.

⁷⁶⁹ Article 94 of Law of 12 March 2004 on social assistance.

In those cases, the beneficiary has to inform authorities about the move and its reasoning. Then, the programme can continue in a new place of living.

Refugees and subsidiary protection beneficiaries are not assigned to a specific residence for reasons of public interest or public order.

2. Travel documents

Refugees obtain travel documents mentioned in the Refugee Convention, which are valid for 2 years from the day of issuance.⁷⁷⁰ Subsequent travel documents are issued on the refugee's demand.⁷⁷¹ The document is issued free of charge, whether a first travel document or a subsequent one. The authority responsible for issuance of refugee travel documents is the Head of the Office for Foreigners.⁷⁷² The procedure concerning refugee travel documents should last one month or two, if it is a complicated case.

A refugee travel document has to be received in person. A travel document for a child under the age of 13 should be received in person by his or her legal representative.⁷⁷³ In case of *force majeure* preventing a foreigner to receive a document in person, the refugee travel document can be received by a proxy.⁷⁷⁴ Foreigners are obliged to give their fingerprints any time they apply for a refugee travel document.⁷⁷⁵ The obligation to give fingerprints and mandatory personal presence to receive the travel document means that most of the time refugees willing to obtain a new travel document have to travel to Warsaw twice, even if they live far away. It is time-consuming and costly.

Beneficiaries of subsidiary protection are entitled to a Polish travel document for foreigners. The application for the document should be submitted to a Voivode having jurisdiction over the current place of stay of a foreigner and requires a fee of 100 PLN / 21 €.⁷⁷⁶

A Polish travel document will be issued only if a beneficiary of subsidiary protection: has lost his or her passport or the passport has been damaged or its validity has expired, *and* he or she is unable to obtain a new passport from the authorities of the country of origin.⁷⁷⁷ Inability to obtain a new passport from the authorities of the country of origin is often understood by the Polish authorities as a requirement for beneficiaries to present written evidence that they have contacted the embassy of their country of origin and that this authority has refused to issue a passport for them. Often foreign authorities are unwilling to issue a document confirming those facts. Moreover, some beneficiaries of subsidiary protection are afraid to contact authorities of their country of origin, because they sought protection in Poland due to the persecution or harm they experienced from the authorities of their country of origin.

The procedure concerning the Polish travel document for a foreigner should last one month or two, if it is a complicated case. In practice, however, it may last longer.

Refusal to issue the Polish travel document for a foreigner can be appealed to the Head of the Office for Foreigners.

The Polish travel document for a foreigner entitles to multiple border crossings and is valid for 1 year.⁷⁷⁸ After that period, a beneficiary of subsidiary protection needs to apply for another such document. Even in case of an application for a subsequent Polish travel document, after the previous one expires, beneficiaries

⁷⁷⁰ Article 89i(1) and (3) Law on Protection.

⁷⁷¹ Article 89m Law on Protection.

⁷⁷² Article 89n(1) Law on Protection.

⁷⁷³ Article 89ib(1) and (2) Law on Protection.

⁷⁷⁴ Article 89ib(4) Law on Protection.

⁷⁷⁵ Articles 89i(4) and 89m Law on Protection.

⁷⁷⁶ Article 257(1) Law on Foreigners.

⁷⁷⁷ Article 252(3) Law on Foreigners.

⁷⁷⁸ Article 253 Law on Foreigners.

of subsidiary protection are expected to again take measures in order to obtain the passport from their country of origin.⁷⁷⁹

	Number of Refugee Convention travel documents (issued to recognized refugees)	Number Polish travel documents (issued to beneficiaries of subsidiary protection)
2017	658	102
2018	555	Not available
2019	681	38
2020	538	129
2021	950	238

Source: Authors of this report based on an analysis of the statistics shared by the Office for Foreigners.

D. Housing

Indicators: Housing	
1. For how long are beneficiaries entitled to stay in reception centres?	2 months
2. Number of beneficiaries staying in reception centres as of 31 December 2021:	1,076

Beneficiaries of international protection are allowed to stay in the centres for 2 months after being served with the positive decision.⁷⁸⁰

The state does not provide housing. There is a general lack of social housing to nationals as well, so the situation of beneficiaries is difficult in this regard.⁷⁸¹ General conditions to obtain housing under the law are hard to fulfil for beneficiaries because of their relatively short stay in Poland and mobility.⁷⁸² Some municipalities provide singular flats annually, dedicated for beneficiaries e.g.: 5 in **Warsaw**, 4 in **Lublin**, 4 in **Gdansk**. Within the 12-month period of Individual Integration Programme (IPI), individuals may receive a financial benefit to pay for a flat. Yet, according to social assistants in the Centre for Social Assistance in Wolomin, (suburbs of Warsaw) the owners are not willing to rent flats to refugees and often demand higher fees.⁷⁸³

Many NGOs are of the opinion that beneficiaries of international protection face homelessness and destitution in Poland.⁷⁸⁴ Some researchers stress that although there is no data on the number of homeless beneficiaries of international protection, there is a high risk that the number is substantial.⁷⁸⁵ There is a study in which episodes of homelessness or severe housing conditions were reported in the period between living in the reception centre and benefitting from integration programme or after the integration assistance

⁷⁷⁹ Article 254 Law on Foreigners.

⁷⁸⁰ Article 74(1)2 Law on Protection.

⁷⁸¹ Maryla Koss-Goryszewska 'Mieszkalnictwo' in A. Górka, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), available (in Polish) at: <https://bit.ly/2w3NkBS>, 27.

⁷⁸² Ibidem, 29.

⁷⁸³ Rzeczpospolita, 'Bez mieszkań dla uchodźców', 13 October 2015, available (in Polish) at: <http://bit.ly/2IQYYJS>.

⁷⁸⁴ Wyborcza, 'Uchodźcy w Polsce mieszkają w squatach i ruderach. Fundacja szuka dla nich tanich mieszkań', 10 November 2016, available (in Polish) at: <http://bit.ly/2kqrrpE>. There was an extended research on this for UNHCR in 2013, available at: <http://bit.ly/2kKwLAI>.

⁷⁸⁵ Maryla Koss-Goryszewska 'Mieszkalnictwo' in A. Górka, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), available (in Polish) at: <https://bit.ly/2w3NkBS>, 30.

ended.⁷⁸⁶ The Foundation Ocalenie, running a project called “Welcome home”, promoting private sponsoring for beneficiaries, within which it helped 53 beneficiaries (as of August 2019) in i.a. renting a flat in **Warsaw**, informs that more than 25% beneficiaries in Poland can face homelessness. The main obstacles to find a flat are high prices and discrimination.⁷⁸⁷ As another study shows, generally a negative narrative about refugees is prevalent in the public discourse, which leads to a systematic growth of the negative attitudes towards refugees in Poland. The lack of knowledge about the assistance offered to refugees in Poland reinforces stereotypical ideas about welfare support accompanied with the complete passivity and demanding nature of the refugees.⁷⁸⁸

According to the report from 2020, many beneficiaries still experience homelessness. Stereotypes and negative attitude towards foreigners prevail. Finding accommodation for large families is even more challenging. IPI is not tailored to tackle these problems.⁷⁸⁹

Another extensive study on integration from 2020 shows that housing is one of the major issues for both asylum seekers and beneficiaries of international protection in Poland. Applicants who had lived outside the facilities run by the Office for Foreigners during the procedure, seem to be better prepared for the numerous challenges, such as finding adequate housing for a reasonable price. The shortage of affordable housing makes the situation of persons with international protection particularly difficult. Consequently, inadequate quality of housing results in slowing down the process of adaptation of foreigners to the new socio-cultural conditions of the host country, and may have a negative impact on their physical and mental health.⁷⁹⁰ The difficulty of finding adequate and affordable housing is one of the important reasons why some beneficiaries of international protection decide to leave Poland and search for better living conditions in the countries of Western Europe where there might be denser diaspora and other support networks.⁷⁹¹

The main obstacles faced by people with a refugee experience with regard to housing, as identified by a group of stakeholders (NGOs, local authorities) at the meeting in 2021⁷⁹² include: problems with renting on the commercial market, the Individual Integration Program that is not well adjusted to the needs of its beneficiaries, the lack of recognition of the needs of people with refugee experience in local housing policies, the lack of governmental housing, anti-refugee discourse of authorities, the lack of significant cooperation of local authorities with NGOs, as well as the lack of an efficient crisis aid system.

E. Employment and education

1. Access to the labour market

Refugees and beneficiaries of subsidiary protection have access to labour market on the same conditions as Polish citizens. There is no difference between refugees and subsidiary protection beneficiaries. Access to employment is not limited to certain sectors.

⁷⁸⁶ Lukaszewicz, K., ‘Exile to Poverty: Policies and Poverty Among Refugees in Poland’, *International Migration* Vol. 55 (6) 2017, 63.

⁷⁸⁷ Information available at: <https://bit.ly/3d9U426>.

⁷⁸⁸ B. Łaciak, J. Seges Frelak ‘The wages of fear. Attitudes towards refugees and migrants in Poland’, Foundation Institute of Public Affairs, Warsaw 2018, available at: <http://bit.ly/32oTsAQ>.

⁷⁸⁹ NGOs alternative report to the government report on implementation of the Convention of the Rights of the Child, submitted to UNICEF, August 2020, available (in Polish) at: <https://bit.ly/3s3hZXX>.

⁷⁹⁰ K. Sobczak-Szelc, M. Pachocka, K. Pędziwiatr, J. Szałańska, ‘Integration Policies, Practices and Responses. Poland – Country Report’, *Multilevel Governance of Mass Migration in Europe and Beyond Project* (#770564, Horizon2020), available at: <http://bit.ly/3bfjTxL>, 11.

⁷⁹¹ Ibidem, 134.

⁷⁹² The housing situation of persons granted international protection and persons under the asylum procedure – NIEM/V4NIEM National Coalition meeting, 22 April 2021, available at: <https://bit.ly/343ApkL>

In practice they have access to employment although they face obstacles, e.g. language skills, qualifications, low awareness of employers about their full access to the labor market. Additionally, labour market institutions are not prepared to help beneficiaries of international protection to enter the labour market in Poland, despite a clear obligation to do so in the law. NGOs report that foreign employees face discrimination, often on multiple basis.⁷⁹³

Low language skills and low professional qualifications results in unemployment or employment with low salary; instability of employment; small chances for a promotion.⁷⁹⁴ It is easier to find a job in bigger cities, e.g. in **Warsaw** where vocational trainings are provided in foreign languages. Support of the state is only provided during the 12-month Individual Integration Programme (IPI). Although beneficiaries of international protection have access to professional qualifications programs, they are held in Polish which exclude their participation in practice. There are no programs specially dedicated to foreigners improving professional qualification with learning Polish. Additionally, the specific needs of foreigners are not taken in to account.⁷⁹⁵

In the report from 2020, the key problems were identified as: insufficient knowledge of Polish by beneficiaries of international protection, modest linguistic skills of the labour market services and limited ties and social networks, which often act as barriers for them to find a job. Assistance provided by social workers within IPI in most cases consist of support in completing documentation necessary to register at labour office, searching for job offers and contacting a potential employer as well as informing about the possibility of participating in vocational training in Polish. Vocational trainings on the other hand do not respond to market needs.

An important finding of the study is that despite early and effective inclusion in the labour market which gives a greater chance for integration of beneficiaries of international protection with Polish society, there is a lack of mechanism to mainstream integration of beneficiaries of international protection in labour market. There is also a lack of monitoring system for acquisition of work skills, and recognition of qualifications as well as for labour market inclusion of beneficiaries of international protection. Moreover, data related to trainings and effectiveness of IPI in relation to labour market inclusion are not collected in a systematic way.⁷⁹⁶

Polish NGOs play an invaluable role in helping migrants and refugees and it is not different in the area of integration on the labour market. The report lists all the projects and activities NGO have ran in 2020 in order to facilitate access to labour market for beneficiaries.⁷⁹⁷ The COVID-pandemic made it ever harder to obtain and maintain workplace.⁷⁹⁸ Some NGOs raised money for alimentionation for beneficiaries who lost their jobs during pandemic.⁷⁹⁹

According to the reports for 2021, one of the key problems remains insufficient knowledge of Polish language by beneficiaries of international protection. Refugees interviewed for research often bring up that employers do not have time for explanations and translations. Hence, provision of long-term and effective

⁷⁹³ P. Mickiewicz, *Dyskryminacja cudzoziemców na rynku pracy* [in] Stowarzyszenie Interwencji Prawnej (SIP), *SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r.* (2019), available (in Polish) at: <http://bit.ly/2S507LV>, 53.

⁷⁹⁴ Mikołaj Pawlak 'Zatrudnienie' in A. Górską, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), 32.

⁷⁹⁵ Mikołaj Pawlak, 'Kwalifikacje zawodowe' in A. Górską, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), 37.

⁷⁹⁶ K. Sobczak-Szelc, M. Pachocka, K. Pędziwiatr, J. Szałańska, 'Integration Policies, Practices and Responses. Poland – Country Report', *Multilevel Governance of Mass Migration in Europe and Beyond Project* (#770564, Horizon2020), available at: <http://bit.ly/3bfjTxL>, 134.

⁷⁹⁷ K. Sobczak-Szelc, M. Pachocka, K. Pędziwiatr, J. Szałańska, 'Integration Policies, Practices and Responses. Poland – Country Report', *Multilevel Governance of Mass Migration in Europe and Beyond Project* (#770564, Horizon2020), available at: <http://bit.ly/3bfjTxL>, 46-47.

⁷⁹⁸ M.K. Nowak, 'Poprosiła o postojowe, zerwano umowe. Uchodźcy dziś nie mają na chleb, jutro straca mieszkanie,' 30 May 2020, available (in Polish) at: <http://bit.ly/3b1D79R>.

⁷⁹⁹ See Ocalenie Foundation news, *Potrzebna pomoc żywnościowa*, available (in Polish) at: <http://bit.ly/2ORh924>.

language courses remains one of the key factors needed for improving the access to labour market. Meanwhile merely around 35 percent of beneficiaries of international protection attend language courses. This results from either lack of the courses in some localities, inability to reconcile work with participation in a course due to the latter's hours, or low attractiveness of the courses (i.e. their failure to meet the needs of refugees).⁸⁰⁰

2. Access to education

The situation does not differ from the situation of asylum seekers (see above [Access to education](#)). The situation of beneficiaries can be actually worse because the schools near the reception centres are more familiar with the challenges related to foreign pupils than other schools in the country.

Data on the number of foreign children is collected through the nationwide Educational Information System. On its basis, it can be concluded that in March 2021, there were 278 children with international protection status in elementary schools and 66 children in secondary schools. The analysis of this data and comparison with other information shows that the system of collecting information on foreign students is flawed and data is incomplete. This is mainly due to the difficulties in correctly determining the legal status of pupils by the school staff.⁸⁰¹

A major challenge for the education of children with international protection status in Poland is the lack of appropriate policies – there is no formal long-term strategy involving all concerned partners (ministry, educational institutions, research institutions, expert organizations, representatives of schools and local authorities) to facilitate integration of beneficiaries through education. At the central level, there is no mechanism for monitoring and evaluating educational policy and the educational outcomes of children and teenagers.

During COVID pandemic, remote teaching required access to technical equipment which was problematic. Also, remote education was conducted only in Polish, which was a challenge to some families of beneficiaries.⁸⁰²

The main finding of the report from 2020 dealing with education of beneficiaries is that even though there are instruments stipulated by the law and designed for foreign children, such as additional Polish language classes, compensatory classes, preparatory classes and teachers' assistants, due to insufficient funding their implementation is often inadequate. It turned out that the biggest shortcoming of the inclusion of refugee children in the education system is lack of trainings and methodological support for teachers who work with them.⁸⁰³

With regard to education of adults, the most important issues appeared to be learning of Polish language and recognition of education obtained in the countries of origin. It turned out that the attendance of beneficiaries of international protection in the courses is very low (approx. 35 percent) which results from either lack of the courses in some localities, inability to reconcile work with participation in a course due to the latter's hours, or low attractiveness of the courses (i.e. their failure to meet the needs of refugees). The procedures of recognition of qualifications from the country of origin, are expensive and complicated. However, in order to enable continuation of education for refugees, many universities in Poland offered

⁸⁰⁰ RESPOND Poland Policy Brief, Adult Refugees' Integration in Poland, 2021, <https://bit.ly/3vrD0QZ>

⁸⁰¹ K. Potoniec (ed), Comparative analysis of instruments supporting the integration of pupils under international protection in the educational systems of the Czech Republic, Poland and Hungary, 2021, <https://bit.ly/35FtMps>, p. 12.

⁸⁰² Ibidem.

⁸⁰³ K. Sobczak-Szelc, M. Pachocka, K. Pędziwiatr, J. Szałańska, 'Integration Policies, Practices and Responses. Poland – Country Report', *Multilevel Governance of Mass Migration in Europe and Beyond Project* (#770564, Horizon2020), available at: <http://bit.ly/3bfjTxL>, p. 135.

facilitation in the mentioned procedures together with providing scholarships that would ease refugees' admission for studies.⁸⁰⁴

As reported in 2021, in Poland beneficiaries are neither provided with opportunities to learn the Polish language sufficiently good to master it nor do they have a guarantee to work according to their professions due to the difficult procedure of recognition of diplomas. Furthermore, the possibilities for refugees to improve skills and qualifications are very limited. One explanation of such a situation is a fragmented integration policy that is dispersed among various public institutions, lacking a holistic approach.⁸⁰⁵

F. Social welfare

Beneficiaries of international protection have access to social welfare on equal terms as nationals. There is no difference drawn between refugees and subsidiary protection beneficiaries.

1. Forms of social assistance

Social assistance can be provided *inter alia* for the following reasons: orphaned children; poverty; homelessness; unemployment; disability; long-term or severe disease, violence in the family; the need to protect the child and family; addiction (alcoholism and drug addiction); difficulties in integration of foreigners who were granted refugee status, subsidiary protection, sudden and unpredictable situations (natural / ecological disaster, crisis situation, random event), difficulties in integration due to leaving the care and educational institution or prison.

Social assistance is granted to beneficiaries of international protection whose income does not exceed PLN 776 (161 €) (for a single person), or PLN 600 (121 €) (for a person in the family).⁸⁰⁶ The application for social assistance has to be filed before the Social Welfare Centre (*Ośrodek Pomocy Społecznej*, OPS) which is located in the district where beneficiaries of international protection reside.

Beneficiaries of international protection are also entitled to family benefits and supplements (*świadczenia rodzinne i dodatki*) under two conditions also applicable to Polish nationals: (a) residence in Poland; and (b) the average monthly family income per person in a family, which cannot exceed 674 PLN (149 €) or 764 PLN (169,5 €)⁸⁰⁷ if the child in the family is certified as disabled. They have a right to apply for:

- Family allowance
- Childbirth aid and supplement
- Attendance allowance
- Parental benefit
- Supplement for the beginning of the school year, education away from home, education and rehabilitation of a disabled child, raising a child in a numerous family, raising child alone, and caring a child during parental leave.

Furthermore, beneficiaries of international protection have a right to apply for special financial support under the government "500+ Programme", which is paid on monthly basis. This benefit is for families with children and should be spent on the need of child regardless of income. For families with a disabled child, the net income criterion is 1,200 PLN (266 €). The benefits are granted by Municipal Office of Social Welfare, acting on behalf of the President of the city.

On the other hand, single mothers who are recognised beneficiaries of international protection, still face obstacles to receiving the above-mentioned benefits. According to the law, they have to provide a court

⁸⁰⁴ Ibidem.

⁸⁰⁵ RESPOND Poland Policy Brief, Adult Refugees' Integration in Poland, 2021, <https://bit.ly/3vrD0QZ>

⁸⁰⁶ Since 1 January 2022.

⁸⁰⁷ Ministry of Family, Work and Social Policy, Information, available (in Polish) at: <https://bit.ly/38lyK0m>.

with a writ of execution (*tytuł wykonawczy*) confirming maintenance benefit from the other parent. As a result of these regulations, they are deprived of those benefits because they are not able to present that required document due to their exceptional personal and family situation.⁸⁰⁸

2. Individual Integration Programme (IPI)

Beneficiaries of international protection are also entitled to the Individual Integration Programme (IPI) provided by the Poviats Family Support Centres (*Powiatowe Centra Pomocy Rodzinie*, PCPR). They have to submit an application for IPI with additional documentation to the head of the poviats (starosta) through the PCPR within 60 days from the date beneficiaries of international protection had received a decision on refugee status or subsidiary protection. The application covers also the spouse and the minor children of the applicant if they were covered by the applicant's asylum application. On the other hand, children born in Poland after the completion of the parents' integration program are not granted such assistance. Likewise, spouse of a Polish citizen has been excluded by law from the right to apply for the IPI.

The Programme takes 12 months during which integration assistance is provided. This assistance includes:

- Cash benefits for the maintenance and coverage of expenses related to learning Polish language;
- Payment of the health insurance premium specified in the provisions on general insurance in the National Health Fund;
- Special social counselling.

The social worker carries out the so-called environmental interview with a beneficiary of international protection and his or her family, and then together with them draw up an IPI. The programme determines the amount, scope and forms of integration assistance, as well as mutual obligations of the beneficiary and PCPR. The minimum cash benefit amount is PLN 647 (149 €), per person per month. Financial assistance is paid from the month beneficiaries of international protection applied for IPI or from the moment they left the open centre for foreigners.

Since the 1 October 2018 beneficiaries of international protection are entitled to receive:

1) during the first 6 months of the integration program:

- up to PLN 1376,00 (291 €) per month - for a single person;
- up to PLN 963,20 (204 €) per person per month - in a 2-person family;
- up to PLN 825,60 (175 €) per person per month - in a 3-person family;
- up to PLN 688 (145 €) per month per person - for a family of four and more.

2) in the period from 7 to 12 months of the integration program:

- up to PLN 1238,40 (262 €) per month - for a single person;
- up to PLN 866,88 (183 €) per person per month - in a 2-person family;
- up to PLN 743,04 (157 €) per person per month - in a 3-person family;
- up to PLN 619 (131€) per month per person - for a family of four and more.⁸⁰⁹

PCPR assists the beneficiary to obtain housing in a place of residence his or her choice, where he or she is obliged to reside during the 12-month period of the IPI. A change of residence is allowed in particularly justified cases. In case the beneficiary changes residence in the region without informing PCPR, the programme will be terminated.

⁸⁰⁸ Legal Intervention Association, "SIP w działaniu. Prawa Cudzoziemców w Polsce 2019", 2020, available (in Polish) at: <https://bit.ly/3sl00lp>.

⁸⁰⁹ Ministry of Family, Work and Social policy, *ROZPORZĄDZENIE MINISTRA PRACY I POLITYKI SPOŁECZNEJ z dnia 7 kwietnia 2015 r. w sprawie udzielania pomocy cudzoziemcom*, available (in Polish) at: <https://bit.ly/38PPAuB>.

In practice, beneficiaries face a range of obstacles in obtaining social assistance, ranging from lack of awareness of their rights and language barrier, to the discretion of authorities in the limits of financial assistance granted, to the requirement of translated forms and official documents which cannot be obtained from their country of origin e.g. alimony judgment to receive the “500+” child benefit. The need for the entire family to reside in Poland may also pose difficulties.⁸¹⁰ According to the NIEM report, The regulations guiding the IIP have been out of date for more than a decade now, and they no longer respond to the needs of its beneficiaries

As studies find, social policy provides few or no resources needed to function independently in Poland.⁸¹¹ By delivering mostly financial assistance, integration programmes help families to get by on a daily basis but fail to build the resources needed to become independent, to achieve appropriate adaptation level in a new environment and prepare oneself to cover free market rental costs. For some participants, the programmes strengthened their feelings of lack of control over their lives and the helplessness already developed during the asylum procedure. There is a lack of adequate social work with beneficiaries. The financial means are not sufficient for renting a flat on the commercial market and only few of them can count on receiving social or communal housing.⁸¹² According to SIP and NIEM report⁸¹³, IPI should last longer than 12 months, be practically adapted to individual needs of applicants. Additionally, integration assistance should also be granted to children born after the completion of parents' integration programs.⁸¹⁴

The case workers interviewed in the study explained that, because they have too many integration programmes to manage monthly, it was practically impossible for them to offer any social work counselling, and they instead focused on managing monetary transfers.⁸¹⁵ Most of the IPIs are implemented by WCPR (Warszawskie Centrum Pomocy Rodziny), which department of Social Integration and Crisis Intervention has four social workers who provide integration assistance to beneficiaries of international protection.⁸¹⁶

In the first half of 2021 590,129 PLN was spent on different kinds of social welfare for recognised refugees (compared to 1,107,119 PLN in 2020, 1,307,313 PLN in 2019, and 1,440,867 PLN (343,063 €) in 2018) and 600,271 PLN was spent for beneficiaries of subsidiary protection (compared to 727,710 PLN in 2020, 1,248,671 PLN in 2019 and 2,318,295 PLN (579,573 €) in 2018).⁸¹⁷ Assistance was provided in the form of social assistance, psychological and legal support, assistance in local institutions, financial support, and cash benefits for learning the Polish language as part of the implementation of the individual programme of integration.

Social Welfare Centres assisted 21 families in 2021 (compared to 26 families in 2020 and 150 families (265 people)-in 2019) of recognised refugees and families under subsidiary protection.⁸¹⁸

⁸¹⁰ Commissioner for Human Rights, ‘Prawo do świadczeń rodzinnych cudzoziemki objętej ochroną uzupełniającą w sytuacji, gdy nie wszyscy członkowie rodziny zamieszkują w Polsce, PCPR’, 10 January 2018, available (in Polish) at: <http://bit.ly/2C81Yey>.

⁸¹¹ Lukaszewicz, K., ‘Exile to Poverty: Policies and Poverty Among Refugees in Poland’, *International Migration Vol. 55 (6) 2017*, 65, see also *Prawa dziecka-Raport Alternatywny*, August 2020, available (in Polish) at: <https://bit.ly/30eskUX>

⁸¹² *Ibidem*.

⁸¹³ List of recommendations to improve housing situation of Beneficiaries of International Protection in Poland – prepared by Refugee Council operating within the NIEM/V4NIEM, <https://bit.ly/3huJ56L>.

⁸¹⁴ SIP, *Komentujemy propozycje zmian w ustawie o pomocy społecznej*, available (in Polish) at: <http://bit.ly/3uVH2yi>.

⁸¹⁵ Lukaszewicz, K., ‘Exile to Poverty: Policies and Poverty Among Refugees in Poland’, *International Migration Vol. 55 (6) 2017*, 65.

⁸¹⁶ K. Sobczak-Szelc, M. Pachocka, K. Pędziwiatr, J. Szałańska, ‘Integration Policies, Practices and Responses. Poland – Country Report’, *Multilevel Governance of Mass Migration in Europe and Beyond Project (#770564, Horizon2020)*, available at: <http://bit.ly/3bfjTxL>.

⁸¹⁷ Ministry of Family, Labour and Social Policy, *Report 2019*, available (in Polish) at: <https://bit.ly/2SFg2AE>.

⁸¹⁸ Ministry of Family, Labour and Social Policy, *Report 2019*, available (in Polish) at: <https://bit.ly/2G3RwVY>.

G. Health care

The right to healthcare is a constitutional right, applicable to third-country nationals as well. Recognised refugees and beneficiaries of subsidiary protection are considered “insurance holders” under the Law on Healthcare Services financed from public funds and are thus entitled to exactly the same services as Poles under the condition of having a valid health insurance.⁸¹⁹ It means that in practice free health care is conditional on the payment of health care insurance with the National Health Fund (NFZ). Refugees and subsidiary protection holders, within their 12-month IPI, are obliged to register within regional job centre and are granted health insurance. After the IPI is completed, the obligation to pay insurance lies with: the employer (if a refugee has a work contract), a regional job centre or social assistance centre (if they are registered as unemployed) or the refugees themselves if they wish to cover the costs of insurance.⁸²⁰ The required documentation is very hard to obtain and there are long administrative delays and waiting periods in obtaining entitlement to health care in Poland, according to the report from 2019.⁸²¹

Importantly, in Poland, all children under 18 years old are entitled to free health care, even if they are not insured and the cost of their treatment is covered by the State Treasury. Children under 19 years old who attend school, regardless of their migration status, are covered by preventive healthcare which includes medical and dental examinations, rehabilitation programmes, health awareness education and health emergency education provided by school or district nurses.⁸²²

The health insurance with the NFZ covers all guaranteed health care services specified in the lists of the Ministry of Health. They include both basic and specialist medical services, vaccinations, diagnostic testing (laboratory or other), rehabilitation, hospital care and medical rescue services, emergency ambulance services and medical transport. The NFZ, however, does not cover some dentistry procedures, costs of purchasing medicines, auxiliary products or orthopaedic equipment.⁸²³ Notably, nursing care for elderly persons is not provided in Poland.⁸²⁴

Although these provisions were in place for years, there are still cases where they are put in question. In 2021 SIP reported a case of a woman granted subsidiary protection 10 years earlier, who was charged with the costs of perinatal care provided in the hospital when she was delivering her child, on the basis of a decision of the President of the NFZ. The reasons of the decision mentioned that at that time the woman had not had social insurance. As a result of a complaint submitted by the woman, assisted by the NGO lawyer, the authority annulled its own decision admitting that the woman had a right to cost-free perinatal care.⁸²⁵

The main issue with regard to access to healthcare are linguistic and cultural barriers. Access to interpretation in the health care system is not available at all.⁸²⁶ Other challenges are similar to the challenge Polish nationals are facing as well: long waiting time to see a specialist, costly private medical services and expensive medicines. The beneficiaries’ access to health care is jeopardised by difficulties in accessing

⁸¹⁹ Article 3(1)(2) Law of 27 August 2004 on healthcare services financed from public funds.

⁸²⁰ M. Szczepanik, *Right to healthcare and access to medical services for asylum seekers and beneficiaries of international protection in Poland*, May 2017, available at: <http://bit.ly/2CxXokd>.

⁸²¹ Alexander Wolffhardt, Carmine Conte, Thomas Huddleston, *The European benchmark for refugee integration: A comparative analysis of the National Integration Evaluation Mechanism in 14 EU countries*, 2019, available at: <https://bit.ly/2SlshUh>, 123.

⁸²² Article 27(1) and (3) Law on healthcare services financed from public funds.

⁸²³ M. Szczepanik, *Right to healthcare and access to medical services for asylum seekers and beneficiaries of international protection in Poland*, May 2017, available at: <http://bit.ly/2CxXokd>.

⁸²⁴ Alexander Wolffhardt, Carmine Conte, Thomas Huddleston, *The European benchmark for refugee integration: A comparative analysis of the National Integration Evaluation Mechanism in 14 EU countries*, 2019, available at: <https://bit.ly/2SlshUh>, 122.

⁸²⁵ SIP, *Opieka medyczna dla kobiet w okresie porodu i połogu oraz ich dzieci*, 10 May 2021, <https://bit.ly/3vuhsTH>

⁸²⁶ Alexander Wolffhardt, Carmine Conte, Thomas Huddleston, *The European benchmark for refugee integration: A comparative analysis of the National Integration Evaluation Mechanism in 14 EU countries*, 2019, available at: <https://bit.ly/2SlshUh>, 124.

legal forms of employment, which guarantee free health care.⁸²⁷ That is why in 2020, when due to pandemic beneficiaries were left without work, in many cases the situation was critical – NGOs organized online fundraising for food or medical treatments.⁸²⁸

According to a report from 2020, the barriers in accessing healthcare were linguistic ones and linked with the stereotypical perception of persons coming from a specific part of the globe or belonging to a given ethnic or religious group. Similar to citizens of Poland, persons with international protection who cannot wait to see a specialist and have an adequate funding use the services of the private medical sector. One of the clear gaps in the medical services is the specialized treatment for victims of torture or traumatized refugees. There is a clear lack of the qualified psychologists and therapists specializing in treating trauma, in particular in an intercultural context.⁸²⁹

The COVID vaccination in Poland is voluntary and free of charge. Since 10 May 2021, everyone could register for the vaccination, including non-Polish citizens, regardless of their legal status. According to information from the Ministry of Health, in the case of migrants, a referral for vaccination could be issued on the basis of an ID and not the national identification number (PESEL).

⁸²⁷ Maryla Koss-Goryszewska 'Służba zdrowia' in A. Górńska, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), 43.

⁸²⁸ See e.g. information available on the website of Ocalenie NGO, about online fundraising for some particular medical treatments for beneficiaries: <http://bit.ly/3s2qtP0>.

⁸²⁹ K. Sobczak-Szelc, M. Pachocka, K. Pędziwiatr, J. Szalańska, 'Integration Policies, Practices and Responses. Poland – Country Report', *Multilevel Governance of Mass Migration in Europe and Beyond Project* (#770564, Horizon2020), available at: <http://bit.ly/3bfjTxL>, 136.

ANNEX I – Transposition of the CEAS in national legislation

Directives and other CEAS measures transposed into national legislation

Directive	Deadline for transposition	Date of transposition	Official title of corresponding act	Web Link
Directive 2011/95/EU Recast Qualification Directive	21 December 2013	30 August 2014	Ustawa z dnia 26 czerwca 2014 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw	http://bit.ly/1dBH7hj (PL)
Directive 2013/32/EU Recast Asylum Procedures Directive	20 July 2015 Article 31(3)-(5) to be transposed by 20 July 2018	13 November 2015	Ustawa z dnia 10 września 2015 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw	http://bit.ly/1SHT11B (PL)
Directive 2013/33/EU Recast Reception Conditions Directive	20 July 2015	13 November 2015	Ustawa z dnia 10 września 2015 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw	http://bit.ly/1SHT11B (PL)
Regulation (EU) No 604/2013 Dublin III Regulation	Directly applicable 20 July 2013	13 November 2015	Ustawa z dnia 10 września 2015 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw	http://bit.ly/1SHT11B (PL)