

Country Report: Poland



2016
Update

Acknowledgements & Methodology

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

The information in this report is up-to-date as of 31 December 2016.

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 20 countries. This includes 17 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, SE, UK) and 3 non-EU countries (Serbia, Switzerland, Turkey) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



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Glossary & List of Abbreviations

AMIF	Asylum, Migration and Integration Fund
ASQAEM	Asylum Systems Quality Assurance and Evaluation Mechanism
CAR	Central African Republic
CJEU	Court of Justice of the European Union
DRC	Democratic Republic of the Congo
ECtHR	European Court of Human Rights
EMN	European Migration Network
ERF	European Refugee Fund
HFHR	Helsinki Foundation for Human Rights
IFA	Internal Flight Alternative
LIA	Legal Intervention Association (Stowarzyszenie Interwencji Prawnej, SIP)
MS	Member State
PTSD	Post-Traumatic Stress Disorder
SG	Border Guard Straż Graniczna
SGBV	Sexual and gender-based violence
TCN	Third Country National
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. They 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 under request.

Applications and granting of protection status at first instance: 2016

	Applicants in 2016	Pending applications in 2016	Refugee status	Subsidiary protection	Humanitarian protection ²	Rejection	Refugee rate	Subs. Prot. rate	Hum. Prot. rate	Rejection rate
Total	12321	3431	108	150	177	2188			n/a	

Breakdown by countries of origin of the total numbers

Russia	8994	2185	10	57		1125				
Ukraine	1306	520	16	51		696				
Tajikistan	882	124	6	7		109				
Armenia	344	78	0	0		14				
Georgia	124	179	0	1		36				
Vietnam	84	31	0	0		51				
Kirgistan	72	24	0	1		31				
Turkey	65	13	0	0		26				
Syria	47	18	40	3		1				
Belarus	46	32	4	0		9				

Source: Office for Foreigners

¹ Website available at: <http://bit.ly/2l6FUCB>.

² There are 2 kinds of humanitarian status in Poland: humanitarian stay permit and tolerated stay permit, both granted in return proceedings by the Border Guard, not in the international protection proceedings.

Gender/age breakdown of the total number of applicants: 2016 – not available as of 31 January 2017

	Number	Percentage
Total number of applicants	12,321	100%
Men	:	:
Women	:	:
Children	:	:
Unaccompanied children	142	1.15%

Source: „Napływ cudzoziemców do Polski w latach 2014-2016”, prepared by the Head of the Office for Foreigners

Comparison between first instance and appeal decision rates: 2016

	First instance		Appeal	
	Number	Percentage	Number	Percentage
Total number of persons covered by decisions	11997		n/a	
Granting protection:				
• <i>Refugee status</i>	108		20	
• <i>Subsidiary protection</i>	150		46	
Refusing protection	2188		1969	

Source: Office for Foreigners

Overview of the legal framework

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

Title (EN)	Original Title (PL)	Abbreviation	Web Link
Law of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland (Journal of Laws 2012 pos. 680)	Ustawa z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej (Dz.U. 2012 poz. 680)	Law on Protection	http://bit.ly/1eHn2b2 (PL)
Law of 12 December 2013 on foreigners (Journal of Laws 2013 pos. 1650)	Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach (Dz.U. 2013 poz. 1650)	Law on Foreigners	http://bit.ly/1HebFUe (PL)
Law of 14 June 1960 Code of administrative proceedings (Journal of Laws 2013 pos. 267)	Ustawa z dnia 14 czerwca 1960 r. Kodeks Postępowania Administracyjnego (Dz.U. 2013 poz. 267)	Code of administrative proceedings	http://bit.ly/1TNeKhC (PL)
Law of 10 September 2015 amending the Law on Protection and other acts (Journal of Laws 2015 pos. 1607)	Ustawa z dnia 10 września 2015 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw	Law amending the Law on Protection	http://bit.ly/1SHT11B (PL)

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

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

Overview of the main changes since the previous report update

The report was previously updated in **November 2015**.

Procedure

- ❖ **Access to the procedure:** Access to the procedure remains problematic in Poland. Reports say that, in spite of repeated, clearly formulated requests, invoking the experience of persecution in the country of origin, asylum seekers are refused the right to lodge an application and enter Poland. In August, representatives of the Polish Ombudsman conducted an unannounced inspection of the railway border crossing in Terespol and stated that 5 families explicitly declared their intention to apply for international protection and only one of them was admitted. During other interviews foreigners were describing situations or events which could indicate a coercive nature of their migration but again only in one case the foreigners were admitted. The representatives also noticed that the conditions of this preliminary questioning were difficult - three out of the four stands are situated at such a short distance from each other that conducted interviews may be easily overheard by third parties (e.g. other foreigners).
- ❖ **Preliminary identification mechanism:** A new vulnerability assessment is carried out by an SG officer at the time of lodging an application. The officer screens the applicants to identify victims of trafficking in human beings or persons subject to torture. NGOs point out that this preliminary identification is conducted at the time of lodging asylum application, so often at the border, where the conditions are difficult. Some are of the opinion, that the questions from the application for international protection cannot be considered an early identification at all. The clear evidence that vulnerable persons are not identified correctly is that victims of violence are still placed in detention, while the law prohibits detaining such applicants. NGOs generally confirm that the system of identification envisaged in the law does not work in practice.

Reception conditions

- ❖ **No reception during onward appeal:** In principle, during the onward appeal procedure before the Voivodeship Administrative Court in **Warsaw**, asylum seekers are not entitled to material reception conditions. Although in practice, when the court suspends enforcement of the contested decision of the Refugee Board for the time of the court proceedings, asylum seekers are re-granted material reception conditions to the same extent as during the administrative asylum procedure, until the ruling of the court. However, in 2016 the Court mostly refused to suspend enforcement of the negative decision on international protection for the time of the court proceedings, which leaves asylum seekers without any material reception conditions for this time.

Detention of asylum seekers

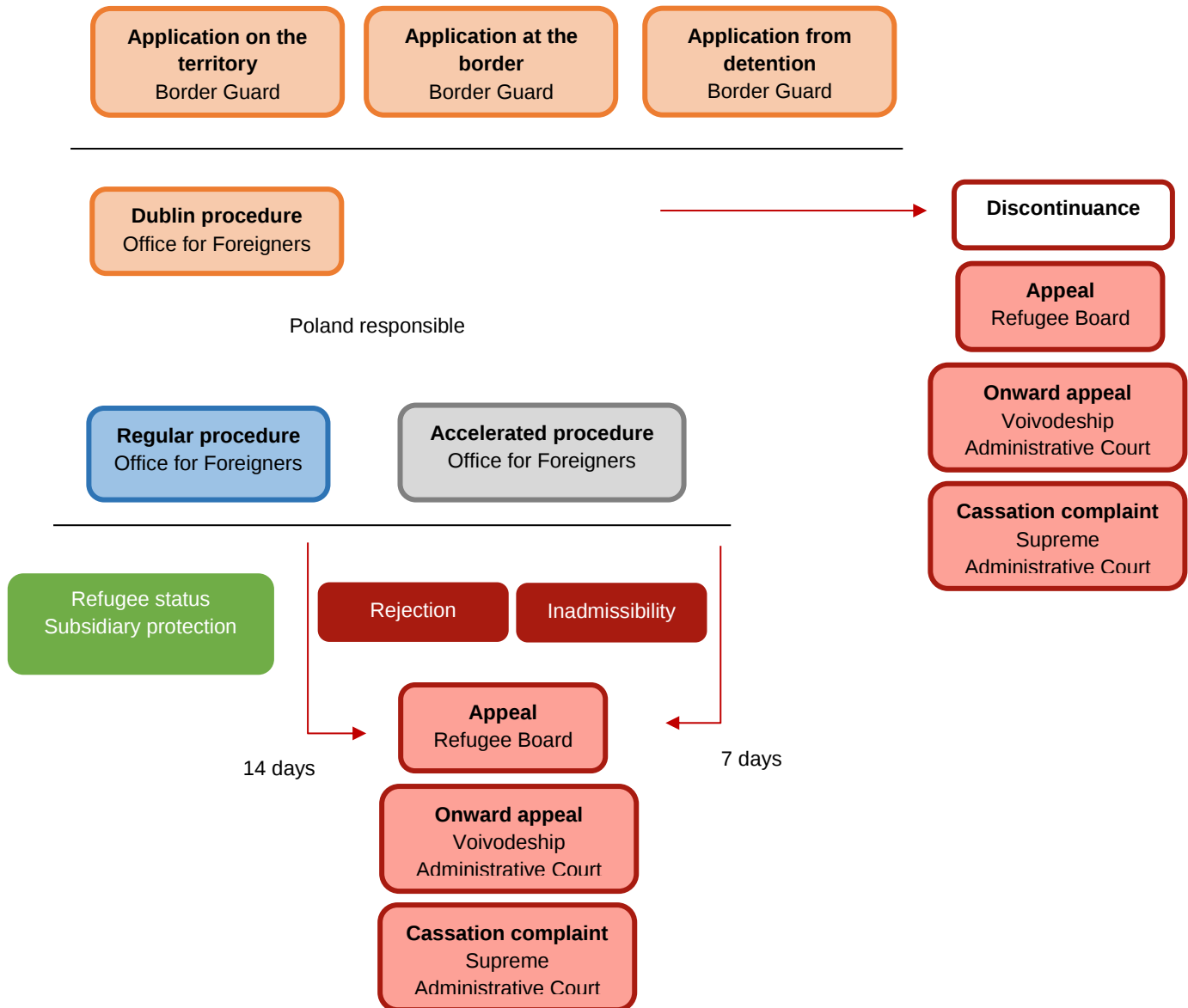
- ❖ **Detention of children:** In 2016, 292 children were placed with their parents in a detention centres. Total of all asylum seekers was 603 persons in whole 2016. In 2016 children were placed in detention centres in **Kętrzyn**, **Biała Podlaska** and **Przemyśl**. Still the best interest of the child is not considered in decisions concerning detention. Generally the right to education for children in detention centres for asylum applicants is not properly implemented. Topics and activities offered to children do not meet the requirements of the general education curriculum.
- ❖ **Lack of identification vulnerable applicants:** In October 2016 family with three minor children (2,4,8 years) was detained in a detention centre in **Kętrzyn**, after the transfer under the Dublin Regulation from Germany. Even though the family had all medical records with them which confirmed (also during their arrest in Germany, in German) that the physical and mental health state of two members of the family, was not only inadequate to make the transfer, but also certainly

did not allowed them to be placed in a detention centre, they were detained in **Kętrzyn**. None of the medical documents was taken into consideration neither by SG when issuing a motion to the court nor by the regional court during placing them in a detention centre. The family was released after 3 weeks. In the opinion of National Prevention Mechanism representatives, being for 3 weeks in a detention centre was inadequate to their health condition and caused further traumatization.

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: | ☒ Yes | ☐ No |
| ▪ Prioritised examination: ³ | ☐ Yes | ☒ No |
| ▪ Fast-track processing: ⁴ | ☐ Yes | ☒ No |
| ❖ Dublin procedure: | ☒ Yes | ☐ No |
| ❖ Admissibility procedure: | ☒ Yes | ☐ No |
| ❖ Border procedure: | ☐ Yes | ☒ No |
| ❖ Accelerated procedure: ⁵ | ☒ Yes | ☐ No |
| ❖ Other: Asylum | | |

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 in EN	Competent authority in original language (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
Appeal procedures ❖ First appeal ❖ Second (onward) appeal	❖ Refugee Board ❖ Voivodeship Administrative Court in Warsaw ❖ Supreme Administrative Court	❖ Rada do Spraw Uchodźców ❖ Wojewódzki Sąd Administracyjny w Warszawie ❖ Naczelny Sąd Administracyjny
Subsequent application (admissibility)	Head of the Office for Foreigners	Szef Urzędu do Spraw Cudzoziemców

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

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority?
Office for Foreigners	45	Ministry of Interior	☒ Yes ☐ No

5. Short overview of the asylum procedure

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

The examination of an asylum application lodged in Poland then involves two main stages:

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

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

⁵ Labelled as “accelerated procedure” in national law. See Article 31(8) APD.

- a. Examination on the merits by the Office for Foreigners;
- b. Appeal procedure before the Refugee Board.

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

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

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

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

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

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

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

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 accelerated procedures 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 the Board 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

⁶ From 13 November 2015 the Dublin procedure should be applied in every case: Article 36(1) Law on Protection.

in the law. The Court may suspend execution of the decision for the time of the court proceedings upon request.

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

In 2012-2015 cases were reported where persons were denied access to the territory at the border crossing checkpoint in **Terespol** (at the border with Belarus), which is the main entry point in Poland for asylum seekers. HFHR made numerous inquiries in individual cases asking for clarification of these situations and brought up the issue at ministerial level.⁷ In some cases asylum seekers were refused entry, in others they were detained on the basis of abusing the asylum procedure (apparent even in the case of first-time applicants). The asylum seekers, mostly of Georgian nationality, interviewed in the detention centre in **Bialystok** in October 2012 by the HFHR representatives claimed they had asked for asylum on the first instance, but managed to enter the territory only after several attempts and days later and were subsequently detained. The SG states that Third Country Nationals (TCNs) do not ask for asylum while trying to cross the border without a visa or other permit and give other reasons which do not entitle them to enter Poland (financial problems in the country of origin, family members in other Member States).⁸ They also claim that Poland is a transit country.

The issue was discussed at several meetings with the SG representatives in 2013 and 2014. Still, HFHR and another NGO (Legal Intervention Association, LIA) receive phone calls from asylum seekers trying to cross the border in Terespol. On 29 October 2013 five representatives of the HFHR and LIA went to **Terespol** with the purpose of meeting with the SG and monitoring the border crossing checkpoint. During their visit, the lawyers were shown the rooms and facilities for TCNs (waiting areas, kitchen, toilet, room for mothers and their children). They talked to two asylum-seeking families (one from Chechnya, one from Georgia), waiting for all the necessary procedural steps (fingerprinting, short interview) to be taken. The family of Chechen origin entered Poland for the first time, but the Georgian family claimed they had tried to enter Poland nine times before they succeeded and managed to lodge an asylum application. According to their statement, they were not given the decision on refusal of entry, but signed a document written in Polish.

According to the SG in Terespol, there are no cases of refusal of entry of foreigners who want to apply for asylum. Every time there is a TCN who does not fulfil the conditions to enter Poland, the SG issues a decision on refusal of entry, which can be appealed. There were no cases of appeal in practice. The SG hand over to the refused entrant the decision issued on the form with the instruction on appeal (in Polish) and the list of NGOs which are available in Russian. The SG officer places a decision on refusal of entry in the registry with a detailed memo on what were the TCNs reasons for entry. The SG claims it is mostly work or visiting family members and that TCNs do not express any fear for their life or health.

HFHR reports that in 2014 Syrian and Iraqi applicants at **Terespol** were also exposed to the same treatment. Some of them had lived in Belarus or Russia for some time as students. At a HFHR meeting in 2014 with the SG Headquarters it was reconfirmed that if it is asylum they apply for, their claims are registered and no further inquiries as to the reasons for entry are made. However HFHR and UNHCR still

⁷ This issue was also included in HFHR's intervention letter submitted to the Head of the Office for Foreigners, the Border Guard Commander in Chief and the Ministry of Interior on 18 January 2013 (not published) and was mentioned in HFHR's comments to the project of the new Law on foreigners from November 2012, available (in Polish), available at: <http://bit.ly/1MG2ae7>.

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

receive phone calls from the border and TCNs saying they want to apply for asylum but are refused entry at the border. HFHR has intervened in the past at the border crossing point and after some of these interventions TCNs were allowed entry in as asylum seekers. The problem is also widely described in the HFHR report published in December 2014.⁹

In the first half of 2015, 2,027 persons applied for asylum at the **Terespol** border crossing point. The highest number of asylum seekers per day was 41 (comparing to approximately 250 in 2013). 3,130 persons were refused entry. HFHR lawyers confirm that they keep receiving information about the described problem from asylum seekers.¹⁰ The Border Guards Headquarters reiterates that access to the procedure is monitored by UNHCR and the NGO indicated by UNHCR, which is Halina Niec Legal Aid Centre (*Centrum Pomocy Prawnej im. Haliny Nieć*).¹¹

In 2016 the situation became even more serious. Reports say that, in spite of repeated, clearly formulated requests, invoking the experience of persecution in the country of origin, asylum seekers are refused the right to lodge an application and enter Poland.¹²

On 11 August 2016, representatives of the Polish Ombudsman conducted an unannounced inspection of the railway border crossing in **Terespol** in response to the information that a group of around 500 foreigners was attempting to enter the territory of Poland for some time in order to apply for protection. On that day 436 foreigners tried to cross the border in **Terespol**, out of which 223 were children. None of them had visas or any other permit allowing them to enter Poland. The majority of 406 foreigners were refused the right of entry into Poland by the Border Guard who issued respective administrative decisions in that regard. Only 7 applications for international protection were accepted (covering 31 persons). The Ombudsman's representatives participated in interviews with 79 families trying to cross the border on that day. The monitoring team admitted that in 62 cases, individuals who underwent preliminary questioning did not declare the intention to apply for international protection in Poland, nor provided information which could suggest that they came to Poland with such an intention. As the reason for their arrival they most commonly mentioned the willingness to improve living conditions, find employment or ensure better education and prospects for the future for their children. However, the representatives stated that 5 families explicitly declared their intention to apply for international protection and only one of them was admitted. During 12 other interviews foreigners were describing situations or events which could indicate a coercive nature of their migration but again only in one case the foreigners were admitted. The representatives also noticed that the conditions of this preliminary questioning were difficult - three out of the four stands are situated at such a short distance from each other that conducted interviews may be easily overheard by third parties (e.g. other foreigners).¹³

NGOs also conducted border monitoring in 2016 – HFHR published a report “A road to Nowhere” about the situation in **Terespol**¹⁴ and the LIA monitored access to procedure at the border crossing point in

⁹ K. Rusiłowicz, *Dostęp do procedury uchodźczej (Access to an asylum procedure)*, in Helsinki Foundation for Human Rights, *W poszukiwaniu ochrony. Wybrane problemy dotyczące realizacji praw cudzoziemców ubiegających się o nadanie statusu uchodźcy i objętych ochroną międzynarodową w latach 2012-2014. Obserwacje Programu Pomocy Prawnej dla Uchodźców i Migrantów Helsińskiej Fundacji Praw Człowieka (In search of protection. Selected problems concerning the enforcement of rights of foreigners who apply for refugee status and are under international protection in the years 2012-2014. Observations of the Legal Assistance for Refugees and Migrants Programme of the Helsinki Foundation for Human Rights)*, 2014, available in Polish at: <http://bit.ly/1eiVxDF>, 16.

¹⁰ E-mail information to HFHR from 3 September 2015.

¹¹ Letter from the Border Guard Headquarters to HFHR from 18 August no MAIL KG-OI-614/III/15 and from 24 August 2015 no FAX-KG-CU-5944/IP/15.

¹² HFHR letter of 22 July 2016, available at: <http://bit.ly/2mrOzRp>.

¹³ Ombudsman, Inspection of the railway border crossing in Terespol, 21 September 2016, available at: <http://bit.ly/2meul1l>.

¹⁴ HFHR, *A road to nowhere*, 2016, *The account of a monitoring visit at the Brest-Terespol border crossing between Poland and Belarus*, available at: <http://bit.ly/2l7nt2x>.

Terespol, Medyka and Warsaw airport Okęcie.¹⁵ HFHR states that all their respondents expressed the will to apply for protection and their personal stories correspond to the COI reports from the respective countries. LIA draws attention to the internal guidance of the Border Guard on how to conduct an assessment whether a given person should be considered international protection seeker, which is not envisaged in the law. Both organisation claim that the Border Guards ignore the requests of the foreigners who ask for international protection. HFHR underlines, that Border Guard officers often act purposively to humiliate foreign nationals. Sometimes the officers use offensive and derogatory comparisons while referring to foreign nationals (e.g. they compare foreign nationals to dogs), ridicule their problems or even demonstratively tear documents. NGOs representatives, contrary to the Ombudsman representatives, were refused a possibility to participate in questionings, even as formal representatives of the party.

The Ministry of the Interior answered to the interpellation of one of the MPs about the situation in **Terespol**. In their opinion, the situation is not critical, but is subject to monitoring because of the potential threat to the security of state and public order and because of the necessity to observe the principle of non-refoulement.¹⁶

2. Registration of the asylum application

Indicators: Registration

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

Asylum applications should be submitted to the Border Guard (SG) which will then transfer them to the Head of the Office for Foreigners. If the application is lodged at the border or in detention the relevant authority receiving it is the SG unit responsible for the border check point or the detention facility. If the application is lodged in the territory, it should be submitted to any SG unit. There is also a possibility to declare a will to apply for asylum by post for i.e. elderly persons, persons with disabilities, pregnant women, persons in hospitals or imprisoned.¹⁷

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

When applying for asylum, the asylum seeker has to surrender their travel document (e.g. passport) to the SG. Travel documents are kept by the Head of the Office for Foreigners. Asylum seekers are issued a temporary ID document entitling them to stay on the territory of Poland.¹⁸ The document is initially valid for 90 days (10 days in case of Dublin returnees), then for 6 months and can be prolonged every 6 months by the Head of the Office for Foreigners until the end of the asylum procedure.¹⁹

When asylum seekers are already on the territory and express the intention to apply for asylum to the SG unit in Warsaw, located in the same building as the Office for Foreigners, in practice it happened that they were asked to come back in a few days, notably when there is a need to provide interpretation in a language other than Russian or English.²⁰ Moreover, it is often the case that when an NGO lawyer representing a client wants to assist with the application, they are asked to schedule a meeting in advance (e.g. two-three days).²¹ In 2014 and 2015 HFHR received information from Ukrainian asylum seekers that registration can approximately take 7 days. The Border Guard Headquarters presents the opinion that it is max 2-3 days and such delays should not be considered as a rule. This issue will be monitored in the frame of the internal

¹⁵ Legal Intervention Association (Stowarzyszenie Interwencji Prawnej), *At the border. Report on monitoring of access to the procedure for granting international protection at border crossings in Terespol, Medyka, and Warszawa-Okęcie Airport*, available at: <http://bit.ly/2IPBrVE>.

¹⁶ Ministry of Internal Affairs and Administration, available at <http://bit.ly/2IR7wQL>.

¹⁷ Article 28(2) Law on Protection, as amended in November 2015.

¹⁸ Foreigner's Identity Temporary Certificate, *Tymczasowe Zaświadczenie Tożsamości Cudzoziemca*.

¹⁹ Article 55(1) and (2) and Article 55a(2) Law on Protection, as amended in November 2015.

²⁰ Information provided by the Office for Foreigners, Department of Asylum Procedures on 25 March 2014.

²¹ HFHR lawyers had such an experience in cases of Belarussians in 2012.

control carried out by the Border Guard Headquarters.²² From 13 November 2015 this practice is reflected in the law. The SG is entitled to inform an asylum seeker that it is impossible to apply for asylum on a day when said individual came to the SG unit and instead to set a date and place when it will be possible.²³ In 2016 the Border Guard provided no information about the waiting time to submit an application in their unit in **Warsaw**.

C. Procedures

1. Regular procedure

1.1. General (scope, time limits)

Indicators: Regular Procedure: General

1. Time-limit set in law for the determining authority to make a decision on the asylum application at first instance: 6 months
2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? ☒ Yes ☐ No
3. Backlog of pending cases as of 31 December 2016: 3431

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

The time limit set in law for the Head of the Office for Foreigners to make a decision on the asylum application is six months.²⁴ Under the Law amending the Law on Protection, which entered into force on 13 November 2015, it can be prolonged to 15 months if the case is complicated, if there are many asylum seekers applying at the same time or if the asylum seeker did not fulfil the obligation of presenting all the evidence and documents or attending the interview.²⁵ The Office for Foreigners confirms that this provision is applied in practice, but did not provide exact numbers.²⁶ Overall in 3196 cases in 2016 the Office for Foreigners decided to prolong the examination of the case (which means that the case was not handled in 6 months).

In 2015 the average processing time to issue a decision on the merits in practice was 161 days (5 months and 8 days).²⁷ In 2016 it was 86 days for the Office for Foreigners. The longest processing time took 1 636 days and the shortest 2 days.²⁸

According to lawyers working on cases at the HFHR, there is a backlog in both first and second instance proceedings. At first instance, 3,030 applications were pending at the end of September 2015;²⁹ information on pending cases at second instance is not available. As of 31 December 2016 there were 3431 cases pending before the first instance authority.

²² Letter from the Border Guard Headquarters to HFHR from 24 August 2015 no FAX-KG-CU-5944/IP/15.

²³ Article 28(1) Law on Protection, as amended in November 2015.

²⁴ Article 34(1) Law on Protection, as amended in November 2015.

²⁵ Article 34 Law on Protection, as amended in November 2015.

²⁶ The Office for Foreigners letter to HFHR from 1 February 2017 no BSZ.WAiSM.0361.7.2017/TB

²⁷ Office for Foreigners, *Commentary to the statistics for I half of 2015*, available at: <http://bit.ly/1EW04DT>.

²⁸ The Office for Foreigners letter to HFHR from 1 February 2017 no BSZ.WAiSM.0361.7.2017/TB

²⁹ Eurostat, *Pending applications*, September 2015 (rounded).

According to the law, if the decision is not issued within 6 months, the general provisions on inaction of the administrative authority apply,³⁰ i.e. the Head of the Office for Foreigners should inform the applicant in writing about the reasons of delay (which in practice is done in a very general way) and the applicant can submit a complaint to the second instance authority (the latter hardly ever happens in practice). The most significant consequence for the applicant of not issuing a decision on asylum application within 6 months is a possibility to apply for a work permit on this basis.³¹ 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.³²

1.2. Prioritised examination and fast-track processing

According to the Office for Foreigners well-founded cases (e.g. Syrians), cases of persons requiring special treatment (e.g. unaccompanied minors) and cases of detained asylum seekers are prioritised as much as it is possible and/or needed.³³ For Syrians, the average time to process their asylum applications in the first half of 2015 was 94 days, in the case of unaccompanied minors it was 90 days.³⁴ In 2016 the average time to process an asylum application from a Syrian applicant took 116 days which means it was longer than the average. With regard to unaccompanied minors no statistical data was provided. In case vulnerable applicants and detainees the Office for Foreigners confirmed that they are prioritised but because of complexity of these cases the processing time is long.³⁵

1.3. Personal interview

Indicators: Regular Procedure: Personal Interview

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

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

- ❖ A decision on granting refugee status can be issued on the basis of evidence already gathered; or
- ❖ An applicant is not fit to be interviewed (e.g. due to health or psychological problems).³⁶

According to the Office for Foreigners, interviews are conducted in the majority of cases in a regular procedure.³⁷ In previous years,³⁸ it has happened that the interview was conducted although the applicant was not fit for interview due to serious psychological and psychiatric problems.³⁹ The Office for Foreigners stated that in 2015 and 2016 there were cases where the interview was not conducted because the applicant was not fit for interview.⁴⁰ The procedures are generally gender-sensitive. In 2016 the Office for Foreigners did not provide statistical data concerning the number of conducted personal interviews.

³⁰ Article 36-38 Code of Administrative Proceedings.

³¹ Article 35 Law on Protection.

³² No data made available upon request on the average length of asylum procedure in both instances and on the backlog of cases in the first and second instance authorities.

³³ Letter from the Head of the Office for Foreigners to HFHR from 27 August 2015 no BSZ-0811/1429/15/RW.

³⁴ *Ibid.*

³⁵ The Office for Foreigners letter to HFHR from 1 February 2017 no BSZ.WAiSM.0361.7.2017/TB.

³⁶ Article 44(1) and (2) Law on Protection, as amended in November 2015.

³⁷ Information provided by the Office for Foreigners, Department of Asylum Procedures, 25 March 2014.

³⁸ No data made available upon request on the number of cases in which the applicant was interviewed by the first instance authority.

³⁹ Case of a Cameroonian woman, a torture survivor, handled by HFHR in 2012. Other anecdotal evidence was collected by HFHR.

⁴⁰ Letter from the Head of the Office for Foreigners to HFHR from 27 August 2015 no BSZ-0811/1429/15/RW.

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

The contract established between the Office for Foreigners and interpretation services regulates the quality, liability, and specifies the field (asylum). Interpretation is available in most of the languages spoken by the asylum applicants in Poland. In the previous year's NGOs pointed at some problems with the quality of interpretation: the dialect of a particular language is not duly taken into account, as well as the knowledge of the country of origin and intercultural competence of the interpreters.⁴¹ According to the Office for Foreigners, in 2014 and 2015 there were no problems with ensuring interpretation services for any language.⁴² In 2016 reported problems concerned very rare languages, like Igbo, djula and tigrinia. In these cases the applicants usually know also other more common languages and agree to be interviewed in that second language.⁴³

Audio or video recording is possible under national legislation if an applicant was informed about this fact and technical means allow for that. According to the Office for Foreigners reply from 2015, there are no technical means to do it.⁴⁴ As for videoconferencing – there are no statistics available for 2015, but in 2014 videoconferencing was used with regard to asylum seekers placed in detention centres, now used on a regular basis, unless there was a vulnerable applicant. According to the Office for Foreigner in those cases the interviewer came to the detention centre with a psychologist.⁴⁵ However, the HFHR reports a case in 2014 where the applicant placed in the detention centre, suffering from post-traumatic stress disorder (PTSD) diagnosed in Germany, was interviewed through videoconferencing, without a psychologist.⁴⁶ The Office for Foreigners did not provide any data on 2016, but HFHR lawyers confirm that videoconferencing is used in detention centres, even in cases of vulnerable applicants.

The law provides that a copy of the report of the interview should be handed in to the applicant after a personal interview. In some cases the applicants do not take or keep them, but they can ask for a copy at any stage of the proceedings. The report is prepared in Polish and contains all the questions asked and responses received, but it is not a verbatim transcript. The report is handwritten, which sometimes makes it unreadable; however, some officers at the Office for Foreigners do use computers. At the end of the interview the report is read to the applicant in an understandable language and before signing it, interviewees can make corrections (and are informed about such possibility).⁴⁷

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

⁴¹ M. Tobiasz, *Practices in interviewing immigrants. Legal implications* (project funded by the Visegrad Fund) Report from Poland, 2011, available at: <http://bit.ly/1O7Arap>.

⁴² Letter from the Head of the Office for Foreigners, DPU-07-1410/2013 from 22 February 2013.

⁴³ The Office for Foreigners letter to HFHR from 1 February 2017 no BSZ.WAiSM.0361.7.2017/TB.

⁴⁴ Letter from the Head of the Office for Foreigners to HFHR from 27 August 2015 no BSZ-0811/1429/15/RW.

⁴⁵ Information obtained from the Office for Foreigners, 25 March 2014.

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

⁴⁷ Interview with HFHR lawyers who shared their experience in representing asylum seekers before the Head of the Office for Foreigners.

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 ❖ If yes, is it suspensive	<table border="0"><tr><td>☒ Yes</td><td>☐ No</td></tr><tr><td>☐ Judicial</td><td>☒ Administrative</td></tr><tr><td>☒ Yes</td><td>☐ No</td></tr></table>	☒ Yes	☐ No	☐ Judicial	☒ Administrative	☒ Yes	☐ No
☒ Yes	☐ No						
☐ Judicial	☒ Administrative						
☒ Yes	☐ No						
2. Average processing time for the appeal body to make a decision:⁴⁸ 119 days

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 appeals translated into the language that the applicant for asylum had previously declared as understandable. 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 decision-making process.⁴⁹ In the regular procedure, decisions are made by three members. The procedure includes an assessment of the facts, and there is a possibility of hearing applicants. The time limit set in law for the appeal procedure is one month.⁵⁰ The appeal has suspensive effect.⁵¹ Neither hearings nor decisions of the Refugee Board are made public.

In 2016 the average processing time to issue a decision in appeal proceedings before the Refugee Board was 119 days. The longest processing time took 2 years 8 months 27 days and the shortest 1 day.⁵²

In 2016 the Refugee Board issued 1118 decisions.⁵³ In 74 cases the Refugee Board decided to hear the applicant. There were no cases of hearing the witness.

As mentioned above the Refugee Board may annul the first instance decision; overturn it or confirm the decision of the Head of the Office for Foreigners. In the majority of cases the decisions of the Head of the Office for Foreigners were confirmed (908 decisions in 2016).⁵⁴

After the negative decision or a decision on discontinuing the asylum procedure becomes final, the respective authority informs the Border Guard and the return proceedings can be launched.⁵⁵

After the administrative appeal procedure before the Refugee Board, the latter's decision can be further appealed to the Voivodeship Administrative Court in Warsaw within 30 days, but only points of law can be litigated at this stage.⁵⁶ From mid-2015 there is no fee for the procedure. This onward appeal does not have a suspensive effect on a final administrative decision. However, asylum seekers can ask the court to suspend a decision for the time of the court proceedings, if the decision can cause irreversible harm. The court procedure is adversarial (both the Refugee Board and the asylum seeker are parties before the court). The ruling of the Voivodeship Administrative Court in Warsaw can itself be appealed to the Supreme Administrative Court by lodging a cassation complaint, based exclusively on the legal conditions foreseen in the law, also accompanied by a request for suspension of the administrative decision.⁵⁷

⁴⁸ First half of 2015.

⁴⁹ Letter from the Head of the Refugee Board to HFHR from 27 August 2015 no DP-RURPW-02157-2015-KW.

⁵⁰ Article 35(3) Code of Administrative Proceedings.

⁵¹ Article 130(1) and (2) Code of Administrative Proceedings.

⁵² The Refugee Board letter to HFHR from 25 January 2017 no BRZP.WR.4452.1.2017/BŁ.

⁵³ The Refugee Board letter to HFHR from 25 January 2017 no BRZP.WR.4452.1.2017/BŁ.

⁵⁴ The Refugee Board letter to HFHR from 25 January 2017 no BRZP.WR.4452.1.2017/BŁ.

⁵⁵ Article 48a Law on Foreigners.

⁵⁶ 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).

⁵⁷ *Ibid.*

As of May 2014, the Law on Foreigners separates asylum proceedings and return proceedings, which means that a return decision is no longer issued within the asylum procedure. However, it can be issued after the administrative asylum procedure finishes and before the Voivodship Administrative Court in Warsaw examines the appeal against the final administrative decision refusing protection to the applicant. This is considered problematic by many NGOs in Poland, which stress that the Refugee Board is an administrative body, not the court, so the asylum seeker should be granted access to an effective remedy before a court before return can be conducted.⁵⁸ The jurisprudence of the Voivodeship Administrative Court in Warsaw and Supreme Administrative Court on this issue is not coherent. There have been rulings in 2015, in which it was stated that launching the return proceedings should be withheld until the court decides on the asylum case.⁵⁹ However, the Court has also ruled the opposite⁶⁰ and this line was followed in 2016.⁶¹

According to the statistics of the Refugee Board, in 2016 there were 345 complaints submitted to the Voivodeship Administrative Court against the decisions of the Refugee Board.⁶²

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
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 - ❖ 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
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 - ❖ Does free legal assistance cover

☐ Representation in courts
☒ Legal advice

A State legal aid system was introduced by the Law amending the Law on Protection on 13 November 2015.⁶³ This is something new in Polish legislation (there is still no state-funded legal aid for citizens). The legal aid system covers legal information, provided by the employees of the Office for Foreigners in cases concerning revocation of protection in the first instance, and legal aid provided by advocates, legal counsellors and NGOs in the second instance. The latter will involve preparing appeal and providing legal representation in cases concerning refusal of protection, discontinuance of the procedure, and refusal of reopening the procedure, Dublin, inadmissibility of the application and revocation of protection. The system is managed by the Head of the Office for Foreigners who contracts advocates, legal counsellors and NGO lawyers.

In 2016 315 asylum seekers benefited from the system of free legal aid.⁶⁴ Taking into account the overall number of appeals in 2016 – 1200⁶⁵ - this is definitely not much. Legal aid is provided by 230 legal counsellors, 228 advocates and 3 NGOs: LIA, The Rule of Law Institute and Halina Niec Legal Aid Centre.

There are also NGOs providing legal assistance through AMIF-funded projects, which have also provided this assistance under ERF-funded projects. However, AMIF funding is very unstable and practically has

⁵⁸ See e.g. HFHR letter sent to the Court in The Hague in one of the Dublin cases, describing the problem, available at: <http://bit.ly/1FPBj1v>.

⁵⁹ Supreme Administrative Court, Ruling from 1 April 2015 no II OZ 218/15, summary and the original ruling available at: <http://bit.ly/1jK7oxl>.

⁶⁰ Following rulings of the Supreme Administrative Court: from 9 January 2015 no II OZ 1384/14, from 28 January 2015 no II OZ 41/15, from 21 April 2015 no II OZ 309/15 from 7 May 2015 no II OZ 378/15, from 8 May 2015 no II OZ 402/15, all cited in the ruling of the Voivodeship Administrative Court from 29 May 2015 no IV SAWa 1227/15 available at: <http://bit.ly/1j98Mdb>.

⁶¹ See e.g. ruling of the Supreme Administrative Court no II OZ 1081/15 available at (PL): <http://bit.ly/2IOGQgT>.

⁶² The Refugee Board letter to HFHR from 25 January 2017 no BRZP.WR.4452.1.2017/BL.

⁶³ Article 69(c)-(m) Law on Protection, as amended in November 2015.

⁶⁴ The Office for Foreigners letter to HFHR from 1 February 2017 no BSZ.WAiSM.0361.7.2017/TB.

⁶⁵ The Refugee Board letter to HFHR from 25 January 2017 no BRZP.WR.4452.1.2017/BL.

been suspended. In February 2016 one AMIF call for proposals was cancelled, after the announcement of the results had been postponed three times.⁶⁶ In April two new calls were announced, but as of 31 December 2016 still no results have been given. The activities of these calls were supposed to be originally beginning in August 2016, as the call for proposals documentation specified. On 19 December 2016 19 NGOs sent letters to the Ministry of the Interior and to the European Commission Representation in Poland about this issue.⁶⁷

From 2012 on and until mid-2015 free legal assistance for asylum seekers and people granted international protection was only provided through projects run by NGOs funded by the European Refugee Fund (ERF); 75% of the projects' budget was covered by the ERF and there was a possibility for NGOs to request an additional 10% from the state budget, while 15% had to be provided by the organisation itself.

Projects for legal assistance funded through the ERF finished at the end of 2014. Some NGOs, such as LIA, had to reduce their activities from 1 January 2015.⁶⁸ National authorities responsible for the implementation of the funds, after numerous requests from NGOs and information in the media, decided to issue an additional call for projects and the funds were made available from 1.01.2015 until the end of June 2015. Since then the situation is very unstable and there are delays in announcing and arranging for calls for proposals.

Generally NGOs providing legal assistance in Poland differ between one another: there are some specialised organisations, with extensive experience in the field, engaged also in strategic litigation and advocacy. For some others, providing legal assistance to asylum seekers is another component of their general assistance activities.⁶⁹ In most cases, NGOs assist asylum seekers not only in the asylum process, but also in other legal proceedings and in solving every-day problems. Assistance related to the asylum procedure includes providing information and preparing relevant documents (appeals, applications, complaints) covering every stage of the procedure.⁷⁰

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

⁶⁶ More information available at: <http://bit.ly/2lguY9N>.

⁶⁷ E-mail information received from the Polish Migration Forum on 7 January 2017

⁶⁸ Available in Polish at: <http://bit.ly/1j98zXB>.

⁶⁹ A. Bergiel, K. Kubin, *Bezpłatne poradnictwo prawne dla migrantów przymusowych – opis działalności organizacji pozarządowych. Wyniki badań jakościowych (Free legal aid for forced migrants- a description of the NGOs' activities. The results of qualitative research)* in J. Frelak, W. Klaus, ed., *Słabe ogniwa. Wyzwania dla funkcjonowania systemu ochrony uchodźców w Polsce (Weak links. Challenges for the functioning of the system of refugee protection in Poland)*, Instytut Spraw Publicznych, 2011, 15.

⁷⁰ A. Gutkowska, *Ewaluacja funkcjonowania poradnictwa prawnego dla uchodźców – analiza prawna i praktyczna (Evaluation of the functioning of legal counseling for refugees- legal and practical analysis)* in J. Frelak, W. Klaus, ed., *Słabe ogniwa. Wyzwania dla funkcjonowania systemu ochrony uchodźców w Polsce*, Instytut Spraw Publicznych, 2011, 144.

Legal assistance provided by NGOs consists mainly of individual consultations during office hours.⁷¹ But only some projects involve the provision of legal assistance during visits to accommodation and detention centres. Generally asylum seekers in reception centres face practical obstacles in accessing legal assistance, as most of the reception centres are located in remote areas, while NGOs have their offices in the main cities of the four *voivodeships* (Mazowieckie, Małopolskie, Podlaskie and Lubelskie).⁷²

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

2. Dublin

2.1. General

Dublin statistics: 2016

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
Total	180	82	Total	9503	1420
Germany	65	41	Germany	6613	901
Hungary	17	2	France	966	34
Austria	16	2	Austria	672	207

Source: Office for Foreigners

Application of the Dublin criteria

According to the Dublin Proceedings Unit at the Office for Foreigners, the request for taking charge/taking back may be initiated at any stage of the asylum procedure if any circumstances justifying the request arise. The vast majority of “in” requests (5625 out 9503) was based on article 18(1)c of the Dublin III Regulation, while 68 out of 180 “out” requests was directed on the basis of article 18(1)b of the Dublin III Regulation.

In 2015 in cases of “out” requests, the most common circumstances that justified launching the Dublin procedure were: interception of the illegally staying foreigner and Eurodac hit (take back requests, 60% of “out” requests), family reunification (take charge requests, approximately 15% of “out” requests), holding a visa or residence permit issued by another Member State (take charge requests, app. 10 % of “out” requests) or Eurodac hit of an asylum applicant (take back requests, 7% of “out” requests). In 2016 no information was provided.

In case of “in” requests, the most common circumstances that justified launching the Dublin procedure were: asylum application lodged in another Member State and Eurodac hit; less frequently: illegal stay and Eurodac hit (take back requests, 72% of “in” requests), holding a visa or residence permit issued by Poland (take charge requests, 26% of “in” requests) and family reunification (take charge requests, app. 1% of “in” requests).

In 2015 in cases considering family unity in Dublin procedures no use was made of DNA tests. In all cases the asylum seekers were in possession of the documents certifying family ties and there was no need to confirm family links by forms, there were requests for information or medical examination. Generally requests to other Member States are made if there is enough evidence, taking into consideration the stage of the procedure and the applicable deadlines.⁷³

⁷¹ A. Bergiel, K. Kubin, *op. cit.*, 34.

⁷² A. Gutkowska, *op.cit.*, 136 and 146.

⁷³ E-mail information from the Dublin Unit at the Office for Foreigners from 8 September 2015.

The discretionary clauses

The humanitarian clause was applied just once in 2016. The sovereignty clause was used on nine occasions.⁷⁴ No information on the circumstances was provided.

2.2. Procedure

Indicators: Dublin: Procedure

1. On average, how long does a transfer take after the responsible Member State has accepted responsibility?
4-6 weeks if not appealed

The Head of the Office for Foreigners is responsible for Dublin procedures.⁷⁵ All asylum seekers (over 14 years old) are fingerprinted and checked in Eurodac at the time of lodging their asylum application. Until 12 November 2015 if there was any evidence or sign that another country may be responsible for examining the application, the Dublin procedure was applied. There were no grounds set in the national law that would allow for not applying the Dublin procedure, if there was any sign that another country may be deemed responsible.

From 13 November 2015 on, in all cases the Head of the Office for Foreigners applies the Dublin procedure.⁷⁶

According to the Office for Foreigners, if the authorities decide to apply the Dublin procedure, asylum seekers are informed about it. They are, however, informed about the following steps of the procedure (decision received from another Member State, the need to submit additional documents). Asylum seekers and their legal representatives can contact the Dublin Unit in person, in writing or by phone.⁷⁷

Individualised guarantees

The judgment *Tarakhel v Switzerland* has not influenced the practice of the Head of the Office for Foreigners in Dublin cases in 2015 and 2016. The reason given is that the only foreigners transferred from Poland to Italy are single men.⁷⁸ Persons with special needs are not transferred to Italy, Hungary and Bulgaria.⁷⁹

Transfers

According to the information provided in 2015, the time period during which the transfer is made depends on whether the Dublin procedure was initiated by the asylum authorities or by the applicant themselves (e.g. family reunification requests). In the latter case asylum seekers usually do not appeal the decision on transfer. In cases of detention involving illegal stay or family reunification it takes on average 4-6 weeks before the applicant is transferred to the Member State which accepted responsibility (from 13 days to 3 months). In cases of holding residence permit or visa of another Member State by the applicant or Eurodac hit it is hard to estimate, since asylum seekers often appeal such decisions on transfer. In these instances the Member State concerned is informed about the suspensive effect.⁸⁰ In 2016 no update was provided.

Asylum seekers are transferred under escort only when there is a risk of absconding or if the asylum seeker has already absconded beforehand. In 2016, the Border Guard informed that they transferred 90 persons under coercion.⁸¹

⁷⁴ The Office for Foreigners letter to HFHR from 1 February 2017 no BSZ.WAiSM.0361.7.2017/TB.

⁷⁵ Article 36(2) Law on Protection, as amended in November 2015.

⁷⁶ Article 36(1) Law on Protection, as amended in November 2015.

⁷⁷ Letter from the Head of the Office for Foreigners to HFHR from 27 August 2015 no BSZ-0811/1429/15/RW.

⁷⁸ *Ibid.*

⁷⁹ The Office for Foreigners letter to HFHR from 1 February 2017 no BSZ.WAiSM.0361.7.2017/TB.

⁸⁰ *Ibid.*

⁸¹ The Border Guard Headquarters letter to HFHR from 19 January 2017 no KG-OI-III.0180.5.2017/AP.

When an asylum seeker is transferred back from another Member State, they need to lodge an asylum application through the SG (or an application to re-open their asylum procedure). The SG either directs them to a reception centre or detains them for a maximum of 48 hours and requests a placement in a guarded centre to the court. Depending on the situation, their procedure is re-opened (if it was discontinued beforehand, because they left) or their application is considered subsequent, if they already received a decision before leaving Poland.

An asylum seeker can be detained after being transferred back from another state, as crossing the border illegally when leaving Poland constitutes a basis to be placed in detention or they may be detained in case of a lack of identity documents.⁸² In 2014 HFHR handled a case of an Iranian woman, who was transferred under the Dublin Regulation from the Netherlands to Poland with an established identity according to the transfer documents but was detained upon arrival on the basis of her lack of identity documents. Assisted by HFHR lawyers, the asylum seeker (now granted subsidiary protection) applied to the court for compensation due to unlawful detention. Compensation, in this case, has been granted entirely.

There is also a legal basis for detention in Dublin “out” cases introduced on 13 November 2015, based on the risk of absconding (see section on [Grounds for Detention](#)).⁸³ The Border Guards reported that 8 persons were placed in detention in 2016 on this basis. In 2016, 65 persons were transferred under Dublin from detention centres.⁸⁴

2.3. Personal interview

Indicators: Dublin: Personal Interview

☒ Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the Dublin procedure?⁸⁵ ☐ Yes ☒ No

There is no personal interview conducted exclusively for the purpose of the Dublin procedure. The information about the possible responsibility of another Member State is taken through various means. Alongside the Eurodac database information may be acquired from a form on which an asylum claim is registered by the SG or from an interview in the regular asylum procedure conducted by the Office for Foreigners. If there is a need to obtain additional information or documents from an asylum seeker involved in a Dublin procedure, they are contacted in writing, by phone or are asked to come to the Office for Foreigners.⁸⁶ It is worth mentioning that under the Law amending the Law on Protection there is a new form for an asylum application issued and additional questions useful for the Dublin procedure form an integral part of it.⁸⁷

⁸² No data made available by the Border Guards on how many transferees were detained upon arrival. Last available statistics on this issue can be found in the Transnational Dublin Project Final Report from May 2011, available at: <http://bit.ly/1MG39e7>.

⁸³ Article 398(1)(3a) Law on Foreigners, as amended in November 2015.

⁸⁴ The Border Guard Headquarters letter to HFHR from 19 January 2017 no KG-OI-III.0180.5.2017/AP.

⁸⁵ The Dublin procedure is the same as the regular procedure in Poland and thus there is no separate interview where an applicant's case falls under Dublin.

⁸⁶ Information obtained from the Dublin Proceedings Unit at the Office for Foreigners in 2014 (orally and by e-mail).

⁸⁷ Regulation of the Ministry of the Interior of 4 November 2015 on the asylum application form (Rozporządzenie Ministra Spraw Wewnętrznych z dnia 4 listopada 2015 r. w sprawie wzoru formularza wniosku o udzielenie ochrony międzynarodowej), available 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?

☒ Yes	☐ No
☐ Judicial	☒ Administrative
- ❖ If yes, is it

☒ Yes	☐ No
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- ❖ If yes, is it suspensive

☒ Yes	☐ No
☐ First appeal	☒ No
☐ Onward appeal ⁸⁸	☒ No

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

The average time for the appeal procedure in Dublin cases in 2016 was 68 days. In 2016 the Refugee Board issued 15 decisions in Dublin proceedings, out of which 11 confirmed the decision of the Head of the Office for Foreigners.

2.5. Legal assistance

Indicators: Dublin: Legal Assistance

☒ Same as regular procedure

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

☐ Yes	☒ With difficulty	☐ No
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- ❖ Does free legal assistance cover:

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

☐ Yes	☒ With difficulty	☐ No
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- ❖ Does free legal assistance cover

☐ Representation in courts
☒ Legal advice

Free legal assistance is offered as described in the section on [Regular Procedure: Legal Assistance](#). State legal aid introduced on 1 January 2016 covers preparing an appeal and representation in the second instance.⁸⁹

2.6. Suspension of transfers

Indicators: Dublin: Suspension of Transfers

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

☒ Yes	☐ No
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- ❖ If yes, to which country or countries? Greece

The Office for Foreigners adopted a policy of non-transfer to **Greece** from 1 February 2011, as a result of the European Court of Human Rights (ECtHR)'s *M.S.S.* judgment.⁹⁰ In 2016 cases of applicants with special needs are not subject to Dublin procedure if the receiving country would be Hungary, Italy or Bulgaria.⁹¹

⁸⁸ Information was provided by the Dublin Proceedings Unit at the Office for Foreigners.

⁸⁹ Article 69e Law on Protection, as amended in November 2015.

⁹⁰ ECtHR, *M.S.S. v. Belgium and Greece*, Application No. 30696/09, Judgment of 21 January 2011.

⁹¹ The Office for Foreigners letter to HFHR from 1 February 2017 no BSZ.WAiSM.0361.7.2017/TB.

Poland does not direct any take charge/take back requests to Greece, but tries to establish whether another state could be responsible for examining the asylum application and if not, it takes the responsibility for examining the asylum application. There were no other systematic suspensions to any other Member States as a result of jurisprudence or policy. It is worth mentioning that, as reported by HFHR in 2014, transfers to Greece under readmission agreements did take place. Some of the returnees were rejected asylum seekers (e.g. from Pakistan). There was no information on whether their situation in Greece upon return was subject to any evaluation. The problem of readmissions to Greece was described by HFHR in their report published on 27 June 2015.⁹² The Border Guard Headquarters have informed HFHR that since 1 July 2015 readmissions to Greece have been suspended.⁹³ By mid-2015 there were 12 foreigners readmitted to Greece. In 2016 there were no readmissions to Greece.⁹⁴

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

2.7. The situation of Dublin returnees

There is no information on obstacles in accessing the asylum procedure by the Dublin returnees. There were cases when HFHR, trying to follow the asylum seekers transferred back from another country, learned from the SG that they applied straight away for voluntary return and left the territory. The reason why they chose return over a (re)examination of their asylum claim is not known. The time limit to reopen the procedure has not been problematic as it was 2 years. Since 13 November 2015 the deadline is 9 months. In cases where e.g. the applicant did not wait for examination of his asylum claim in Poland but went to another Member State and did not come back to Poland within 9 months, the case will not be evaluated under the regular “in-merit” procedure. Their application lodged after this deadline will instead be considered as a subsequent application and subject to an admissibility procedure.⁹⁵ These provisions will concern decisions on discontinuing the procedure issued under the new regulations. For the decisions on discontinuing the procedure issued under the previous law, the deadline of 2 years for reopening the procedure is still applicable.⁹⁶

In 2016, 9186 decisions on discontinuing the procedure were issued because the applicant explicitly withdrew the application, left Poland, did not reach or left the reception centre, etc. At the same time there were no cases of reopening the procedure within 9 months, as the Office for Foreigners reports.⁹⁷

In 2013 and 2014 HFHR was concerned about the practice of the application of the Dublin II Regulation, which resulted in the separation of the families of asylum seekers between two countries. Based on their information there were cases in which German authorities, transferred only some members of the foreigners’ family, who have been initially under one, common asylum application in the territory of the Republic of Poland. Such practice was most commonly used in cases of foreigners who lodged an asylum application to the Head of the Office for Foreigners in Poland and after that travelled on to Germany. Subsequently their procedure in Poland was discontinued. Apart from infringement of international and European standards regarding family unity, said practice leads also to other legal problems.

⁹² Przekazania cudzoziemców do Grecji (*Transfers of foreigners to Greece*) in the Helsinki Foundation for Human Rights, POWROTY. Obserwacje Programu Pomocy Prawnej dla Uchodźców i Migrantów Helsińskiej Fundacji Praw Człowieka dotyczące przestrzegania praw cudzoziemców powracających do kraju pochodzenia (*RETURNS. Observations of the Legal Assistance for Refugees and Migrants Programme of the Helsinki Foundation for Human Rights concerning the rights of returning migrants*), 2015, 62, available in Polish at: <http://bit.ly/1MG3i1e>.

⁹³ Letter from the Border Guard Headquarters to HFHR from 24 August 2015 no FAX-KG-CU-5944/IP/15.

⁹⁴ The Border Guard Headquarters letter to HFHR from 19 January 2017 no KG-OI-III.0180.5.2017/AP.

⁹⁵ Article 40(6) Law on Protection, as amended in November 2015.

⁹⁶ Article 15 Law amending the Law on Protection, which entered into force in November 2015.

⁹⁷ The Office for Foreigners letter to HFHR from 1 February 2017 no BSZ.WAiSM.0361.7.2017/TB.

In a situation where an asylum seeker is transferred to Poland the Head of the Office of Foreigners lifts the previous decision of discontinuation of the proceedings and decides on its renewal. In some cases members of the family of the asylum seeker, on behalf of whom the asylum seeker lodged an asylum application, are also under these proceedings, even though those members are not on the territory of the Republic of Poland. In such a situation, when part of the family of the asylum seeker is on the territory of another country, there is a problematic issue on the legitimacy of examining the asylum application for the whole family. In case of initiating such proceedings asylum seekers who are not present in the territory of Poland are not provided with the right of active participation in the proceedings for granting them the status of a refugee. There is also no legal basis for granting the protection for the family of the asylum seeker if the application turns out to be justified. Whereas in the situation when part of the family is transferred, without the applicant, the members of the family have no capacity to request for renewal of the previous proceedings concerning them. In this situation the solution of filing another asylum application by the members of the family cannot be recognized satisfactory. When the family of the applicant has left his / her country of origin, due to possible danger that threatened only the applicant, and has as a whole been under one asylum application, this family is left with no chance of obtaining protection.

Furthermore, in one case reported to HFHR, the applicant (male adult) was transferred to Poland, while his wife, who was at the time in an advanced stage of pregnancy, stayed in Germany along with their minor children. In another case only a mother with small children, was transferred to Poland while the father of the family stayed in Germany. As a result, these families were separated and women with children stayed without their husbands. During the meeting of the HFHR with the SG Headquarters representatives, it was said that after discussion with the German counterparts, there were no such cases. The Dublin Unit at the Office for Foreigners confirms that these cases were incidental in 2014 and 2015. There were no such cases in 2016.⁹⁸

3. Admissibility procedure

3.1. General (scope, criteria, time limits)

An admissibility procedure is provided for in national legislation.⁹⁹ 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.¹⁰⁰

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

- ❖ Another Member State has granted refugee status to the applicant;
- ❖ A third country can be considered a first country of asylum with regard to the applicant;
- ❖ The applicant submitted a subsequent application after receiving a final decision, based on the same circumstances;
- ❖ A spouse of an applicant lodged a new asylum application after the applicant received a final decision and when the spouse's case was a part of an application made on their behalf and there are no facts justifying a separate application of the spouse.¹⁰¹

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.¹⁰² There

⁹⁸ Information provided by HFHR. Office for Foreigners did not provide information on this issue in 2016.

⁹⁹ Article 40 Law on Protection (applicable until 12 November 2015). From 13 November 2015: Article 38 Law on Protection.

¹⁰⁰ Article 38(4) Law on Protection, as amended in November 2015.

¹⁰¹ Article 38 Law on Protection, as amended in November 2015.

¹⁰² Article 38 Law on Protection, as amended in November 2015.

is no information on the actual use of this provision in 2016 by the Office for Foreigners. The general number of decisions on inadmissibility in 2016 was 770.¹⁰³

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.

The statistics obtained from the Office for Foreigners show, that in 2015, decisions on discontinuation of the procedure because of inadmissibility of the asylum application (issued on the basis of the Law on Protection before the amendment) were received by:

- ❖ 6 asylum seekers on the basis of the first ground where the applicant was a recognised refugee in another Member State,
- ❖ 196 asylum seekers on the basis of the second ground where the applicant lodged a subsequent application on identical facts,
- ❖ 6 asylum seekers on the basis of the third ground where a spouse's application contained the same reasoning as the applicant.

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 interview are the same as in a regular procedure. There is no data on how many interviews were conducted in admissibility procedures in 2016 in 2014 according to the Office for Foreigners, in 90% of cases of subsequent applications which are subject to admissibility procedure, there is no personal interview of the applicant.¹⁰⁴ For the admissibility procedures much depends on the case whether it is a detailed interview, as in the regular procedure, or whether it focuses only on specific issues (e.g. new circumstances).¹⁰⁵ The scope is not limited to identity, nationality, and travel route.¹⁰⁶

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, including its suspensive effect. The deadline for the appeal is 14 days.

¹⁰³ The Office for Foreigners letter to HFHR from 1 February 2017 no BSZ.WAiSM.0361.7.2017/TB.

¹⁰⁴ Email from the Office for Foreigners, Department of Asylum Proceedings from 1 April 2014.

¹⁰⁵ Information obtained from the Office for Foreigners, letter DPU-07-1410/2013 from 22 February 2013.

¹⁰⁶ The Office for Foreigners letter to HFHR from 1 February 2017 no BSZ.WAiSM.0361.7.2017/TB.

3.4. Legal assistance

Indicators: Admissibility Procedure: Legal Assistance

☒ Same as regular procedure

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

Free legal assistance is offered in the same context as described in the section on [Regular Procedure: Legal Assistance](#). State legal aid introduced on 1 January 2016 covers preparing an appeal and representation in the second instance.¹⁰⁷

4. Border procedure (border and transit zones)

There is no border procedure in Poland.

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:¹⁰⁸

- ❖ 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 (197 cases in 2016);
- ❖ Misleads the authority by hiding or presenting false information or documents which are important in an asylum procedure (4 cases in 2016)
- ❖ Makes inconsistent, contradictory, improbable or insufficient explanation of the persecution they are fleeing from, which are clearly inconsistent with the COI (11 cases in 2016)
- ❖ Submits an application to delay or disturb enforcement of a return decision (13 cases in 2016)
- ❖ Is a threat to national security or public order or was, on this ground, already expelled from the territory (3 cases in 2016)

The statistics obtained from the Office for Foreigners show that in 2016 the Head of the Office for Foreigners examined 228 applications in accelerated procedure.¹⁰⁹

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.¹¹⁰ There are no consequences of not respecting this time limit.

¹⁰⁷ Article 69e Law on Protection, as amended in November 2015.

¹⁰⁸ Procedure regulated in Article 39 Law on Protection, as amended in November 2015.

¹⁰⁹ The Office for Foreigners letter to HFHR from 1 February 2017 no BSZ.WAiSM.0361.7.2017/TB

¹¹⁰ No data was made available upon request if the time limit is respected in practice.

5.2. Personal Interview

Indicators: Accelerated Procedure: Personal Interview

☒ Same as regular procedure

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

Until 12 November 2015 in the cases referred to above (where the Office for Foreigners considers that the applicant had others reasons for applying for asylum than a well-founded fear of persecution or had not provided any information on the fear of persecution) there was no mandatory interview by the Head of the Office for Foreigners, unless the applicant was an unaccompanied child.¹¹¹ The rule is not applicable from 13 November 2015. This means that the interview in accelerated procedure is conducted according to the same rules as in regular procedure (see [Regular Procedure: Personal Interview](#)).¹¹²

In 2014 according to the Office for Foreigners, in 60% of cases considered manifestly unfounded, the personal interview was not conducted.¹¹³ No data from 2015 and 2016 has been made available. If it does take place, the interview does not differ from the one in a regular procedure – it is in the same form and the same rules apply.¹¹⁴

5.3. Appeal

Indicators: Accelerated Procedure: Appeal

☐ Same as regular procedure

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

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

- (1) The time limit to lodge an appeal is 7 calendar days instead of 14;¹¹⁵
- (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).¹¹⁶

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, because it is a short time, even more so if it falls on a weekend.

¹¹¹ Article 34(2)(1) Law on Protection applicable until 12 November 2015.

¹¹² Article 44 Law on Protection, as amended in November 2015.

¹¹³ E-mail from the Office for Foreigners, Department of Asylum Proceedings from 1 April 2014.

¹¹⁴ The Office for Foreigners letter to HFHR from 1 February 2017 no BSZ.WAiSM.0361.7.2017/TB

¹¹⁵ Article 39(2)(3) Law on Protection, applicable from 13 November 2015.

¹¹⁶ Article 34(2)(4) and (5) Law on Protection (applicable until 12 November 2015). From 13 November 2015: Article 39(2) Law on Protection.

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 introduced on 1 January 2016 covers preparing an appeal and representation in the second instance.¹¹⁷

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

As of 13 November 2015, foreigners, who need special treatment, are defined particularly as:¹¹⁸

- ❖ 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, psychical, including sexual).

The Head of the Office for Foreigners is obliged to make an assessment whether these persons need special treatment in the proceedings regarding granting international protection or regarding social assistance. In order to make this assessment, the authority can arrange for a medical or psychological examination of the applicant, funded by the state. In case when 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 did not agree to be subject 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

¹¹⁷ Article 69e Law on Protection, as amended in November 2015.

¹¹⁸ Article 68(1) Law on Protection, as amended in November 2015.

immediately after submitting an application for international protection and in any other time until the proceedings is finished, in case any new circumstances arise.¹¹⁹

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

In 2015-2016 there was a project “I recognise, I help – integration and development of the activities and procedures of the Office for Foreigners and the Border Guard with the purpose of a complex identification of vulnerable persons seeking protection in the territory of Poland”, implemented by the Office for Foreigners, the Border Guard and the Foundation “Różnosfera”. The detailed description of the integrated system of complex identification of vulnerable groups is to be a final product of the project.¹²⁰ On the website of the Foundation “Różnosfera” <http://www.roznosfera.org/> there are leaflets in Polish, Russian and Ukrainian explaining the purpose, the consequences and the process of the identification mechanism, including the rights of the asylum seekers. However, some NGOs are of the opinion that the tool used for the identification within this assessment was superficial, while at this stage of the procedure an in-depth analysis should be conducted.¹²¹

With the new law there was a new form of an asylum application introduced.¹²² Apart from the self-identification mechanism (questions concerning medical conditions, disability, pregnancy), a SG officer registering the application assesses whether an applicant (or any person covered by the application) may belong to one of these two groups: victims of trafficking in human beings or persons subject to torture. The Border Guard Headquarters applies an algorithm prepared in 2014 on how to handle vulnerable applicants. It defines aims, ways and rules for the SG actions in case of identifying a vulnerable person. The objective is to ensure optimal conditions guaranteeing the assistance of medical personnel and psychologists whenever needed.¹²³ NGOs point out that this preliminary identification is conducted at the time of lodging asylum application, so often at the border, where the conditions are difficult. Some are of the opinion, that the questions from the application for international protection cannot be considered an early identification at all.¹²⁴ The clear evidence that vulnerable persons are not identified correctly is that victims of violence are still placed in detention, while the law prohibits detaining such applicants. NGOs generally confirm that the system of identification envisaged in the law does not work in practice.¹²⁵

Until 12 November 2015 the Head of the Office for Foreigners ensured medical or psychological examinations only to asylum seekers who themselves informed the authority carrying out the procedure that they were a victim of violence, were disabled or whose psychophysical status lead to believe that they have been a victim of violence. This identification mechanism was not considered sufficient and effective by UNHCR, NGOs and some scholars.¹²⁶ In practice, the Office for Foreigners has not developed an

¹¹⁹ Article 68(3)-(6) Law on Protection, as amended in November 2015.

¹²⁰ More info available at: <http://bit.ly/2IJUzIL>.

¹²¹ Interview with LIA, November 2016.

¹²² Regulation of 5 November 2015 on the asylum application form (Rozporządzenie Ministra Spraw Wewnętrznych z dnia 5 listopada 2015 r. w sprawie wzoru formularza wniosku o udzielenie ochrony międzynarodowej), available at: <http://bit.ly/1hljviW>.

¹²³ Letter from the Border Guard Headquarters to HFHR from 24 August 2015 no FAX-KG-CU-5944/IP/15.

¹²⁴ Interview with LIA, November 2016.

¹²⁵ Interview with HFHR and LIA.

¹²⁶ A. Chrzanowska, W. Klaus, (*Recommendations for policy on placement of the centres for refugees*), in A. Chrzanowska, W. Klaus, A. Kosowicz, ed., *Polityka wyboru i lokalizacji ośrodków dla uchodźców. Analiza i rekomendacje* (*The policy on selection and location of the centres for refugees. Analysis and recommendations*), Stowarzyszenie Interwencji Prawnej, Fundacja Polskie Forum Migracyjne, 2011, 17, available at <http://bit.ly/1NwNBuF>. Also: D. Witko, K. Rusiłowicz, *Brak identyfikacji, gwarancji proceduralnych i odpowiednich warunków recepcyjnych dla osób wymagających szczególnej opieki* (*Lack of identification, procedural guarantees and proper reception conditions for vulnerable asylum seekers*), in Helsinki Foundation for Human Rights, *W poszukiwaniu ochrony. Wybrane problemy dotyczące realizacji praw cudzoziemców ubiegających się o nadanie statusu uchodźcy i objętych ochroną międzynarodową w latach 2012-2014. Obserwacje Programu Pomocy Prawnej dla Uchodźców i Migrantów Helsińskiej Fundacji Praw Człowieka* 2014, available in Polish at: <http://bit.ly/1eiVxDF>, 27-32.

effective process of identifying people with special needs, including victims of violence and traumatised people.¹²⁷ Asylum seekers do not give information about their disability or any violence they have suffered in the past, because they believe it is obvious or they do not know that it will lead to obtaining special procedural guarantees.¹²⁸ This self-identification mechanism present in Polish legislation was criticised by ECRE.¹²⁹ According to the UNHCR National Office Poland, the main challenge regarding the procedure concerned the identification of vulnerable persons and procedural guarantees for them.¹³⁰

Age assessment

Polish law provides for an identification mechanism for unaccompanied children.¹³¹ 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 a lack of consent, the applicant is considered an adult. Results of the medical examination should contain the information, if an asylum seeker is an adult. In case of any doubts, the applicant is considered as a minor. The responsibility for undertaking a medical examination is triggered by the authorities and shall be ensured by the SG.¹³²

There are not any requirements as to which methods should be chosen and used and what qualifications doctors should have. The legislation only states that examination should be done in manner respecting dignity and using the least invasive technique.¹³³ However, since the end of 2013 there is an algorithm of conducting medical examination of age assessment in return and asylum proceedings applied by the SG. It was drafted following the guidelines of the Study Group on Forensic Age Diagnostics. It foresees three methods:

- ❖ General examination;
- ❖ X-ray of a wrist;
- ❖ Teeth examination (pantomogram).

They are applied following the appointed order (from the least invasive) and in case of establishing a minor's age no additional examinations are conducted.¹³⁴ In practice in case the assessment cannot establish an exact age, young people are usually given the benefit of the doubt (this rule is reflected in the law since November 2015).¹³⁵ Although in 2011, several Afghan youths were subjected to an age assessment examination initiated by the SG (the applicants were detained) and they were declared adults, despite submitting documents from their country of origin, confirming that they were children. The practice of according little weight to documents confirming the age of the applicant sent from his country of origin and to giving preference to the age assessment expertise (even with the margin of error) continued in following years.¹³⁶

¹²⁷ P. Nikiel, *Raport z wyników badań i obserwacji zrealizowanych podczas projektu „Kampania na rzecz uchodźców i działania monitoringowe w ośrodkach dla cudzoziemców w Bytomiu i w Grotnikach (Report on the results of the research and observations carried out during the "Campaign for refugees and monitoring activities in the centres for foreigners in Bytom and Grotniki")*, Centrum Pomocy Prawnej im. H. Nieć, 2011, 14, available in Polish at: <http://bit.ly/1f0ONLE>, 14.

¹²⁸ M. Pajura, K. Przybysławska (ed.), *Cudzoziemcy szczególnej troski w Polsce (identyfikacja, detencja, orzecznictwo) [Vulnerable foreigners in Poland (identification, detention, jurisdiction)]*, Centrum Pomocy Prawnej im. Haliny Nieć, 2013, available at: <http://bit.ly/1dxieU4>.

¹²⁹ See ECRE's submission in *Bilalova v Poland* with argumentation to this effect, available at: <http://bit.ly/1M6NOXt>.

¹³⁰ Information provided by UNHCR on 11 February 2014.

¹³¹ Article 32 Law on Protection, as amended in November 2015.

¹³² Article 32 Law on Protection, as amended in November 2015.

¹³³ Article 32(4) Law on Protection, as amended in November 2015.

¹³⁴ Letter from the Border Guard Headquarters to HFHR from 24 August 2015 no FAX-KG-CU-5944/IP/15.

¹³⁵ Article 32(5) Law on Protection, as amended in November 2015.

¹³⁶ M. Jaźwińska, *Procedura badania wieku cudzoziemców (Procedure of foreigners' age assesment)*, in Helsinki Foundation for Human Rights, *W poszukiwaniu ochrony. Wybrane problemy dotyczące realizacji praw cudzoziemców ubiegających się o nadanie statusu uchodźcy i objętych ochroną międzynarodową w latach*

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

During the first half of 2015 three age assessments were conducted in the detention centre in Ketrzyn. In all three cases the applicants were minors.¹³⁷ In 2016 the Border Guard provided no information about the number of age assessments.

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:

As mentioned above 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 (minors, disabled, elderly, victims of torture, etc.) 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 his needs, the actions in the proceedings regarding granting international protection are performed:

- ❖ by the person of the same gender;
- ❖ in the presence of a psychologist, medical doctor or an interpreter, of a gender indicated by the foreigner.¹³⁸

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.¹³⁹ An interview should not be conducted if the health condition of the applicant or psychological considerations make it impossible to hear them within the time set in the law as a deadline (i.e. 6 months).

NGOs confirm that there were cases where the interview was postponed under this provision. However, NGOs also report a case involving a traumatised asylum seeker whom the Office for Foreigners decided to interview once more to clarify small contradictions which occurred in her previous statements notwithstanding that her legal representative had applied for the personal interview to be replaced with written explanations along with the psychological problems which occurred during the first interview and were confirmed by the psychologist. The asylum seeker was not in a fit state to participate in the second interview because of her PTSD, which was confirmed by medical reports and known to the Office for Foreigners. Nonetheless the interview was still organised. The individual was not able to answer any

2012-2014. *Obserwacje Programu Pomocy Prawnej dla Uchodźców i Migrantów Helsińskiej Fundacji Praw Człowieka* (In search of protection. Selected problems concerning the enforcement of rights of foreigners who apply for refugee status and are under international protection in the years 2012-2014. Observations of the Legal Assistance for Refugees and Migrants Programme of the Helsinki Foundation for Human Rights), 2014, available in Polish at: <http://bit.ly/1eiVxDF>, 76-77.

¹³⁷ Letter from the Border Guard Headquarters from 18 August 2015 MAIL KG-OI-614/III/2015.

¹³⁸ Article 69 Law on Protection, as amended in November 2015.

¹³⁹ Article 44(4)1 Law on Protection, as amended in November 2015.

questions, because symptoms of PTSD occurred at the beginning of the interview (dissociation, panic attacks, paralysis of the body). She was then taken to hospital. She was later granted subsidiary protection.¹⁴⁰

The Office for Foreigners informed that the minors are always interviewed in their place of stay. The Office also confirms that there were cases of not conducting an interview in 2015-2016 if the case files proved it was not necessary to grant protection. There were also cases of collecting written statements. The Office for Foreigners claims that all the case-workers were trained on interview techniques of vulnerable applicants by the psychologists. Psychological counselling is available in every reception centre and at the Office for Foreigners. Psychologists have a minimum 4 duty hours a week per 120 foreigners. They can identify an asylum seeker as requiring special treatment in the course of the proceedings, so that appropriate guarantees are ensured.¹⁴¹

In Poland there is a very limited number of NGOs specialising in psychological support for vulnerable asylum seekers, some of them concentrate on assistance directed to a particular group (children or victims of trafficking). There are three NGOs which provide psychological support to asylum seekers generally – the first one is the International Humanitarian Initiative – they support asylum seekers on a regular basis in Warsaw. They visit detention centres occasionally if they receive information about asylum seekers who need psychological support. They run a project – “Protect” – process of recognition and orientation of torture victims in European countries to facilitate care and treatment. The second one is Ocalenie Foundation; they support asylum seekers on a regular basis, three times a week in Warsaw. Their psychologist speaks English and Russian. The third one is the Foundation “Różnosfera” which participated in the project with the Office for Foreigners and the Border Guard in the project “I recognise, I help” mentioned above. Other NGOs, due to financial reasons, provide psychological support in a limited way, and not on a regular basis.

According to the Office for Foreigners, in 2014 accelerated procedures were not used either towards unaccompanied children or victims of torture, rape or other serious forms of psychological, physical or sexual violence. In very rare cases the interview is not carried out at all.¹⁴² In 2016 the Office for Foreigners stressed, that the law does not exclude application of accelerated procedures towards vulnerable applicants and did not present any statistical data.¹⁴³

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 the medical or psychological examination can be conducted in order to assess whether a person needs special treatment with regard to procedural safeguards and reception.¹⁴⁴ There is no medical examination for the purpose of confirming past persecution or serious harm. During the parliamentary work on the regulation covering the issue of medical examination conducted at the time of submission of an application for international protection, HFHR suggested it should cover the examination

¹⁴⁰ D. Witko, K. Rusiłowicz, *Lack of identification, procedural guarantees and proper reception conditions for vulnerable asylum seekers*, in Helsinki Foundation for Human Rights, *W poszukiwaniu ochrony. Wybrane problemy dotyczące realizacji praw cudzoziemców ubiegających się o nadanie statusu uchodźcy i objętych ochroną międzynarodową w latach 2012-2014. Obserwacje Programu Pomocy Prawnej dla Uchodźców i Migrantów Helsińskiej Fundacji Praw Człowieka* 2014, 28-29, available at: <http://bit.ly/1eiVxDF>.

¹⁴¹ Letter from the Head of the Office for Foreigners to HFHR no DPS.WII.522.1.2016/KL.

¹⁴² Information obtained from the Department for Social Assistance, Office for Foreigners, 25 March 2014.

¹⁴³ The Office for Foreigners letter to HFHR from 1 February 2017 no BSZ.WAiSM.0361.7.2017/TB.

¹⁴⁴ Article 68 Law on Protection, as amended in November 2015.

with the purpose of identifying the signs of past persecutions or serious harm, but the request has been dismissed.¹⁴⁵

In 2013 the Office for Foreigners answered that the methodology set in the Istanbul protocol is not used.¹⁴⁶ In 2016 the Office for Foreigners answered that the matter of methodology of the medical examination (conducted for the purpose of identification of persons requiring special treatments in the procedure) is part of medical documentation and is not disclosed to the Office.¹⁴⁷

Most of the NGOs did not report a case of conducting medical examination to confirm past persecutions in 2016.

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*).¹⁴⁸ 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. According to the Office for Foreigners, this usually took too long, even 2 months.¹⁴⁹ Under the law in force since November 2015, the deadline for appointing the guardian is 3 days. There is no information on observing this rule in practice.

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 fulfil certain conditions.¹⁵⁰ 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. NGOs personnel and students of legal clinics at universities were appointed as guardians. The legal representative should be present during the interview, together with a psychologist, and may ask questions and make comments.¹⁵¹

Currently unaccompanied children are placed in various intervention facilities in Poland, instead of in a central institution. After the court ruling they can be placed in foster care facilities or foster families. In 2016 unaccompanied minors were mostly placed in case or educational facilities in Ketrzyn ("because of the closeness to the detention centre in Ketrzyn")¹⁵² as well as in Przemyśl and Rzeszów. There is no information whether the personnel speaks foreign languages there, this is not one of criteria.¹⁵³

When the international protection proceedings is finished with a negative decision, the minor remains in the same foster family or institution.

In 2016 there were 142 unaccompanied minors applying for international protection in Poland. In the first half of 2015 there were fifteen asylum seeking unaccompanied minors (5 from Vietnam, 4 from Tajikistan, 3 from Russia, 1 from Afghanistan, 1 from Iraq and 1 from Kyrgyzstan). In 12 cases the asylum proceedings

¹⁴⁵ HFHR lawyer, e-mail information, October 2016.

¹⁴⁶ Letter from the Head of the Office for Foreigners, DPU-07-1410/2013 from 22 February 2013.

¹⁴⁷ The Office for Foreigners letter to HFHR from 1 February 2017 no BSZ.WAiSM.0361.7.2017/TB

¹⁴⁸ Article 61 Law on Protection.

¹⁴⁹ Letter from the Head of the Office for Foreigners to HFHR from 27 August 2015 no BSZ-0811/1429/15/RW.

¹⁵⁰ Article 66 Law on Protection, as amended in November 2015.

¹⁵¹ Article 65(3) and (4) Law on Protection.

¹⁵² The Office for Foreigners letter to HFHR from 1 February 2017 no BSZ.WAiSM.0361.7.2017/TB

¹⁵³ Letter from the Head of the Office for Foreigners to HFHR from 27 August 2015 no BSZ-0811/1429/15/RW.

were discontinued because the minor absconded.¹⁵⁴ Generally there is very little information available on unaccompanied minors in Poland. As of 15 June 2016 only 6 unaccompanied minors benefitted from social assistance provided by the Office for Foreigners in Poland.¹⁵⁵

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 (see section on [Admissibility Procedure](#)). If there are no new grounds of the applicants, the decision on inadmissibility is issued. In the first half of 2015, 926 out of 3,826 asylum seekers lodged subsequent applications. These were submitted mainly by Russians, Ukrainians and Georgians. In 2016 there were 2481 subsequent applications, submitted mainly by Russians, Ukrainians and Georgians.

In 2011 the Supreme Administrative Court, in a significant judgment,¹⁵⁶ highlighted that the administrative authorities, when deciding on admissibility of a subsequent asylum application:

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

This judgment is respected in practice and is cited in other cases.¹⁵⁷

If the application is considered admissible, i.e. containing new circumstances relevant for the case, no separate decision until 12 November 2015 was issued and the proceedings are continued according to general rules of the regular procedure. From 13 November 2015, in that case the Head of the Office for Foreigners issues a decision considering the application admissible.¹⁵⁸ No information was provided on practical use of this provision in 2016.

The first subsequent application has a suspensive effect on a return decision until it is claimed inadmissible (or until the protection is refused).¹⁵⁹

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

¹⁵⁴ Letter from the Head of the Office for Foreigners to HFHR from 27 August 2015 no BSZ-0811/1429/15/RW.

¹⁵⁵ The Office for Foreigners, Special reports, Reception: <http://bit.ly/2kpvqmw>

¹⁵⁶ Supreme Administrative Court, Judgment from 24 February 2011, II OSK 557/10 (not published).

¹⁵⁷ Voivodeship Administrative Court in Warsaw, Judgment from 13 June 2012, V SA/Wa 2332/11 (not published). See also Report on the activities of the Refugee Board for 2014 (*Sprawozdanie z działalności Rady do Spraw Uchodźców za 2014 r.*), Warsaw, January 2015 (not available online).

¹⁵⁸ Article 38(5) Law on Protection, as amended in November 2015.

¹⁵⁹ Article 330(2) and (3) Law on Foreigners, as amended in November 2015.

F. The safe country concepts

Indicators: Safe Country Concepts

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

1. Safe country of origin

National legislation in force until 12 November 2015 foresaw that an application should be considered manifestly unfounded and subject to an accelerated procedure if the applicant comes from a safe country of origin included in the common minimum list of safe countries of origin established by the Council of the European Union.¹⁶⁰ However, as such a list was never adopted by the Council of the EU, there was therefore in practice no safe country of origin concept being implemented in Poland.

After the amendment of the Law of Protection applicable from 13 November 2015 this concept is not applied in Poland.

2. First country of asylum

The concept of first country of asylum is included in Law amending the Law on Protection transposing the recast Asylum Procedures Directive and reflects the wording of Article 35 of that Directive. The law entered into force on 13 November 2015. There is no information about the practical use of this provision.

G. Relocation

Indicators: Relocation

1. Number of persons effectively relocated since the start of the scheme 0

Until now Poland has not relocated any asylum seeker from Italy or Greece.

On 16 December 2015 Poland declared readiness to relocate in first phase 65 foreigners from Greece and 35 from Italy. According to the Polish Ministry of Interior and Administration, relocation procedures, which had started at the end of 2015, were impeded by incorrect functioning of the hot-spots in Greece and Italy and insufficient implementation of the proper security procedures by those countries in order to verify asylum seekers' identity. Ministry enhanced that proper verification of the asylum seekers for safety reasons is especially important concerning the terrorist attacks in Paris and Brussels.¹⁶¹ Other reasons of the lack of the relocation to Poland publicly presented by Polish officials were: possession of fake documents by the candidates to the relocation,¹⁶² lack of the direct access to the candidates in Italy and insufficient level of verification of those asylum seekers who were to be relocated from Greece to Poland.¹⁶³ As a result the

¹⁶⁰ Article 34(1) Law on Protection (as applicable until 12 November 2015).

¹⁶¹ Letter from Ministry of the Interior and Administration to Polish Ombudsman (Rzecznik Praw Obywatelskich) from 31.03.2016 no BMP-0790-4-2/2016/Mj, available at (PL): <http://bit.ly/2meA0oc>.

¹⁶² Statement of the Polish Minister of the Interior and Administration M. Błaszczak in that matter cited in the article: “Błaszczak: Nie przyjmujemy uchodźców, którzy zagrażają bezpieczeństwu Polski i Polaków” (“Błaszczak: We will not admit refugees who are a threat for Poland and Polish people”), 9.05.2016, available at (PL): <http://bit.ly/2kTyEyZ>.

¹⁶³ The Office for Foreigners' information for the Polsat News, cited in the article: Polsat News, “PN: proces relokacji uchodźców z Grecji i Włoch do Polski zatrzymany” (“Relocation of refugees from Greece and Italy stopped”), 5.05.2016, available at (PL): <http://bit.ly/2mssH8x>.

relocation of the 65 asylum seekers from Greece and 35 asylum seekers from Italy was finally cancelled.¹⁶⁴ Currently Polish authorities state that Poland is against the mechanism of forced relocation of asylum seekers within Europe.¹⁶⁵

It is worth noticing that in January 2016 Polish Government presented the project of the Regulation on the foreigners' relocation in 2016. In the regulation the number of asylum seekers to be relocated in 2016 (400) was specified as well as the mechanism of financing of the relocation procedures. The project was criticized by NGOs and public authorities,¹⁶⁶ as not sufficient in the scope of the number of relocated foreigners and the integration measures provided for them. The regulation has not been enacted until now.

As a result, the answer to the above mentioned questions can be only theoretical, based on the current legislation (Law on Protection), not on practice.

Relocation was introduced into the Polish legislation at the beginning of 2012. The new chapter (5a) of the Law on Protection considered special rules concerning relocated and resettled foreigners, distinguishing this procedure from the regular asylum procedure (art. 86a-86j). Foreigner who has been qualified to relocation can apply for a refugee status in Poland before arrival to the Polish territory. They are entitled then to obtain a temporary identity document (TZTC) valid 90 days. The interview can be held in the country of their current stay. Polish authorities provide transport of relocated foreigners to the Polish border and – if they apply for asylum in Poland – to the first reception centre. After arrival to Poland relocated asylum seekers are obliged to give their passports to the Polish authorities for the time of the asylum proceedings. If they applied for asylum in Poland before arrival, they are entitled to health care (to the same extent as other asylum seekers in Poland) from the moment of crossing the Polish border (not from the moment of registration in the first reception centre).

The above mentioned rules concern also security procedure before foreigners' arrival to Poland. The Head of the Office for Foreigners is obliged to ask main security agencies in Poland whether the foreigner is a threat for security or public order in Poland (obligation is excluded in case of the minor below the age of 13). Originally security agencies had 14 days to answer, since 13 November 2015¹⁶⁷ – 7 days. In case of the lack of the answer, the foreigner was considered as not being a threat. Since 19 June 2016¹⁶⁸ security agencies are obliged to answer Head of the Office for Foreigners' request in 45 days (prolongation possible by subsequent 14 days). The aim of that change was to guarantee longer and more precise checking of foreigners who are about to be relocated to Poland.¹⁶⁹ If any of the security agencies considers the foreigner as a threat, they will not be relocated to Poland.

All the differences between relocation and regular asylum procedure are listed above. Generally, accordingly to the Law on Protection, the relocated foreigner after arrival to Poland is subject to regular asylum procedure and regular asylum reception conditions, with small exceptions listed above. Their application is not considered, by law, in fast-track or prioritised procedure. They have the same status as other asylum seekers in Poland.

¹⁶⁴ *Ibid.*

¹⁶⁵ Ministry of the Interior and Administration, „Grupa Wyszehradzka przeciwna automatycznej relokacji uchodźców” („Wyszehrad group against automatic relocation of refugees”), 11.07.2016, available at (PL): <http://bit.ly/2mepvBo>.

¹⁶⁶ The project and NGOs as well as public authorities' opinions available at (PL): <http://bit.ly/2IMorni>.

¹⁶⁷ Law of 10 September 2015 amending the Law on Protection and other acts.

¹⁶⁸ Law of 20 May 2016 amending the Law on Protection.

¹⁶⁹ Ministry of the Interior and Administration, „Służby będą miały więcej czasu na sprawdzenie cudzoziemca” („Agencies will have more time to check the foreigner”), 14.04.2016, available at (PL): <http://bit.ly/2IOQoIE>.

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

Indicators: Information and Access to NGOs and UNHCR

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
2. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☒ With difficulty ☐ No
3. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☒ With difficulty ☐ No
4. 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

The same level of information on the asylum procedure is provided to applicants during all types of procedures. According to the Law on Protection, as of 13 November 2015, the SG officer who receives an asylum application has to inform in writing the applicant in a language that they understand on:

- ❖ 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.¹⁷⁰

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.

In addition, the Office for Foreigners also offers information in the form of a booklet entitled “First steps in Poland – practical brochure for the asylum applicants in Poland”.¹⁷¹ It was published in 2011 under a project co-financed by ERF and then updated in 2015. It is now available in 6 languages (Russian, English, Georgian, Arabic, French and Polish) and contains basic information on Poland, Polish law regarding asylum seekers and social assistance.

Asylum seekers are informed about the Dublin procedure when they apply for international protection in accordance with the Dublin III Regulation.¹⁷² They receive a leaflet, as specified in Article 4(3) of the Dublin III Regulation, when their fingerprints are taken. These leaflets are currently available in the following languages: Polish, English, Arabic, Armenian, Pashto, Persian, Ukrainian, Vietnamese, Russian and Georgian. There is also a separate instruction about the rules of the Dublin procedure, which has been a part of a general instruction for asylum seekers since 2004, currently available in: Polish, English, Arabic, Chinese, French, Georgian, Hindi, Spanish, Moldavian, Armenian, Panjabi, Persian, Portuguese, Russian, Ukrainian and Urdu.¹⁷³

¹⁷⁰ Article 30(1)(5) Law on Protection, as amended in November 2015.

¹⁷¹ The booklets are available at: <http://bit.ly/1sLwQG>.

¹⁷² Article 4 Dublin III Regulation.

¹⁷³ Letter from the Border Guard Headquarters to HFHR from 24 August 2015 no FAX-KG-CU-5944/IP/15.

Information on the Dublin procedure is rather unclear and it is hard to estimate, whether it is the insufficient information or other reasons that make an asylum seeker go to other Member States despite the fact that Poland, according to the hierarchy within the Dublin Regulation, should examine their application.

NGOs also provide information on asylum within projects co-funded by ERF. A leaflet entitled “Refugee procedure in Poland – vulnerable persons and victims of sexual and gender based violence” was produced by the Halina Nieć Legal Aid Centre and the Office for Foreigners in 2012 in Polish and English.¹⁷⁴ In 2012, the HFHR prepared a booklet on the asylum procedure and a booklet on the rights and obligations after being granted protection in Polish, English, Russian, Arabic and French. The booklets are available on the webpage of the HFHR, and were sent to the Office for Foreigners, as well as detention and reception centres. Both HFHR booklets were updated in 2014. Updated versions are available in Polish, English and Russian.¹⁷⁵ In 2015 HFHR published a video on family reunification procedure, available in Polish, English, Russian, Ukrainian, Vietnamese and Chinese.¹⁷⁶

Information about the possibility to contact UNHCR is available in the Office for Foreigners (in English, Russian, French, Arabic and Vietnamese) and in reception and detention centres. The instructions for asylum applicants provided by the SG contain information about the possibility to contact UNHCR and NGOs. According to the Border Guards they are provided at the border and are available in: Polish, English, Arabic, Chinese, Vietnamese, French, Georgian, Hindi, Persian, Russian, Ukrainian, Urdu, Kazakh, Tadjik, Sorani, Kyrgyz, Bengali, Belarussian and Turkish.¹⁷⁷

In every reception centre there is an organisation, which provides integration assistance (e.g. educational and leisure activities) to asylum seekers accommodated there,¹⁷⁸ although it is dependent on financial means of these organisations.

I. 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: Syria
2. Are applications from specific nationalities considered manifestly unfounded?¹⁷⁹ ☐ Yes ☒ No
❖ If yes, specify which:

In Poland there is no official policy implemented with regard to the top 5 countries of origin (Russia, Ukraine, Georgia, Tajikistan, Syria), because every application is examined individually. However, there are some trends visible in cases of Syrian and Georgian asylum seekers. While asylum applications of Syrians are granted (or cases are discontinued, probably because of leaving Poland), Georgians are consequently refused any protection status.

HFHR has documented SG practices in establishing the identity of asylum seekers. There were cases of Iranian, Vietnamese and Belarusian asylum seekers who were asked to meet the representatives from their

¹⁷⁴ The leaflet was published within the framework of the project “Give them a chance! - Legal and information support to vulnerable asylum seekers and SGBV prevention in centres for asylum seekers in Poland” The booklet is available at: <http://bit.ly/1IsLwQG>.

¹⁷⁵ HFHR, “Me in the asylum procedure”, available at: <http://bit.ly/1Lt7Hcu> and “Refugee status, subsidiary protection – what next?”, available at: <http://bit.ly/1FPBrOt>.

¹⁷⁶ HFHR, “The whole family in Poland. Educational Film for Migrants on Family Reunification”, available at: <http://bit.ly/1QUgH8l>.

¹⁷⁷ Letter from the Border Guard Headquarters to HFHR from 18 August 2015 no MAIL KG-OI-614/III/2015.

¹⁷⁸ Information provided by the Office for Foreigners, Department for Social Assistance, 25.03.2014. List of NGOs with which Office for Foreigners cooperated is listed in an informative brochure: *Urząd do Spraw Cudzoziemców, Informator Departamentu Pomocy Socjalnej*, from 21 January 2013.

¹⁷⁹ Whether under the “safe country of origin” concept or otherwise.

country of origin consulates in order to confirm their identity. According to Polish authorities, such activities did not involve disclosing the information that the person concerned applied for asylum and there was therefore no infringement of Article 9 of the Law on Protection.¹⁸⁰

However in the opinion of HFHR, organising a meeting itself poses a threat to the asylum seeker or his relatives in the country of origin. One example of this issue is highlighted in the case of Vietnamese citizens seeking asylum. On 23 April 2014, there was a visit by representatives of Vietnam's authorities to the guarded centre in **Białystok**. The purpose of the visit was to confirm the identity of detained foreigners believed to be Vietnamese nationals. HFHR was concerned because Vietnamese officials actually met asylum seekers. This issue was raised in a request submitted to the SG by HFHR. In response, the SG emphasised that, in accordance with the principle set out in law, asylum seekers are not interrogated unless they submitted their asylum applications after the list of people was already transferred by the SG to the Vietnamese authorities for the purposes of confirming identity. At the same time, the SG denied that actions taken by the SG on 23 April 2014 breached the rights of third country nationals. In another request, the HFHR referred to explanations of the SG and indicated at least two cases known to the HFHR concerning asylum applicants whose asylum examination had lasted for a long time and who were interrogated by representatives of the authorities of Vietnam on 23 April 2014 in the guarded centre in **Białystok**.¹⁸¹ The problem was described in HFHR report published in December 2014.¹⁸²

In recent years concerns were expressed with regard to the standards of reasoning in the decisions concerning Russian citizens of Chechen nationality.¹⁸³ HFHR practice in granting legal assistance to asylum seekers in Poland served as one of the sources of information. Generally, the situation in Chechnya has been considered stable for some time and it happens that country of origin information is taken into account only selectively. The authorities' position is that if there were no persecutions in the past, it cannot be argued that there can be a well-founded fear of persecutions upon return. Witness statements of other Chechens are not taken into account, as they are found not credible, since the members of the community are generally willing to testify in favour of one another. The Internal Flight Alternative (existing possibility to live in another part of Russian Federation) is raised in negative decisions, without giving due consideration of the personal situation of an applicant (vulnerable persons: elderly persons, single women with children). The Refugee Board in its report for 2014 admits that until 2009 the proven fact of living in Chechnya resulted in obtaining protection status. After finishing military action, there is no justification of granting protection only because of the general situation in the region and this has been confirmed by the numerous judgements of the Voivodeship Administrative Court. The Refugee Board expresses the opinion that the most instable situation can be observed in Dagestan.¹⁸⁴ In 2016 NGOs raised concerns about the COI used in decisions regarding Chechen nationals.

In 2014 the number of Ukrainian asylum seekers increased significantly. Ukrainians constituted 34 % of all asylum claims (there were 8,195 asylum applications, out of which 2,318 were citizens of Ukraine). With regard to these 2,318 applications lodged in 2014, the Office for Foreigners issued 645 negative decisions and 372 cases were discontinued. Subsidiary protection was granted in only six cases, and eleven applicants were issued a "tolerated stay" permit (a form of limited national protection). The remaining

¹⁸⁰ Information concerning a foreigner cannot be made available to authorities or public institutions in their country of origin which would make it possible to determine that: (a) an asylum procedure of the foreigner is pending or has ended; (b) the foreigner has been granted or refused the refugee status or subsidiary protection.

¹⁸¹ The request is on the website, available at: <http://bit.ly/1RBYHzf>.

¹⁸² J. Białas, *Potwierdzenie tożsamości cudzoziemców w trakcie procedur uchodźczych (Confirming identity of foreigners during asylum procedures)*, in Helsinki Foundation for Human Rights, *W poszukiwaniu ochrony. Wybrane problemy dotyczące realizacji praw cudzoziemców ubiegających się o nadanie statusu uchodźcy i objętych ochroną międzynarodową w latach 2012-2014. Obserwacje Programu Pomocy Prawnej dla Uchodźców i Migrantów Helsińskiej Fundacji Praw Człowieka*, 2014, available in Polish at: <http://bit.ly/1eiVxDF>, 20.

¹⁸³ ECRE, *Guidelines on the treatment of Chechen internally displaced persons (IDPs), asylum seekers and refugees in Europe*, revised March 2011, available at: <http://bit.ly/1Yk1Qc8>; Dublin Transnational Project- Part 1, Final Report from May 2011, available at: <http://bit.ly/1SKXtDj>.

¹⁸⁴ Report on the activities of the Refugee Board for 2014 (*Sprawozdanie z działalności Rady do Spraw Uchodźców za 2014 r.*), Warsaw, January 2015 (not available online).

number are either pending, or there is no data on the result. In the first 6 months of 2015, 1,345 citizens of Ukraine applied for asylum in Poland. They constituted 33% of all asylum applicants. In the reporting period none of the Ukrainians were granted refugee status by the Head of the Office for Foreigners (first instance authority) and only 2 persons were granted subsidiary protection. 925 citizens of Ukraine were refused protection and 440 had their cases discontinued. As a result of appeal proceedings held by the Refugee Board, 2 Ukrainians were granted refugee status and altogether 8 were granted subsidiary protection. 475 persons had their decision upheld and 28 quashed. The main reason for rejection mentioned in the negative decisions concerns the Internal Flight Alternative (IFA). Contrary to political statements and actions, in the decisions Polish authorities express the opinion that the situation in the western part of the country is stable, so Ukrainians from conflict zones in the east could settle their safely and legally and have access to the necessary facilities.¹⁸⁵ As supporting evidence they point to the new law on internally displaced persons adopted in Ukraine.¹⁸⁶ In case of Crimea the Refugee Board in its decisions expresses the opinion that Ukraine is the only country of origin of the persons coming from this region (it is important as permanent inhabitants of Crimea acquired Russian citizenship *ex lege*).¹⁸⁷ The number of applicants from Ukraine decreased from 2305 in 2015 to 1229 in 2016. While in 2015 only 6 decisions granting refugee status and 6 granting subsidiary protection were issued, in 2016 there were 16 positive decisions on refugee status and 51 decisions on subsidiary protection. The Refugee Board added to that number 16 decisions on refugee status and 13 on subsidiary protection. There were 696 negative decisions. The Office for Foreigners provided information about the profiles of the applicants.¹⁸⁸ The main profiles are: political (persons fear persecutions and repression because of their political opinions), Crimean (coming from Crimea, fearing persecutions because of their ethnic or religious background), eastern (coming from Donbas), “army” (fearing being called to army), economic (coming to get work or health care in Poland). It is worth noticing, that in 2016 87891 persons applied for temporary residence permits in Poland and 57789 persons were granted these permits.

When asylum seekers are identified as Syrian nationals, they are granted refugee status or subsidiary protection. According to the official statistics of the Office for Foreigners for 2016, 40 persons were granted refugee status, 3 subsidiary protection and there was one negative decision. No policy on “freezing” or postponing the examination of the applications was adopted.

As of 31 December 2016 no returns are carried out to the following countries: Syria, Eritrea, Yemen, Qatar, Maldives, Burundi, Oman, Hungary – both with regard to Dublin transfers and readmission.¹⁸⁹

¹⁸⁵ Report on the activities of the Refugee Board for 2014 (*Sprawozdanie z działalności Rady do Spraw Uchodźców za 2014 r.*), Warsaw, January 2015 (not available online).

¹⁸⁶ Information based on numerous cases handled by HFHR in 2014 and 2015.

¹⁸⁷ Report on the activities of the Refugee Board for 2014 (*Sprawozdanie z działalności Rady do Spraw Uchodźców za 2014 r.*), Warsaw, January 2015 (not available online).

¹⁸⁸ The Office for Foreigners information on Ukrainian applicants available at: <http://bit.ly/2IKyIGP>.

¹⁸⁹ The Border Guard Headquarters letter to HFHR from 19 January 2017 no KG-OI-III.0180.5.2017/AP.

Reception Conditions

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators: Criteria and Restrictions to Reception Conditions

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

❖ Regular procedure	☒ Yes	☐ Reduced material conditions	☐ No
❖ Dublin procedure	☒ Yes	☐ Reduced material conditions	☐ No
❖ Admissibility procedure	☒ Yes	☐ Reduced material conditions	☐ No
❖ Accelerated procedure	☒ Yes	☐ Reduced material conditions	☐ No
❖ First appeal	☒ Yes	☐ Reduced material conditions	☐ No
❖ Onward appeal	☐ Yes	☐ Reduced material conditions	☒ No
❖ Subsequent application	☒ Yes	☐ Reduced material conditions	☐ No

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

☐ Yes	☒ No
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Asylum seekers are entitled to material reception conditions to the same extent during all asylum procedures in Poland (there is no difference between regular, accelerated and admissibility procedures, as well as during first appeal).¹⁹⁰

Asylum seekers are entitled to material reception conditions after claiming asylum, from the moment they register in one of the first reception centres. They should register here within two days after applying for asylum, otherwise their procedure will be discontinued.¹⁹¹ Only medical assistance can be granted from the moment of claiming asylum (i.e. before registration in a first reception centre) in special situations, in case of threat to life and health.¹⁹² Proof of an asylum application is confirmed by the temporary ID issued by the SG after submitting the claim.¹⁹³ However, according to the Office for Foreigners, the lack of such a document is not a problem for registering at the reception centre.¹⁹⁴ From 13 November 2015 asylum seekers are entitled to temporary ID also when they are returned to Poland on the basis of the Dublin Regulation, if they claimed for asylum before departing from Poland and they state that they want to continue the asylum procedure in Poland.¹⁹⁵

As a general rule, reception conditions (material assistance, accommodation, medical care) are provided up until 2 months after the decision on the asylum application becomes final (either positive or negative).¹⁹⁶ However, when the procedure is terminated with the decision on discontinuing the procedure (e.g. in admissibility procedures), reception conditions are provided until 14 days after the decision becomes final.¹⁹⁷ Moreover, from 1 May 2014 reception conditions are not provided, if the term in which an asylum seeker was obliged to leave Poland voluntarily has passed.¹⁹⁸ Asylum seekers as a rule are obliged to

¹⁹⁰ Article 70 Law on Protection.

¹⁹¹ Article 42(1)(1a) Law on Protection.

¹⁹² J. Białas, *Niezgodność zasad pomocy socjalnej zapewnianej osobom ubiegającym się o nadanie statusu uchodźcy z wyrokiem Trybunału Sprawiedliwości UE (Incompatibility of social assistance granted to foreigners applying for a refugee status with CJEU judgement)*, in Helsinki Foundation for Human Rights, *W poszukiwaniu ochrony. Wybrane problemy dotyczące realizacji praw cudzoziemców ubiegających się o nadanie statusu uchodźcy i objętych ochroną międzynarodową w latach 2012-2014. Obserwacje Programu Pomocy Prawnej dla Uchodźców i Migrantów Helsińskiej Fundacji Praw Człowieka*, 2014, available in Polish at: <http://bit.ly/1eiVxDF>, 52-53.

¹⁹³ Article 80 (1) Law on Protection.

¹⁹⁴ Information obtained from Department for Social Assistance, Office for Foreigners, 25 March 2014 and confirmed in the letter of the Office for Foreigners to HFHR from 1 February 2017 no BSZ.WAiSM.0361.7.2017/TB.

¹⁹⁵ Article 55(2) and (3) Law on Protection, as amended in November 2015.

¹⁹⁶ Article 74(1)(2) Law on Protection.

¹⁹⁷ *Ibid.*

¹⁹⁸ Article 74(2)(2) Law on Protection.

leave Poland in 30 days from the day when the final decision of the Refugee Board was delivered or in 30 days from the moment when decision of Office for Foreigners becomes final (if they do not appeal).¹⁹⁹ In practice it means that the most often the reception conditions are provided only for 30 days, not 2 months, in case of negative decision. Reception conditions are provided in practice in this time frame.

In principle, during the onward appeal procedure before the Voivodeship Administrative Court in **Warsaw**, asylum seekers are not entitled to material reception conditions.²⁰⁰ Although in practice, when the court suspends enforcement of the contested decision of the Refugee Board for the time of the court proceedings, asylum seekers are re-granted material reception conditions to the same extent as during the administrative asylum procedure, until the ruling of the court.²⁰¹ However, in 2016 the Court mostly refused to suspend enforcement of the negative decision on international protection (see: [Regular Procedure, Appeal](#)) for the time of the court proceedings, which leaves asylum seekers without any material reception conditions for this time.²⁰²

Good practice reported by some asylum seekers is that they were allowed to stay in the centre even though the period during which they were entitled to assistance had ceased after the above mentioned timeframes. On the other hand, some asylum seekers living outside the centres were afraid to go to the office or the centre to get the benefits they were entitled to after the negative decision became final, due to controls by the SG on the days when benefits are given. This practice was reported by asylum seekers in the specialised reception centre for women and children and in the centre in Linin.

The provision of reception conditions does not depend on the financial situation of asylum seekers.²⁰³

Some asylum seekers are not entitled to material reception conditions in an asylum procedure e.g. beneficiaries of subsidiary protection, applying for asylum again,²⁰⁴ humanitarian stay or “tolerated stay”, TCNs staying in Poland on the basis of temporary stay permit, permanent stay permit or long-term residence permit, TCNs staying in youth care facilities or detention centres or pre-trial custody or detention for criminal purposes.²⁰⁵ Beneficiaries of subsidiary protection, foreigners staying in Poland on the basis of permanent stay permit, long-term residence permit or – in some cases – temporary stay permit are entitled to state benefits (general social assistance system) to the same extent as Polish citizens. Foreigners who were granted humanitarian stay or tolerated stay are entitled to state benefits only in the form of shelter, food, necessary clothing and a benefit for specified purpose.²⁰⁶

There are some practical obstacles reported in accessing material reception conditions. Asylum seekers can apply to change assistance granted in the centre to assistance granted outside of the centre. If the Office for Foreigners agrees then in practice an asylum seeker is entitled to stay in the centre until the end of the month and from the next month they are entitled to financial allowance. The problem is that in law and in practice the financial allowance is not paid on the first day of the month, but by the fifteenth of each

¹⁹⁹ Article 299(6)(2) Law on Foreigners.

²⁰⁰ 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.

²⁰¹ This is the interpretation of the Legal Department of the Office for Foreigners. Information confirmed by the Office for Foreigners in the letter to HFHR from 1 February 2017 no BSZ.WAiSM.0361.7.2017/TB.

²⁰² Eg. ruling of the Voivodeship Administrative Court in Warsaw from 13.04.2015, no. IV SA/Wa 698/15, ruling of the Supreme Administrative Court in Warsaw from 28.01.2015, no. OZ 41/15, ruling of the Voivodeship Administrative Court in Warsaw from 23.05.2016 no. IV SA/Wa 3808/15. More information on the courts' differential practice in this area (in Polish): M. Łysienia, *Prawo cudzoziemca ubiegającego się o udzielenie ochrony międzynarodowej do pobytu na terytorium Polski* (Asylum seeker's right to stay on the Polish territory) in D. Pudziałowska (ed), *Status cudzoziemca w Polsce wobec współczesnych wyzwań międzynarodowych* (Foreigner's status in Poland amid modern international challenges), Wolters Kluwer SA, 2016.

²⁰³ Articles 70-74 Law on Protection.

²⁰⁴ In practice some foreigners after the end of the asylum procedure, in which they were granted subsidiary protection, ask for asylum again in order to be granted refugee status.

²⁰⁵ Article 70(2) Law on Protection.

²⁰⁶ Article 5(2) Law of 30 August 2002 on social assistance (Ustawa z dnia 30 sierpnia 2002 r. o pomocy społecznej).

month.²⁰⁷ It means that foreigners have to move from the centre at the end of the month, but do not get any financial resources to rent an apartment or even buy food for a couple days or even weeks – such cases were reported to the HFHR.²⁰⁸ The Office for Foreigners claims that asylum seekers can stay in the reception centre until the first day of the payment, but then the monthly payment is smaller, so asylum seekers decide themselves to get allowance for a whole month and not only for the part during which they were not living in a centre.²⁰⁹

Another problem reported is that if an asylum seekers cannot come to the centre to collect the monthly financial allowance on the appointed day (i.e. because they are ill), they will only be able to get the allowance the following month, with a new payment. If they do not have additional sources of income, they are left without assistance for one month. According to the Office for Foreigners any case concerning a change in collecting allowance is examined individually and a lot depends on when the applicant submitted a request to collect allowance on the other day.²¹⁰

A further obstacle to receiving support is encountered by formerly detained asylum seekers. Those who have been detained are not entitled to support after being released from the detention centre. They are granted material reception conditions only from the moment of registration in a reception centre, which is very often located far away from the detention centre. As a result asylum seekers have problems covering the cost of transport to the reception centre.²¹¹ From 13.11.2015 SG is obliged to provide the transport to a reception centre for some groups of asylum seekers released from a detention centre: pregnant women, single parents, elderly and disabled people. In justified cases, food for them should be also provided.²¹² The Border Guard does not process data on application of this provision in practice.

Moreover, it was reported that asylum seekers in the process of appealing a decision were sometimes not granted social assistance, for the simple reason that the Office for Foreigners' system had no record that their appeal had been lodged.²¹³

Dublin returnees, if they ask for asylum in Poland (in case if they did not claim for asylum in Poland before) or if they ask to re-open their asylum procedure (when it was discontinued because of their departure from Poland), are entitled to reception conditions on the same rules as mentioned above.

Asylum seekers, who are subject to a Dublin transfer from Poland, are entitled to additional assistance, upon request. The assistance in case of the transfer to other EU country covers: travel costs, administrative payments for travel document or visas and permits, cost of food and medical assistance during the travel.²¹⁴ Reception conditions are provided for such asylum seekers as long as they should leave Poland to other EU country;²¹⁵ it is an exception from the general rules concerning the period in which reception conditions are provided described above. Request for this assistance has to be made in a specific term (30 days from the moment when the final decision on transfer is delivered to the asylum seeker). After this time, demand of the asylum seeker is left without consideration.²¹⁶

²⁰⁷ Section 3(6) Regulation on amount of assistance for asylum seekers, current schedule of payments, available at: <http://bit.ly/1kKb6s3>.

²⁰⁸ HFHR, Letter to the Office for Foreigners from 9 September 2013, available at: <http://bit.ly/1I3doqZ>.

²⁰⁹ Letter from Office for Foreigners from 23 September 2013, available at: <http://bit.ly/1OhAO2W>.

²¹⁰ The Office for Foreigners letter to HFHR from 1 February 2017 no BSZ.WAiSM.0361.7.2017/TB

²¹¹ J. Białas, *Niezgodność zasad pomocy socjalnej zapewnianej osobom ubiegającym się o nadanie statusu uchodźcy z wyrokiem Trybunału Sprawiedliwości UE*, 53.

²¹² Article 89cb Law on Protection.

²¹³ M. Łysienia, *Prawidłowe funkcjonowanie systemu POBYT jako gwarancja przestrzegania praw cudzoziemców (Proper functioning of POBYT system as a guarantee for respect of foreigners' rights)*, in Helsinki Foundation for Human Rights, *W poszukiwaniu ochrony*, 2014, 49.

²¹⁴ Article 75a(2) in conjunction with Article 75(2) Law on Protection.

²¹⁵ Article 74(3)(2) Law on Protection.

²¹⁶ Article 75a(2) in conjunction with Article 75(3) and (3a) Law on Protection.

2. Forms and levels of material reception conditions

Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers as 31 December 2016 (in original currency and in €):
 - ❖ Accommodated, incl. food 50 PLN / €12
 - ❖ Private accommodation 775 PLN / €185

The Regulation on the amount of assistance to asylum seekers sets the level of financial allowances for all amounts related to reception conditions. In the law there are 2 forms of reception conditions:²¹⁷

Assistance granted in the centre

Material conditions	Financial level (where applicable)
Accommodation	
Provision of all meals in the centre or its financial equivalent	PLN 9 / €2.15 per day
Allowance for personal expenses	PLN 50 / €11.93 per month
Permanent financial assistance for purchase of hygienic articles or hygienic utilities ²¹⁸	PLN 20 / €4.77 per month
One-time financial assistance or coupons for purchase of clothing and footwear	PLN 140 / €33.42
Polish language course and basic materials supplies necessary for the course	
Supplies for school for children enjoying education and care of public institutions, primary schools, gymnasia or grammar schools and covering, as far as possible the expenses of extra-curricular classes and sports and recreational classes	
Financing of tickets for public transport - In order to take part in the proceedings for granting the refugee status; - In order to attend medical examinations or vaccinations; - In other particularly justified cases.	
Medical care	

Assistance granted outside the centre

Material conditions	Financial level (where applicable)
Financial allowance for all costs of stay in Poland (amount per person) ❖ Single adult ❖ Two family members ❖ Three family members ❖ Four or more family members	PLN 25 / €5.97 per day PLN 20 / €4.77 per day PLN 15 / €3.58 per day PLN 12.50 / €2.98 per day
Polish language course and basic materials supplies necessary for the course	
Supplies for school for children enjoying education and care of public institutions, primary schools, gymnasia or grammar schools and covering,	

²¹⁷ Article 71 Law on Protection.

²¹⁸ From 13 November 2015 it is possible not only to provide asylum seekers with permanent financial assistance for purchase of hygienic articles, but also with hygienic utilities themselves: Article 1(30) Law amending the Law on Protection.

as far as possible the expenses of extra-curricular classes and sports and recreational classes ²¹⁹	
Financing of tickets for public transport ²²⁰ - In order to take part in the proceedings for granting the refugee status; - In order to attend medical examinations or vaccinations; - In other particularly justified cases.	
Medical care	

Under the law, the assistance granted in the centre is a rule and it is granted to all asylum seekers. An asylum seeker can obtain assistance granted out of the centre upon request, examined by the Head of the Office for Foreigners. It can be granted for organisational, safety or family reasons or to prepare asylum seekers for an independent life after they have been granted any form of protection.²²¹

All of the above mentioned reception conditions are used in practice. As of 31 December 2016, 1,960 asylum seekers benefited from assistance in the centres and 2,267 asylum seekers were granted assistance outside the centres.²²² In 2016, on average 1,735 asylum seekers benefited from assistance in the centres and 2,416 asylum seekers were granted assistance outside the centres.

The amount of social assistance that asylum seekers receive is generally not sufficient to ensure an adequate standard of living in Poland.²²³ With only PLN 750-775 per month, it is very difficult to rent an apartment or even a room in **Warsaw**, where most asylum seekers stay during the procedure.²²⁴ As the amount of financial allowance is not enough to rent 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.²²⁵ Social assistance for families of four members amounts to PLN 1,500 per month and in practice is enough only to rent an apartment. Insufficient amounts of social assistance forces asylum seekers to work in Poland illegally in order to maintain and pay the rent.²²⁶

The amount of social assistance is below the so called “social minimum” (indicator which evaluates the cost of living in Poland). The asylum seeker receives from one and half to two times less than what is essential according to the “social minimum”. The amount of social assistance for asylum seekers was not increased from 2003, even though the costs of living in Poland have enlarged by 35 to 50% depending on the type of the household.²²⁷

²¹⁹ The Office for Foreigners claims that it includes also financing tickets for public transport.

²²⁰ From 13 November 2015 it is possible also to finance the purchase of the tickets for public transport in case of assistance granted outside the centre: Article 1(30) Law amending the Law on Protection.

²²¹ Article 72(1) Law on Protection.

²²² Available in Polish at: <http://bit.ly/1GQaELC>. Information provided by the Office for Foreigners, e-mail from 26 January 2015.

²²³ Letter from Polish Ombudsman (Rzecznik Praw Obywatelskich) to Ministry of Interior from 7.12.2015, in which Polish Ombudsman is asking to consider the increase the amount of financial assistance for asylum seekers, available in Polish at: <http://bit.ly/2kSuaa4>.

²²⁴ N. Klorek, *Ochrona zdrowia nieudokumentowanych migrantów i osób ubiegających się o ochronę międzynarodową w opinii cudzoziemców (Healthcare of the undocumented migrants and persons seeking international protection in the opinion of foreigners)*, in A. Chrzanowska, W. Klaus, ed., *Poza systemem. Dostęp do ochrony zdrowia nieudokumentowanych migrantów i cudzoziemców ubiegających się o ochronę międzynarodową w Polsce (Outside the system. Access to health care of undocumented migrants and foreigners seeking international protection in Poland)*, Stowarzyszenie Interwencji Prawnej, 2011, 56.

²²⁵ K. Wysieńska, *Gdzie jest mój dom? Bezdomność i dostęp do mieszkań wśród ubiegających się o status uchodźcy, uchodźców i osób z przyznaną ochroną międzynarodową w Polsce (Where is my home? Homelessness and access to housing among asylum seekers, refugees and persons granted international protection in Poland)*, UNHCR, 2013, 14, available in Polish at: <http://bit.ly/1CMmGFb>, 14.

²²⁶ Stowarzyszenie Interwencji Prawnej, A. Chrzanowska, I. Czerniejewska, “Mieszkamy tutaj, bo nie mamy innego wyjścia... Raport z monitoringu warunków mieszkaniowych uchodźców w Polsce” (“We live here, because we have no other choice... Report from the monitoring of housing conditions of refugees in Poland”), Analizy, raporty, ekspertyzy Nr 2/2015, 55, available in Polish at: <http://bit.ly/1Lq2Hie>.

²²⁷ M. Jaźwińska, M. Szczepanik, “All quiet on the Eastern front: asylum trends and reception of refugees in Poland during the 2013-2015 Europe’s migration crisis” in Corvinus Society for Foreign Affairs and Culture, (Biztpol

As a result, material reception conditions are considered insufficient to ensure a decent standard of living as highlighted in the CJEU judgment in *Saciri*.²²⁸ The amount of social assistance that asylum seekers receive is not adjusted to their state of health, their age or disability, which is incompatible with *Saciri and Others*.²²⁹

In 2015 Polish Ombudsman, UNHCR, the Helsinki Foundation for Human Rights and the Legal Intervention Association applied to the Ministry of Interior to increase the amount of the social assistance granted to asylum seekers. Their motions were not accepted by the authorities, who concluded that the amount of financial support granted outside of the centres is satisfactory, because it is only an additional form of the material reception conditions. The basic form is the assistance granted in the reception centres, which is sufficient.²³⁰

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

According to the law, in case an asylum seeker performs cleaning work for the centre, provides translation or interpretation that facilitates communication between the personnel of the centre and asylum seekers, or provides cultural and educational activities for other asylum seekers who stay in the centre, the amount of the allowance for personal expenses may be raised to PLN 100 (e.g. in the first half of 2015, such an increased allowance was paid in 367 cases).²³¹ The Office for Foreigners did not provide the data for 2016.

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

3. Reduction or withdrawal of reception conditions

Indicators: Reduction or Withdrawal of Reception Conditions

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

The law provides for a possibility to withdraw material reception conditions, if an asylum seeker grossly violates the rules in the centre or acts violently towards employees of the centre or other foreigners staying there.²³² The decision on depriving reception conditions is issued by the Head of the Office for Foreigners. It can be re-granted to the same extent as previously, 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.²³³

²²⁸ Affaires 2015 Summer Vol. 3 No 2), available at: <http://bit.ly/1OiDPgX>, also letter from Helsinki Foundation for Human Rights to Ministry of Interior from 27.10.2015, available in Polish at: <http://bit.ly/2l82tbT>.

²²⁹ CJEU, Case C-79/13 *Saciri*, Judgment of 27 February 2014; J. Białas, *Niezgodność zasad pomocy socjalnej zapewnianej osobom ubiegającym się o nadanie statusu uchodźcy z wyrokiem Trybunału Sprawiedliwości UE*, 52, also letter from Polish Ombudsman (Rzecznik Praw Obywatelskich) to Ministry of Interior from 7.12.2015, in which he is asking to consider the increase the amount of financial assistance for asylum seekers, available in Polish at: <http://bit.ly/2kSuaa4>.

²³⁰ *Ibid.*

²³¹ Letters from Polish Ombudsman, HFHR and LIA (in Polish) and UNHCR (in English) as well as Ministry of Interior's response (in Polish) available at: <http://bit.ly/2lyW3Va>.

²³² Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW. List of the reception centres, available at: <http://bit.ly/1JzdU5c>.

²³³ Article 76(1) Law on Protection, as amended in November 2015. Before the amendment it was possible to withdraw material reception conditions in cases where an asylum seeker grossly violates the rules of social co-existence in the centre.

²³⁴ Articles 76 and 78 Law on Protection, as amended in November 2015. Before the amendment, it was possible to reduce material reception conditions in this situation to one third of the regular payments.

If an asylum seeker seriously breaches the rules in the centre, in practice they receive three warnings before any further consequences. If they still breach the rules after those warnings, they can be deprived of material reception conditions. Other sanctions are not applied.²³⁴

Social assistance can be reduced to half of the financial allowance provided to asylum seekers also in case of a refusal to undergo medical examinations or necessary sanitary treatment of the asylum seeker themselves and their clothes.²³⁵

The above mentioned rules of withdrawal and reduction of social assistance are used in practice very rarely (around 5 times in 2013, in 2014 there was only one case of withdrawal, in a first half of 2015 no such decision was issued, in 2016 there were 3 cases).²³⁶ In 2013 the 5 people concerned asked to be re-granted social assistance and it was re-granted to them.²³⁷ No information is available about the specific reasons of such a withdrawal or reduction.

Moreover, in case an asylum seeker benefiting from social assistance in the centre stays outside this centre for a period exceeding two days, granting such assistance should be withheld by law until the moment of his return.²³⁸

Decisions on reduction and withdrawal of reception conditions are made on an individual basis. Asylum seekers have a possibility under the law to appeal a decision on reduction and withdrawal of reception conditions. Free legal assistance is provided by NGOs only under the general scheme (see section on Legal aid under the regular procedure).

Since 1 January 2012, the Ministry of Interior has a possibility to reduce asylum seekers' social assistance and/or medical care, if the limit of expenses allocated for this assistance per year (PLN 100,000,000) is likely to be exceeded or if, in a certain period of time, expenses exceed the forecasted amount for this period by at least 10%.²³⁹ Such situation can occur in the case of an increased number of asylum seekers arriving to Poland. The Ministry has not used this opportunity yet.

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

²³⁴ Information obtained from Department for Social Assistance, Office for Foreigners, 25 March 2014.

²³⁵ Article 81(3) Law on Protection, as amended in November 2015. Until 12 November 2015 it was possible to reduce material reception conditions in this situation to one third of the regular payments.

²³⁶ The Office for Foreigners letter to HFHR from 1 February 2017 no BSZ.WAiSM.0361.7.2017/TB.

²³⁷ Information obtained in Department for Social Assistance, Office for Foreigners, 7 February 2013 and 25 March 2014. No such cases in 2014 and first half of 2015.

²³⁸ Article 77 Law on Protection.

²³⁹ Article 19 Law of 28 July 2011 on the legalisation of the stay of certain foreigners on Polish territory, Journal of Laws 2011 no 191 position 1133 (*Ustawa z dnia 28 lipca 2011 r. o zalegalizowaniu pobytu niektórych cudzoziemców na terytorium Rzeczypospolitej Polskiej oraz o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej i ustawy o cudzoziemcach*, Dz. U. 2011 nr 191 poz. 1133), available at: <http://bit.ly/1NyZMY8>.

4. Freedom of movement

Indicators: Freedom of Movement

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

Officially there is no restriction to the freedom of movement of asylum seekers: they can travel around Poland wherever they want. However, when an asylum seeker accommodated in a centre stays outside this centre for more than 2 days, the assistance will be withheld by law until the moment of their return.²⁴⁰ Asylum seekers should inform the employees of the centre if they want to leave for a longer period and then the assistance will still be granted.²⁴¹

The Office for Foreigners decides in which reception centre asylum seekers will be allocated. 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.

Asylum seekers can also apply to be allocated in a centre of their choice, but such a request has to be justified. In March 2014 a group of Ukrainians complained about the conditions in the reception centre in **Podkowa Lesna Debak** and as a result were moved to another one in **Lukow**.²⁴²

The possibility for nuclear families to stay in the same centre is not a problem in practice.²⁴³

Under the law an asylum seeker staying in one centre can be required to move to another facility if this is justified for organizational reasons.²⁴⁴ Polish authorities in practice interpret such rule as applying only to transfers from first-reception centres to an accommodation centre.²⁴⁵ As a result asylum seekers are forced to move only from a first reception centre to the other centres. In practice it can take a few to several days (depending on how long the epidemiological filter procedure lasts and whether the interview is conducted in first reception centre – as a rule it should be conducted there in the first asylum procedure).²⁴⁶ Afterwards if they are allocated to one centre they are very rarely moved to another. If so, it happens only upon request of the asylum seeker. In 2016 there were no cases of moving an asylum seeker to another facility without their request. If an asylum seeker submits such a request, it is mostly because of the location of the centre (e.g. it is far from school or shops).²⁴⁷ There is no decision concerning transfers from one centre to the other so it cannot be appealed. Reasons of public interest and public order do not have any impact on the decision on an asylum seeker's place of stay.²⁴⁸

²⁴⁰ Article 77 Law on Protection.

²⁴¹ Information received from UNHCR National Office Poland and Office for Foreigners, Department for Social Assistance, 25 March 2014.

²⁴² Polskie Radio, "Brud i smród" - uchodźcy z Ukrainy skarżą się na warunki w polskim ośrodku ("Dirty and stinky" - refugees from Ukraine complain about the conditions in a Polish reception centre), 27 March 2014, available at: <http://bit.ly/NY8bKX>.

²⁴³ Information obtained from the Department for Social Assistance, Office for Foreigners, 25 March 2014; EMN, *The Organisation of Reception Facilities for Asylum Seekers in different Member States. National Contribution of Poland*, 2013, 6.

²⁴⁴ Article 82(1)(6) Law on Protection.

²⁴⁵ EMN, *The Organisation of Reception Facilities for Asylum Seekers in different Member States. National Contribution of Poland*, 2013, 19.

²⁴⁶ Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW.

²⁴⁷ The Office for Foreigners letter to HFHR from 1 February 2017 no BSZ.WAiSM.0361.7.2017/TB.

²⁴⁸ Information obtained from the Department for Social Assistance, Office for Foreigners, 25 March 2014. See also Rzecznik Praw Obywatelskich, (Polish Ombudsman), *Realizacja prawa małoletnich cudzoziemców do edukacji. Raport RPO (Implementation of the right to education for foreign minors. Polish Ombudsman report)*, 2013, available at: <http://bit.ly/1Hz4N4a>, 38.

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation

1. Number of reception centres:²⁴⁹ 11
2. Total number of places in the reception centres: 2331
3. Total number of places in private accommodation: n/a
4. Type of accommodation most frequently used in a regular procedure:
☐ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☒ Private housing ☐ Other
5. Type of accommodation most frequently used in an accelerated procedure:
☐ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☒ Private housing ☐ Other

In Poland there are eleven reception centres which altogether provide 2331 places.²⁵⁰ Two centres serve for first reception²⁵¹ (asylum seekers are directed there after applying for asylum in order to register and carry out medical examinations). The other nine are accommodation centres.

Centres are located in different parts of Poland. Some of them are located in cities (**Warsaw, Biała Podlaska, Białystok, Lublin**), but most of them are located in the countryside. Some are located far away from any towns (**Bezwola, Dębak, Czerwony Bór**).²⁵²

There is no problem of overcrowding in these centres; as of 31 December 2016 in first reception centres there was 79,3% occupancy rate and in other centres: 84%.²⁵³

The Head of the Office for Foreigners is responsible for the management of all the centres. This authority can delegate its responsibility for managing the centres to social organisations, associations, etc.²⁵⁴ Currently 7 reception centres are managed by private contractors (private owners and companies).²⁵⁵ In 2016 Office for Foreigners faced some problems concerning delegation of the responsibility for managing the centres to other entities. Only nine entities (seven previous centres and two new ones) presented the offers to manage ten reception centres. New offers though met with wide protests from local community and authorities, which was connected with the rising fear of asylum seekers in connection with latest European migration crisis. As a result, the call for proposals was cancelled in case of those two new locations in order to ensure asylum seekers' safety.²⁵⁶

²⁴⁹ Both permanent and for first arrivals. In general both in the accelerated and regular procedure TCNs choose to receive social assistance outside the centre rather than to stay in a reception centre.

²⁵⁰ Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW. In 2013 the number of asylum seekers in Poland significantly increased (from a total of 10,753 applications for refugee status in 2012 to 10,407 applications only in the first 6 months of 2013). In total it was 15,253 asylum applications in Poland in 2013. The Office for Foreigners had to open two new centres (both in **Bezwola**) and buy more places for foreigners in existing centres: Office for Foreigners' letter DPS-WPŚ-510-3590/2013/MRS from 24 September 2013. In 2014 there was again smaller amount of applications: 6,621.

²⁵¹ N. Kłerek, *op. cit.* See also Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW.

²⁵² List and map of reception centres available at: <http://bit.ly/1JzdU5c>.

²⁵³ Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW.

²⁵⁴ Article 79(2) Law on Protection.

²⁵⁵ Urząd do Spraw Cudzoziemców, *Informator Departamentu Pomocy Socjalnej*, 21 January 2013 and 25 March 2014.

²⁵⁶ Europejska Sieć Migracyjna (European Migration Network), *Problemy z rostrzygnięciem przetargu na ośrodki recepcyjne dla cudzoziemców (Problems with call for proposals procedurę concerning reception centres for foreigners)*, 9.03.2016, available in Polish at: <http://bit.ly/2IRrQRU>.

The Office for Foreigners monitors the situation in centres managed by private contractors e.g. by unexpected visits.²⁵⁷ Asylum seekers can complain to the Office for Foreigners on the situation in the centres and they use this opportunity in practice.²⁵⁸ In period 2012-2014 Office for Foreigners received 187 complaints, 34 applications and 11 complaints with applications (however 89 complaints and 24 applications were written by one foreigner). Supreme Audit Office controlled 27 of those complaints concerning reception facilities. Foreigners complained on: false information given by the centres' employees, lack of the translation of the documents, which were handled in order to be signed, family separation by placing members of one family in different reception centres, access to the food in reception centres, improper treatment by the centres' employees, too late delivery of the postal documents, refusal to admit an application for the assistance granted outside of the centre. Only three of those complaints were considered legitimate.²⁵⁹ No information was by the Office for Foreigners on such complaints in 2016. Other types of accommodation such as hotels can be used only in emergency situations, for short periods of time (e.g. when staying in the centre would put an asylum seeker at risk, e.g. in case of a serious conflict with other asylum seekers staying in the centre). This possibility has not been used in practice yet.²⁶⁰

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

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 known
3. Are unaccompanied children ever accommodated with adults in practice? ☐ Yes ☒ No

The location of some of the reception centres is criticised by NGOs. Centre in **Bezwola, Dębak, Grupa** and **Linin** are located in the woods. The centre in **Warsaw** (for single women with children) is situated far away from the city centre, near factories and a construction company. Nearby there are no shops or other service points, to get to the centre asylum-seeking women have to walk through densely tree-lined road and this road is not illuminated enough. This raises concerns with regard to safety of single women living there.²⁶¹

Living conditions differ in reception centres. In the centres managed by private contractors ensuring certain minimum living conditions standards is obligatory on the basis of agreements between these contractors and the Office for Foreigners e.g. centres have to have furnished rooms for asylum applicants, a separate common-room for men and for women, kindergarten, space to practice religion, a recreation area, schoolrooms, specified number of refrigerators and washing machines.²⁶² Other conditions are dependent

²⁵⁷ European Migration Network, *The Organisation of Reception Facilities for Asylum Seekers in different Member States. National Contribution of Poland*, 2013, 24-25, and information obtained from Department for Social Assistance, Office for Foreigners, 25 March 2014.

²⁵⁸ Information obtained from Department for Social Assistance, Office for Foreigners, 25 March 2014; Para 17 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

²⁵⁹ Najwyższa Izba Kontroli (Supreme Audit Office), *Pomoc społeczna dla uchodźców. Informacja o wynikach kontroli* (Social assistance for refugees. Information about results of the control), November 2015, 22, available in Polish at: <http://bit.ly/2IP90Z4>.

²⁶⁰ Information obtained in Department for Social Assistance, Office for Foreigners, 7.02.2013 and 25.03.2014, also: Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW, information confirmed by The Office for Foreigners' letter to HFHR from 1 February 2017 no BSZ.WAiSM.0361.7.2017/TB.

²⁶¹ Centrum Pomocy Prawnej im. Haliny Nieć, K. Przybysławska (Ed.), "Raport: Przemoc seksualna i przemoc ze względu na płeć w ośrodkach dla osób ubiegających się o nadanie statusu uchodźcy 2012-2014" ("Report: Sexual and Gender - Based Violence in Centers for Asylum Seekers 2012-2014"), (December 2014), 8-10, available in Polish at: <http://bit.ly/1L1SxFG>.

²⁶² Office for Foreigners, Brochure of the Department for Social Assistance (*Informator Departamentu Pomocy Socjalnej*), 2014, also European Migration Network *The Organisation of Reception Facilities for Asylum Seekers in different Member States. National Contribution of Poland*, (2013), 13.

on the willingness and financial situation of the contractor.²⁶³ The Supreme Audit Office (during an audit which took place in years 2012-2014) assessed living conditions in 10 controlled centres as good.²⁶⁴ The Office for Foreigners reports that in the reception centre in **Debak** there is a renovated building in high standard in use since 2016, fully adjusted to the needs of disabled. In **Biała Podlaska** the rooms, corridors and preschool area were renovated as well.²⁶⁵

Asylum seekers are responsible for cleaning their rooms and common areas such as kitchens and bathrooms.²⁶⁶ Asylum seekers often report problem with insects. During the monitoring in reception centre in **Warsaw**,²⁶⁷ all women pointed out that there is a lot of insects in the centre and even showed bites. Women claimed that pest control procedures are occasionally carried out but they are not effective. The problem with insects was also mentioned by asylum seekers during the monitoring in 2015 (centres in **Bezwola** and **Białystok**).²⁶⁸ The Supreme Audit Office (during the audit which took place in years 2012-2014) assessed sanitary conditions in 10 controlled centres as generally compatible with legal requirements. Identified irregularities were of minor importance.²⁶⁹

Rooms in the centres are designed for 2, 4 or more people depending on family's needs.²⁷⁰ Single adults can share a room, but in practice in the centre in **Bezwola**, **Grotniki** and **Grupa** they are accommodated in single rooms.²⁷¹ The Office for Foreigners claims that the amount of toilet facilities and showers is sufficient, although some people complained that it is not the case.²⁷² NGOs point that some of the bathrooms are common for all asylum seekers (they are not situated in the rooms but on the corridor), which increases the risk of sexual-based violence.²⁷³

Only in one centre (**Czerwony Bór**) asylum seekers have to cook for themselves. In other centres asylum seekers receive food from the centre (three meals per day), although there is a kitchen in all centres and asylum seekers can also cook for themselves. Asylum seekers who require specific dietary requirements do receive them (i.e. vegetarian, adapted to their religion or health state, for pregnant women and children). The food provided has to be in accordance with the Act of 25 August 2006 on food safety and nutrition.²⁷⁴ The nutritional values are checked by the Office for Foreigners from time to time.²⁷⁵ In two centres (out of

²⁶³ Rzecznik Praw Obywatelskich (Polish Ombudsman), *Realizacja prawa małoletnich cudzoziemców do edukacji. Raport RPO (PL) (Implementation of the right to education for foreign minors. Polish Ombudsman report)*, (2013), 22, available at: <http://bit.ly/1Hz4N4a>.

²⁶⁴ Najwyższa Izba Kontroli (Supreme Audit Office), *Pomoc społeczna dla uchodźców. Informacja o wynikach kontroli (Social assistance for refugees. Information about results of the control)*, November 2015, 20-21, available in Polish at: <http://bit.ly/2IP90Z4>.

²⁶⁵ The Office for Foreigners' letter to HFHR from 1 February 2017 no BSZ.WAiSM.0361.7.2017/TB

²⁶⁶ Information obtained from the Department for Social Assistance, Office For Foreigners, 25.03.2014.

²⁶⁷ Monitoring concluded in September 2013 in reception centre in Warsaw by different NGOs, the Office for Foreigners and UNHCR, available at: <http://bit.ly/1LJlgSQ>.

²⁶⁸ Monitoring concluded in August 2015 in reception centre in Bezwola and Białystok by UNHCR, different NGOs (incl. HFHR) and public authorities.

²⁶⁹ Najwyższa Izba Kontroli (Supreme Audit Office), *Pomoc społeczna dla uchodźców. Informacja o wynikach kontroli (Social assistance for refugees. Information about results of the control)*, November 2015, 20-21, available in Polish at: <http://bit.ly/2IP90Z4>.

²⁷⁰ EMN, *The Organisation of Reception Facilities for Asylum Seekers in different Member States. National Contribution of Poland*, 2013, 17, available at: <http://bit.ly/1eIFxAS>.

²⁷¹ Centrum Pomocy Prawnej im. Haliny Nieć, K. Przybysławska (Ed.), "Raport: Przemoc seksualna i przemoc ze względu na płeć w ośrodkach dla osób ubiegających się o nadanie statusu uchodźcy 2012-2014" ("Report: Sexual and Gender - Based Violence in Centers for Asylum Seekers 2012-2014"), December 2014, 10.

²⁷² During the monitoring in reception centre in Warsaw concluded in September 2013, women living in the centre claimed that one of the bathrooms is closed for longer period of time because of a damage. As a result they could use only one bathroom, which ended up with very long queues, available at <http://bit.ly/1LJlgSQ>.

²⁷³ Centrum Pomocy Prawnej im. Haliny Nieć, K. Przybysławska (Ed.), *Report: Sexual and Gender - Based Violence in Centers for Asylum Seekers 2012-2014*, December 2014, 10.

²⁷⁴ Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW.

²⁷⁵ Information obtained from Department for Social Assistance, Office For Foreigners, 25.03.2014. See also EMN, *The Organisation of Reception Facilities for Asylum Seekers in different Member States. National Contribution of Poland*, 2013, 21.

ten) audited in 2012-2014 by the Supreme Audit Office nutritional values of the meals were questioned.²⁷⁶ Accordingly to the legislation food and drinks should be prepared – as far as it is possible – by taking into account religious and cultural requirements. Hours of the meals can be changed by employees of the centre, in accordance with religious practices of asylum seekers.²⁷⁷

Polish language courses are organised in all reception centres, also for children. Different workshops are organised in the centres by NGOs, although it is dependent on their financing. In 2016 there were also classes of the Polish language organised for asylum seekers living out of the centres. The Supreme Audit Office after the audit which took place in 10 reception centres in 2012-2014 criticized that there is no identification of the labour market's needs provided and as a result there are no tailored workshops for asylum seekers.²⁷⁸ Centres usually have libraries (only once centre does not have one). In 9 centres there is Wi-Fi available and in 4 centres there are computer rooms with free access to internet.²⁷⁹

Asylum seekers can go outside from the centre whenever they want, during the day, but they should be back before 11pm.²⁸⁰

At present, one employee is in charge of approximately 20-30 asylum seekers (staying in and out of the centres).²⁸¹ There are not enough employees in the centres (2-5 workers per centre).²⁸² As of December 2016 there are 83 employees working in all the centres (number does not include technical-administrative workers like cleaners).²⁸³ Staff of the centre is working from Monday to Friday from 7:00 to 18:00. At night and on weekends only guards are present in the centre, which is not sufficient.²⁸⁴

In 2013-2016 no protests or hunger strikes in centres were reported.²⁸⁵ However, in March 2014 a group of Ukrainian asylum seekers had numerous concerns about the conditions in the reception centre in **Debak – Podkowa Lesna**, which were reported by the media. Those concerns related mostly to the presence of insects and the unsanitary conditions.²⁸⁶ At the end of 2014 one of the buildings in this centre was completely renovated, from July 2014 – the second building is renovated.²⁸⁷ The latter was in use in 2016.

In all centres there is a special room designed for religious practices.²⁸⁸ If asylum seekers want to participate in religious services outside of the centre, they have such a right, although in practice remoteness from the closest place of worship can prevent them from participating in such services.

²⁷⁶ Najwyższa Izba Kontroli (Supreme Audit Office), *Pomoc społeczna dla uchodźców. Informacja o wynikach kontroli* (Social assistance for refugees. Information about results of the control), November 2015, 21, available in Polish at: <http://bit.ly/2IP90Z4>.

²⁷⁷ Para 10.3 and 4 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

²⁷⁸ Najwyższa Izba Kontroli (Supreme Audit Office), *Pomoc społeczna dla uchodźców. Informacja o wynikach kontroli* (Social assistance for refugees. Information about results of the control), November 2015, 5, available in Polish at: <http://bit.ly/2IP90Z4>.

²⁷⁹ Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW.

²⁸⁰ Para 10.3 Regulation on rules of stay in the centre for asylum seekers.

²⁸¹ However, the Office for Foreigners counted all employees, reminding that not all of them work directly with the asylum seekers. The Office for Foreigners' letter to HFHR from 1 February 2017 no BSZ.WAiSM.0361.7.2017/TB.

²⁸² Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW, 23, 35, available at: <http://bit.ly/1GQgTza>.

²⁸³ The Office for Foreigners' letter to HFHR from 1 February 2017 no BSZ.WAiSM.0361.7.2017/TB.

²⁸⁴ Centrum Pomocy Prawnej im. Haliny Nieć, K. Przybyławska (Ed.), *Report: Sexual and Gender - Based Violence in Centers for Asylum Seekers 2012-2014*, December 2014), 12-13.

²⁸⁵ Information obtained from Department for Social Assistance, Office for Foreigners, 25 March 2014.

²⁸⁶ Polskie Radio, "Brud i smród" - uchodźcy z Ukrainy skarżą się na warunki w polskim ośrodku ("Dirty and stinky" - refugees from Ukraine complain about the conditions in a Polish reception centre), 27 March 2014, available at: <http://bit.ly/NY8bKX>.

²⁸⁷ Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW.

²⁸⁸ Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW, also: Najwyższa Izba Kontroli (Supreme Audit Office), *Pomoc społeczna dla uchodźców. Informacja o wynikach kontroli* (Social assistance for refugees. Information about results of the control), November 2015, 9, available in Polish at: <http://bit.ly/2IP90Z4>.

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?
❖ If yes, when do asylum seekers have access the labour market? ☒ Yes ☐ No
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?
❖ If yes, specify which sectors: ☐ Yes ☒ No
4. Does the law limit asylum seekers' employment to a maximum working time?
❖ If yes, specify the number of days per year ☐ Yes ☒ No
5. Are there restrictions to accessing employment in practice? ☒ Yes ☐ No

The law allows for access to the labour market for asylum seekers after six months from the date of submission of an asylum application if a first instance decision has not been given within this time and if the delay is not attributed to any fault of the asylum seeker.²⁸⁹ 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.²⁹⁰ The certificate is valid during the appeal procedure (first appeal only), when it was issued during the first instance procedure.

Access to employment is not limited to certain sectors, but can be problematic in practice. Many employers do not know, that the above mentioned certificate with a temporary ID document gives an asylum seeker a right to work or do not want to employ a person for such a short time (i.e. 6 months, as the employers are unaware that the procedure will actually take longer than the validity of a single ID). Secondly asylum seekers often live in centres which are located far away from big cities, which makes it difficult in practice to find a job. Moreover, most asylum seekers do not know Polish well enough to get a job in Poland.²⁹¹

Experts point out that the fact that asylum seekers cannot work for the first 6 months of the refugee procedure is one of the factors which leads to a lack of independence and reliance on social assistance.²⁹²

²⁸⁹ Article 35 Law on Protection, as amended in November 2015.

²⁹⁰ *Ibid.*

²⁹¹ M. Abdoulvakhabova, *Problemy cudzoziemców w Polsce w świetle funkcjonowania Fundacji Ocalenie (The problems of the foreigners in Poland in light of functioning of the Ocalenie Foundation)*, in M. Duszcyk, P. Dąbrowski (ed.), *Przestrzeganie praw cudzoziemców w Polsce. Monografia (Respect for the rights of foreigners in Poland. Monograph)*, Rzecznik Praw Obywatelskich, 2012, available at: <http://bit.ly/1RTIHbU>, 46.

²⁹² K. Wysińska, *Gdzie jest mój dom? Bezdomność i dostęp do mieszkań wśród ubiegających się o status uchodźcy, uchodźców i osób z przyznaną ochroną międzynarodową w Polsce (Where is my home? Homelessness and access to housing among asylum seekers, refugees and persons granted international protection in Poland)*, UNHCR, 2013, 14.

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. Monitoring took place by the Polish Ombudsman in 2011-2013 and it was determined that in most of the centres all children were attending schools regularly. Only in four centres some children were not attending school (mostly because they were admitted to the centre at the end of a school year or they were still waiting to be enrolled to the school).²⁹³ In NGO research conducted in 2012-2013, 17 schools from 146 researched admitted asylum seeking children (130 minors).²⁹⁴

There are different obstacles in practice for asylum seeking children to access education. The biggest problem is a language and cultural barrier. Children do not know Polish, but they are obliged to participate in classes in Polish. However, in all centres except the reception centre in Biała Podlaska, there are courses of Polish language for children being organised²⁹⁵ and social assistance includes providing children with basic supplies necessary for learning Polish.²⁹⁶ In period 2012-2014 not many asylum seekers took part in Polish language courses organized in the centres. In 2012 only 360 children and 73 adults were learning Polish in the centres (14, 8% of the asylum seekers who were entitled to material reception conditions), in 2013 – 504 children and 92 adults (15, 1%), in the first half of 2014 – 456 children and 103 adults (17%). The amount of lessons of Polish language organized in the centres (2-5 hours a week) was not enough to learn a language and integrate with local society.²⁹⁷

Moreover, children are entitled to additional, free Polish language classes, which should be organised by the authority managing the school, which asylum seekers are attending.²⁹⁸ Children can also participate in additional lessons on other subjects if their education level is different from this of the class. Both forms of assistance can be granted for a maximum of twelve months.²⁹⁹ Preparatory lessons and additional Polish language classes can last for a maximum of five hours per week for one child. In practice, schools organise two to ten hours of additional Polish language lessons per week (most of the times it is 2 hours per week which is not sufficient).³⁰⁰ In some schools they are not organised at all.³⁰¹ During the audit conducted by the Supreme Audit Office in 2012-2014, only 3 out of 11 schools admitting asylum seeking children organized additional Polish language lessons and only one organized additional lessons on other subjects. Schools' representatives explained that lessons were not needed, because children were quickly learning

²⁹³ Rzecznik Praw Obywatelskich, (Polish Ombudsman), *Realizacja prawa małoletnich cudzoziemców do edukacji. Raport RPO (PL) (Implementation of the right to education for foreign minors. Polish Ombudsman report)*, 2013, available at: <http://bit.ly/1Hz4N4a>, 22-23.

²⁹⁴ Fundacja na rzecz Różnorodności Społecznej, K. Kubin, E. Pogorzała "Raport z badania systemu nauczania dzieci cudzoziemskich języka polskiego jako drugiego/obcego w szkołach w Polsce" ("The report on the research on the education of foreign children of Polish language as a second/foreign language in schools in Poland"), May 2014, available in Polish at: <http://bit.ly/1lywuQW>, 25.

²⁹⁵ Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW.

²⁹⁶ Article 71(1)(f) Law on protection.

²⁹⁷ Najwyższa Izba Kontroli (Supreme Audit Office), *Pomoc społeczna dla uchodźców. Informacja o wynikach kontroli (Social assistance for refugees. Information about results of the control)*, November 2015, 9, available in Polish at: <http://bit.ly/2IP90Z4>.

²⁹⁸ Article 94a(4) Law of 7 September 1991 on the education system, Journal of Laws 2004 no 256 position 2572, (Ustawa z dnia 7 września 1991 r. o systemie oświaty, Dz. U. 2004 nr 256 poz. 2572), available at: <http://bit.ly/1NzbqBG>.

²⁹⁹ Article 94a(4a) and (4c) Law of 7 September 1991 on the education system.

³⁰⁰ Fundacja na rzecz Różnorodności Społecznej, *op. cit.*, 29, 78.

³⁰¹ Polish Ombudsman, *op. cit.*, 32.

Polish and easily adapting into Polish society, which was contradictory to the information given by social workers, NGOs and foreigners themselves.³⁰²

Children have also a right to assistance of a person who knows the language of their country of origin, which can be employed as a teacher's assistant by the director of the school. This help is limited to a maximum of twelve months. During the Polish ombudsman monitoring held in 2011/2012, only six schools (from sixteen schools visited) employed such "cultural assistant".³⁰³ Moreover schools are not aware of the above mentioned legal possibilities to support education of children from third countries. During the monitoring held by NGO in 2012-2013, half of the responding schools did not know about the possibility to employ teacher's assistant, the other half did not ask for financial means for that purpose or received a rejection from local authorities to grant such financial means.³⁰⁴ During the audit conducted by the Supreme Audit Office in 2012-2014, only 6 schools employed teachers' assistant³⁰⁵. In some schools NGOs are providing support of teacher's assistant in the framework of their projects.³⁰⁶ Such support is though dependent on the NGOs' funding. As a result, e.g. in 2014/2015 in school responsible for education of children staying in the reception centre in Linin there was no teacher's assistant because of the financial problems of the NGO, who had been employing them before. NGO could not pay for the teacher's assistant's support as a result of i.e. a delayed implementation of the AMIF.³⁰⁷

The above mentioned measures are not considered sufficient by the teachers and directors of the schools concerned. In particular, lack of any adaptation period was criticized for many years.³⁰⁸ As a rule, foreign children are qualified at once to join regular classes which are handled in Polish. By law, they should participate in them for couple hours a day understanding nothing. Afterwards they should take part in the additional classes of Polish language and other subjects, which are organized after regular lessons. Teachers assess that solution as a waste of children's time – they should first take part in the intensive Polish language course and when they are ready - join regular classes. Those critical opinions finally caused the amendment of law in 2016.³⁰⁹ Since 14.09.2016, schools have a possibility to organize preparatory classes for foreign children who do not know sufficiently Polish language. Those classes last for 20-26 hours a week. If a school decides to organize such classes, foreign children are not obliged to

³⁰² Najwyższa Izba Kontroli (Supreme Audit Office), *Pomoc społeczna dla uchodźców. Informacja o wynikach kontroli (Social assistance for refugees. Information about results of the control)*, November 2015, 9, available in Polish at: <http://bit.ly/2IP90Z4>.

³⁰³ *Ibid.*

³⁰⁴ Fundacja na rzecz Różnorodności Społecznej, "Rekomendacje z badań Fundacji na rzecz Różnorodności Społecznej dotyczące sytuacji dzieci cudzoziemskich w szkołach w Polsce" ("Recommendations from the study of the Foundation for Social Diversity on the situation of foreign children in schools in Poland"), 2014, available in Polish at: <http://bit.ly/1MRrH45>.

³⁰⁵ Najwyższa Izba Kontroli (Supreme Audit Office), *Pomoc społeczna dla uchodźców. Informacja o wynikach kontroli (Social assistance for refugees. Information about results of the control)*, November 2015, 9, available in Polish at: <http://bit.ly/2IP90Z4>.

³⁰⁶ Rzecznik Praw Obywatelskich (Polish Ombudsman), *Obecność uchodźców w małych gminach. Doświadczenia Góry Kalwarii i Podkowy Leśnej w integracji uchodźców i edukacji ich dzieci (Refugees presence in small communities. Góra Kalwaria and Podkowa Leśna experience in refugees integration and education of their children)*, 2016, 30-31, available in Polish at: <http://bit.ly/2IKSM6n>.

³⁰⁷ Rzecznik Praw Obywatelskich (Polish Ombudsman), *Obecność uchodźców w małych gminach. Doświadczenia Góry Kalwarii i Podkowy Leśnej w integracji uchodźców i edukacji ich dzieci (Refugees presence in small communities. Góra Kalwaria and Podkowa Leśna experience in refugees integration and education of their children)*, 2016, 30-31, available in Polish at: <http://bit.ly/2IKSM6n>.

³⁰⁸ Rzecznik Praw Obywatelskich (Polish Ombudsman), *Obecność uchodźców w małych gminach. Doświadczenia Góry Kalwarii i Podkowy Leśnej w integracji uchodźców i edukacji ich dzieci (Refugees presence in small communities. Góra Kalwaria and Podkowa Leśna experience in refugees integration and education of their children)*, 2016, 30-31, available in Polish at: <http://bit.ly/2IKSM6n>.

³⁰⁹ Rozporządzenie Ministra Edukacji Narodowej z dnia 9 września 2016 r. w sprawie kształcenia osób niebędących obywatelami polskimi oraz osób będących obywatelami polskimi, które pobierały naukę w szkołach funkcjonujących w systemach oświaty innych państw- Dz. U. 2016 poz. 1453 (Ordinance of the Ministry of National Education of 9 September 2016 on the education of the persons not having Polish citizenship and persons who have Polish citizenship and were educated abroad - Journal of Laws 2016 pos. 1453), available in Polish at: <http://bit.ly/2IQvXu1>.

participate in regular classes, but learning Polish as a foreign language is still limited only to 3 hours per week.³¹⁰

Schools criticize also the limitation to five hours of preparatory and additional Polish language lessons per week, as their practice showed the additional classes should take at least six hours per week. NGOs criticise the automatic limitation of the duration of provision of additional assistance to twelve months, as it should be adjusted individually.³¹¹

Moreover additional Polish language classes do not meet its goal.³¹² In some schools, additional Polish language lessons are organised, but it often happens that the teachers have not received training in teaching Polish as a second language, nor have experience in working in a multicultural environment.³¹³ During the Polish ombudsman monitoring held in 2011-2012, these classes were taught by teachers trained to learn Polish language as a second language only in four schools.³¹⁴ During the monitoring held by NGO in 2012-2013, in 64% of responding schools (65 schools) teachers were not qualified properly to teach Polish language as a second language (only in 14 schools participating in the research specially qualified teachers were conducting these classes).³¹⁵

Experts also point out that there are no legal provisions concerning assessment and promotion to the higher class of the foreign children not knowing sufficiently Polish language. Those children are also obliged to write exams at the end of 6 grade and secondary school, even if they have joined school couple days before. Since the year 2015/2016 they can though use dictionaries and simplified forms during an exam.³¹⁶

Moreover schools admitting foreign children often have to cope with a lack of sufficient financial means to organize proper education for this special group of pupils. Moreover, teachers working with foreign children are not receiving sufficient support, like courses and materials.³¹⁷

The Minister of National Education said in September 2015, that Polish schools are prepared to teach asylum seeking and refugee children. This resulted in a protest of Polish Teachers Union and NGOs, who send a letter to the Polish Prime Minister, in which they disagreed with this statement and accused Polish authorities to fail to create the concept of the education of these children and cooperation with their parents. They stated that it is essential to prepare trainings for teachers from schools to which asylum seeking children will be attending and to design activities aimed at local communities in a place, where these schools will be situated.³¹⁸

Asylum seekers benefit from education in public secondary schools under the same conditions as Polish citizens until the age of 18 or completion of secondary school.³¹⁹ Currently all children in Poland (Polish

³¹⁰ §17 of the above mentioned Regulation.

³¹¹ W. Klaus, *Prawo do edukacji cudzoziemców w Polsce (Foreigners' right to education in Poland)*, Stowarzyszenie Interwencji Prawnej, 2011, available at: <http://bit.ly/1GQW4ng>, 8.

³¹² Fundacja na rzecz Różnorodności Społecznej, K. Kubin, E. Pogorzała "Raport z badania systemu nauczania dzieci cudzoziemskich języka polskiego jako drugiego/obcego w szkołach w Polsce", May 2014, 77.

³¹³ *Ibid.* See also A. Kosowicz, *Access to Quality Education by Asylum-Seeking and Refugee Children. Poland Country Report*, Situational Analysis, Polskie Forum Migracyjne, 2007, available at: <http://bit.ly/1FUXw7j>, 3.

³¹⁴ Polish Ombudsman, *op. cit.*, 32.

³¹⁵ Fundacja na rzecz Różnorodności Społecznej, *op. cit.*, 32.

³¹⁶ Rzecznik Praw Obywatelskich (Polish Ombudsman), *Obecność uchodźców w małych gminach. Doświadczenia Góry Kalwarii i Podkowy Leśnej w integracji uchodźców i edukacji ich dzieci (Refugees presence in small communities. Góra Kalwaria and Podkowa Leśna experience in refugees integration and education of their children)*, 2016, 30-31, available in Polish at: <http://bit.ly/2IKSM6n>.

³¹⁷ Rzecznik Praw Obywatelskich (Polish Ombudsman), *Obecność uchodźców w małych gminach. Doświadczenia Góry Kalwarii i Podkowy Leśnej w integracji uchodźców i edukacji ich dzieci (Refugees presence in small communities. Góra Kalwaria and Podkowa Leśna experience in refugees integration and education of their children)*, 2016, 23-24, available in Polish at: <http://bit.ly/2IKSM6n>.

³¹⁸ Polish Teachers Union (Związek Nauczycielstwa Polskiego), Polish Humanitarian Action (Polska Akcja Humanitarna) and Foundation for Social Diversity (Fundacja na rzecz Różnorodności Społecznej), Letter to Prime Minister from 21 September 2015, available in Polish at: <http://bit.ly/1S8Bx59>.

³¹⁹ Article 94a(1a) Law of 7 September 1991 on the education system.

and non-polish) have a problem with pre-school learning – there is not enough places for them in public kindergartens, so it is difficult to enrol a child there.³²⁰ As a result in most of the centres some form of kindergarten is organised, mostly supported by NGOs. This day care is provided mostly 5 times a week for 5 hours a day.³²¹

If the child cannot enter the regular education system (e.g. because of illness) their special needs are addressed by the Office for Foreigners, e.g. by placing a child in special school, or by NGOs (there was a case when one NGO gave lessons for asylum seekers who were disabled in the centre).³²²

There is no access to vocational training for asylum seekers provided under the law. The Supreme Audit Office after the audit which took place in 10 reception centres in 2012-2014 criticized that there is no identification of the labour market's needs provided and as a result there are no tailored workshops for asylum seekers.³²³

The only educational activities, that adults have access to, are courses of Polish language organised in the first half 2015 in all centres except the reception centre in Biała Podlaska, where asylum seekers mostly stay for a short amount of time. The course's level is considered insufficient by some NGOs.³²⁴ From 2014 in all centres there are organised "Open days", during which asylum seekers can present their culture and customs to polish society.³²⁵ There are some initiatives by NGOs, organising other courses in the centres, including vocational training. These courses are sometimes publicly funded to a certain extent.³²⁶ Problems with AMIF diminished the presence of NGOs in the centres in 2015. Most of the NGOs ceased their activities in the centres with the end of the projects financed from EU funds (from 30 June 2015). In 2016 NGOs carried out projects in partnership with the Office for Foreigners which aimed at general integration, learning Polish, vocational activism, cultural activities, psychological and legal assistance.

D. Health care

Indicators: Health Care

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

Access to health care for asylum seekers is guaranteed in the national legislation to the same extent as for Polish nationals, who have health insurance.³²⁷ Health care for asylum seekers is publicly funded. Basic health care is organised in medical offices within each of the reception centres. Moreover, asylum seekers can benefit from medical assistance provided from 1 July 2015 by a private contractor Petra Medica,³²⁸ with whom the Office for Foreigners has signed an agreement to coordinate medical care for asylum seekers

³²⁰ Information obtained from the Department for Social Assistance, Office for Foreigners, 25 March 2014.

³²¹ The Office for Foreigners' letter to HFHR from 1 February 2017 no BSZ.WAiSM.0361.7.2017/TB.

³²² Information obtained from the Department for Social Assistance, Office for Foreigners, 25 March 2014.

³²³ Najwyższa Izba Kontroli (Supreme Audit Office), *Pomoc społeczna dla uchodźców. Informacja o wynikach kontroli (Social assistance for refugees. Information about results of the control)*, November 2015, 5, available in Polish at: <http://bit.ly/2IP90Z4>.

³²⁴ M. Abdoulvakchabova, *op. cit.*, 45. Office for Foreigners claims that asylum seekers are generally not interested in Polish language lessons. Those asylum seekers who participate in classes are assessing them positively (based on Department for Social Assistance in Office for Foreigners' own research), available at: <http://bit.ly/1RTIHbU>.

³²⁵ Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW.

³²⁶ Information obtained in the Department for Social Assistance, Office for Foreigners, 7 February 2013, also EMN, *op. cit.*, 40.

³²⁷ Article 73(1) Law on Protection.

³²⁸ Information from the Office for Foreigners website: <http://bit.ly/1XqYMIQ>.

and monitors the application of this agreement. Before, for many years this medical assistance was granted in institutions contracted by the Central Clinical Hospital of the Ministry of Interior.³²⁹ Medical assistance guaranteed by this hospital was ensured on a good level, as assessed by the Supreme Audit Office in 2015.³³⁰ After the change of the contractor in 2015, growth of objections towards the medical assistance is noticeable in reception centres.³³¹

In 2012-2014 in all controlled by the Supreme Audit Office (10) reception centres asylum seekers had access to general practitioner's assistance at least for 10 hours a week and nurse assistance was available at least for 20 hours a week.³³² In 2016 the Office for Foreigners confirmed that the medical doctor have 10 duty hours per 120 asylum seekers, while the nurse – 20 hours for the same number of possible patients. Both have 3 hours a week more for every next 50 asylum seekers.

Health care for asylum seekers includes treatment for persons suffering from mental health problems. Currently, psychologists work in all the centres at least for 4 hours a week for every 120 asylum seekers (it is extended for 1 hour for every 50 asylum seekers more).³³³ Their help is limited though to basic consultations.³³⁴ Asylum seekers can also be directed to a psychiatrist or a psychiatric hospital. According to some experts and many NGOs, specialised treatment for victims of torture or traumatised asylum seekers is not available in practice.³³⁵ 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.³³⁶

The biggest obstacle in accessing health care that asylum seekers face is the lack of knowledge of foreign languages amongst doctors and nurses.³³⁷ Polish authorities do not provide interpretation free of charge and most of the asylum seekers are not able to pay for such assistance on their own. Accordingly, with regards to the newest agreement with a private medical contractor, concluded in June 2015, the contractor is obliged to ensure a translation during the medical and psychological consultation, if it is needed.³³⁸ During the monitoring in **Bezwola** and **Białystok** held in 2015, Russian speaking asylum seekers confirmed that doctors and psychologists working in these centres know the Russian language. Even though NGOs informed in 2016 that translation is still problematic in some cases,³³⁹ e.g. HFHR observed that asylum seekers speaking French and Arabic could not communicate with doctors in the first reception centre in

³²⁹ K. Maśliński, *Prawne regulacje w zakresie dostępu do ochrony zdrowia nieudokumentowanych migrantów i cudzoziemców ubiegających się o ochronę międzynarodową w Polsce* (Legal regulations on access to health care of undocumented migrants and foreigners seeking international protection in Poland), in A. Chrzanowska, W. Klaus, ed., *Poza systemem. Dostęp do ochrony zdrowia nieudokumentowanych migrantów i cudzoziemców ubiegających się o ochronę międzynarodową w Polsce*, 2011, available at: <http://bit.ly/1T8OU8n>, 30.

³³⁰ Najwyższa Izba Kontroli (Supreme Audit Office), *Pomoc społeczna dla uchodźców. Informacja o wynikach kontroli* (Social assistance for refugees. Information about results of the control), November 2015, 5, available in Polish at: <http://bit.ly/2IP90Z4>.

³³¹ UNHCR's observation in a framework of the Age Gender Diversity Participatory Assessment 2016 presented during the meeting on 16 November 2016 in Warsaw.

³³² Najwyższa Izba Kontroli (Supreme Audit Office), *Pomoc społeczna dla uchodźców. Informacja o wynikach kontroli* (Social assistance for refugees. Information about results of the control), November 2015, 5, available in Polish at: <http://bit.ly/2IP90Z4>.

³³³ Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW. See also EMN, *op. cit.*, 39.

³³⁴ The Office for Foreigners claims that those psychologists' assistance concentrates on psychological support and counseling and also on diagnosis of mental disorders, including PTSD.

³³⁵ M. Książak, *Dostęp do pomocy medycznej i psychologicznej osób ubiegających się o status uchodźcy w Polsce* (Access to medical and psychological care of asylum seekers in Poland), in A. Chrzanowska, W. Klaus, *Poza systemem. Dostęp do ochrony zdrowia nieudokumentowanych migrantów i cudzoziemców ubiegających się o ochronę międzynarodową w Polsce*, 180-182. This opinion is contested by the Office for Foreigners, claiming that psychological diagnosis and diagnosis of PTSD are provided to asylum seekers, available at: <http://bit.ly/1T8OU8n>.

³³⁶ NGO (LIA) representative, interview from October 2016.

³³⁷ *Ibid*, 174-176.

³³⁸ Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW, confirmed by the Office for Foreigners' letter to HFHR from 1 February 2017 no BSZ.WAiSM.0361.7.2017/TB

³³⁹ Centrum Pomocy Prawnej im. H. Nieć, *Situation of Dublin Returnees in Poland*. HNLAC Information Note – July 2016, p. 8, available at <http://bit.ly/2lkV08v>.

Podkowa Leśna - Dębak and in a medical point in the Office for Foreigners in Warsaw and translation services were not provided.³⁴⁰

The second problem is the fact that some of the clinics and hospitals, providing medical assistance to asylum seekers, are situated far away from the centres, so an asylum seeker cannot be assisted by the closest medical facility (except for emergency situations).³⁴¹ Another problem identified by the experts is a lack of intercultural competence amongst doctors.³⁴² The Office for Foreigners noticed that for those asylum seekers living far away from the centres health care is provided in voivodeship cities in Poland and that coordination of visits is conducted by the helpline of the contractor, where the asylum seeker can get to know the time of the visit and ways to get the prescription.³⁴³

If an asylum seeker is deprived of material reception conditions or they are limited, they are still entitled to health care.³⁴⁴

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

In Polish legislation until 13 November 2015 there were only four categories of asylum seekers that are considered vulnerable: unaccompanied children; disabled people; victims of violence and, to some extent; single women (including with children). Elderly people, who were not seriously ill, pregnant women, if were not single, and single fathers with children were not considered vulnerable by law and in practice.³⁴⁵

From 13 November 2015 foreigners, who need special treatment, are defined particularly as:³⁴⁶

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

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

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

³⁴⁰ Letter from HFHR to the Head of the Office for Foreigners from 13 September 2016 no. 1765/2016/BD.

³⁴¹ N. Kłerek, *op. cit.*, 93-94.

³⁴² H. Grzymała-Moszczyńska, *Uchodźcy jako wyzwanie dla polskiego systemu opieki zdrowotnej (Refugees as a challenge for the Polish health care system)*, in A. Chrzanowska, W. Klaus, *Poza systemem. Dostęp do ochrony zdrowia nieudokumentowanych migrantów i cudzoziemców ubiegających się o ochronę międzynarodową w Polsce*, 2011, 143.

³⁴³ The Office for Foreigners' letter to HFHR from 1 February 2017 no BSZ.WAiSM.0361.7.2017/TB

³⁴⁴ Articles 76(1) and 70(1) Law on Protection.

³⁴⁵ Information obtained from Department for Social Assistance, Office for Foreigners, 25 March 2014.

³⁴⁶ Article 68(1) Law on Protection.

- ❖ Adapt his or her diet to his or her state of health.³⁴⁷

If an asylum seeker is a person who needs special treatment, his needs concerning accommodation and alimentation are taken into account when providing material reception conditions.³⁴⁸ An asylum seeker who needs special treatment should be accommodated in the reception centre by taking into account his special needs.³⁴⁹

From 13 November 2015 the SG 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.³⁵⁰ Prior to this even these groups of vulnerable asylum seekers had to organize this travel themselves. However there is no information on the practical application of this provision.

Some of the reception centres are adapted to the needs of disabled asylum seekers. Three centres have special entrance for disabled foreigners and bathrooms adapted to the needs of the asylum seekers on wheelchairs. Seven other centres have some conveniences for such asylum seekers. There is also a provision of rehabilitation services to this group of persons.³⁵¹

The Office for Foreigners prepared on 2 November 2015 a Procedure no 1/2015 which regards granting social assistance to vulnerable groups. The document contains the steps of identification for the purpose of providing adequate support by the employees of the Social Assistance Department, dividing the vulnerable groups into categories mentioned in the law (e.g. elderly persons, disabled, minors, torture victims, etc.) There is no separate accommodation centres for traumatised asylum seekers, or other vulnerable persons,³⁵² but some of them (including torture victims) can be placed in a single room if there is such a need.³⁵³

Women and children

Only one centre is designed to host a special group of asylum seekers, i.e. single women or single women with children. It is located in **Warsaw** and is managed by a private contractor.³⁵⁴ Moreover, social assistance may be granted outside of the centre when it is necessary in order to ensure the safety of the asylum seeker, with special consideration to the situation of single women.³⁵⁵

To prevent gender based violence the Office for Foreigners concluded a special agreement with the Police, UNHCR, “La Strada” Foundation and Halina Niec Legal Aid Centre, in 2008, aiming to better identify, prevent and respond to gender-based violence in reception centres.³⁵⁶ In all reception centres special teams have been created, consisting of one representative from the Office for Foreigners, the Police and an NGO. Their task is to effectively prevent acts of violence in reception centres and respond to any which

³⁴⁷ Article 68(2) Law on Protection, as amended in November 2015.

³⁴⁸ Article 69a Law on Protection, as amended in November 2015.

³⁴⁹ Para 5.3 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

³⁵⁰ Article 30(1)(8) Law on Protection, as amended in November 2015.

³⁵¹ The Office for Foreigners' letter to HFHR from 1 February 2017 no BSZ.WAiSM.0361.7.2017/TB

³⁵² UNHCR National Office Poland notes that in 2008 UNHCR, Office for Foreigners, Police, Halina Niec Legal Aid Centre and La Strada Foundation signed an Agreement introducing the Standard Operating Procedures on sexual and gender-based violence (“SOPs on SGBV”) in order to prevent and, if need be, respond to SGBV risks and incidents in the given reception facility.

³⁵³ Procedure 1/2015 of the Office for Foreigners.

³⁵⁴ Urząd do Spraw Cudzoziemców, *Informator Departamentu Pomocy Socjalnej*, 2014, available at: <http://bit.ly/1C1A5Ov>.

³⁵⁵ Article 72(1)(1) Law on Protection.

³⁵⁶ *Porozumienie w sprawie standardowych procedur postępowania w zakresie rozpoznawania, przeciwdziałania oraz reagowania na przypadki przemocy seksualnej lub przemocy związanej z płcią wobec cudzoziemców przebywających w ośrodkach dla osób ubiegających się o nadanie statusu uchodźcy* (Agreement on standard procedures to identify, prevent and respond to incidents of sexual violence or gender-based violence against foreigners staying in reception centres), 25 March 2008.

do occur quickly. In 2012-2014, 51 cases of violence were reported by the teams (mainly domestic violence).³⁵⁷ In 2016 there were 23 cases.³⁵⁸

Unaccompanied children

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

The law also refers to the qualified personnel that should undertake activities in the refugee status procedure concerning unaccompanied children (a defined profile of higher education, 2 years of relevant experience).³⁵⁹

When providing material reception conditions to minors, the necessity to safeguard their interests should be taken into account, especially taking into consideration family unity, best interests of the child and their social development, security and protection (particularly if they are a victim of human trafficking) and the minor's opinion according to his age and maturity.³⁶⁰

According to the European Migration Network, accommodation standards provided for unaccompanied minors are evaluated rather positively. EMN pointed out though, that the amount of young care facilities and foster families is generally not sufficient. As a good practice EMN presented the Children's Home no. 9 in Warsaw which was aimed as a dedicated facility for foreign unaccompanied children in a period from 2004 to 2012: "(...) over the years this facility has not only developed a number of practical solutions for the development and integration of unaccompanied children, but also managed to put together a team of professional tutors and carers who obtained several trainings organised by the Office for Foreigners and the Border Guards".³⁶¹ From 2005 to 2012 this Children's Home served as a main facility for asylum seeking unaccompanied children. This solution was highly appreciated by the NGOs. Currently – as a result of legal amendments – the practice has changed and asylum seeking unaccompanied children are placed in facilities all around Poland,³⁶² mainly in **Ketrzyn, Przemysl and Rzeszow**.³⁶³

F. Information for asylum seekers and access to reception centres

1. Provision of information on reception

The provisions in law on information for asylum seekers concerning social assistance are formulated in a general way. The SG, 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

³⁵⁷ *Realizacja Porozumienia w sprawie przemocy seksualnej lub przemocy związanej z płcią - 2013 (Enforcement of the Agreement on sexual violence or gender-based violence - 2013)*, (2013), (PL), available at: <http://bit.ly/1FUf0Kj>. Also: Centrum Pomocy Prawnej im. Haliny Nieć, K. Przybysławska (Ed.), *Report: Sexual and Gender - Based Violence in Centers for Asylum Seekers 2012-2014*, December 2014, 21.

³⁵⁸ The Office for Foreigners' letter to HFHR from 1 February 2017 no BSZ.WAiSM.0361.7.2017/TB

³⁵⁹ Article 66 Law on Protection.

³⁶⁰ Article 69b Law on Protection, as amended in November 2015.

³⁶¹ National Contact Point to the European Migration Network in Poland, *Unaccompanied minors in Poland – policy, practice and data*, 2015, 39.

³⁶² Najwyższa Izba Kontroli (Supreme Audit Office), *Wystąpienie pokontrolne. I/14/007 – Udzielanie przez organy administracji ochrony cudzoziemcom przebywającym na terytorium RP (Post-audit report. I/14/007 – Granting protection by administrative authorities to foreigners staying in Poland)*, 2015.

³⁶³ The Office for Foreigners' letter to HFHR from 1 February 2017 no BSZ.WAiSM.0361.7.2017/TB.

the material reception conditions. It also provides the asylum seeker with the address of the centre to which they have to report.³⁶⁴

Upon admission to the centre, asylum seekers receive (in writing or in the form of an electronic document, in a language understandable to them) the rules of stay in the centre (set in law), information about their rights and obligations (which includes all the basic information, including on access to the labour market or on their legal status), information on regulations governing the provision of assistance for asylum seekers and about procedures used in case of the person has been subjected to violence, especially against minors.³⁶⁵ 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.³⁶⁶ In the reception centres in **Biała Podlaska** and **Dębak** new-coming asylum seekers also participate in a course on basic information about Poland and the asylum procedure, with presentations and information package provided on pendrive.³⁶⁷

It is not envisaged in the legislation which languages the rules of stay in the centre, information about rights and obligations and on regulations governing the provision of assistance for asylum seekers should be translated into. It states that information has to be accessible “in an understandable language”. The rules of stay in the centre and above-mentioned information issued on the basis of the current law were translated in practice into English, Russian, Arabic, French, Georgian, Chechen and Ukrainian.³⁶⁸

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.³⁶⁹

Asylum seekers may receive visits in the centre from 10:00 to 16:00 in a place indicated by the employee of the centre. In particularly justified cases the visiting hours in the centre may be prolonged upon permission of the director of the centre, till no later than 22:00.³⁷⁰

Each entry of a non-resident into the premises of the centre requires the permission of:³⁷¹

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

The Head of the Office for Foreigners or an employee of the centre can refuse to give permission to enter the centre or withdraw it, if this is justified with regards to the interest of the third country national or necessary to ensure the safety or for epidemiological and sanitary reasons.³⁷²

³⁶⁴ Article 30(1)(5) Law on Protection, as amended in November 2015.

³⁶⁵ 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” (updated in 2015 in 5 languages), which is handed to them upon admission to the centre. Available in English, Arabic, Chechen, French, Georgian, Polish, Ukrainian and Russian, available at: <http://bit.ly/1sLwQG>.

³⁶⁶ Para 18 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

³⁶⁷ Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW, also the Office for Foreigners’ letter to HFHR from 1 February 2017 no BSZ.WAiSM.0361.7.2017/TB.

³⁶⁸ The Office for Foreigners’ letter to HFHR from 1 February 2017 no BSZ.WAiSM.0361.7.2017/TB.

³⁶⁹ Paras 7-9 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

³⁷⁰ Para 9 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

³⁷¹ Para 7.2 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

³⁷² Para 7.5 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

The above mentioned rules do not apply to the representative of the UNHCR, who may enter the centre anytime provided that the director of the centre was notified in advance.³⁷³ In the case of NGOs, whose tasks include the provision of assistance to asylum seekers, and entities which provide legal assistance to asylum seekers, the Head of the Office for Foreigners may issue a permit to enter the centre for the period of their activities performed for the asylum seekers residing in the centre.³⁷⁴

In all centres audited by the Supreme Audit Office in 2012-2014, asylum seekers had access to the information about entities providing free legal assistance.³⁷⁵ During their stay in the centre, asylum seekers communicate with legal advisers, UNHCR or NGOs mainly by phone, fax, e-mail, etc. Eight out of the eleven centres are located in small villages, far away from big cities, where most of the legal advisers, UNHCR and NGOs in Poland have their premises, and accessing them can be an obstacle. As a result, asylum seekers are often contacted only remotely, especially when NGOs do not have the funds for travelling to these centres.³⁷⁶ In 2015 the situation worsened because of the lack of funding of the NGOs' activities from the EU funds (NGOs had to diminish or terminate most of their activities in the centres).³⁷⁷ In 2016 NGOs are again present in the centres, there are projects for granting legal assistance directly in some of them. However, funding from AMIF is very unstable (see section on [Regular Procedure: Legal Assistance](#)).

G. Differential treatment of specific nationalities in reception

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

³⁷³ Para 7.6 and 7.7 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

³⁷⁴ Para 7.4 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

³⁷⁵ Najwyższa Izba Kontroli (Supreme Audit Office), *Pomoc społeczna dla uchodźców. Informacja o wynikach kontroli* (Social assistance for refugees. Information about results of the control), November 2015, 21, available in Polish at: <http://bit.ly/2IP90Z4>.

³⁷⁶ A. Gutkowska, *Ewaluacja funkcjonowania poradnictwa prawnego dla uchodźców – analiza prawna i praktyczna* (Evaluation of the functioning of legal counseling for refugees – legal and practical analysis) in J. Frelak, W. Klaus, ed., *Słabe ogniwa. Wyzwania dla funkcjonowania systemu ochrony uchodźców w Polsce* (Weak links. Challenges for the functioning of the system of refugee protection in Poland), Instytut Spraw Publicznych, 2011, 146-147.

³⁷⁷ In 2015 NGOs who financed their legal assistance from EU had to reduce or cease their assistance granted in reception centres. NGOs informed about that Polish authorities, available at: <http://bit.ly/1Cd5nSW>. Some NGOs, like Legal Intervention Association, had to reduce their activities from 1.01.2015, available at: <http://bit.ly/1j98zXB>, some from 1 July 2015 (like HFHR). Even though results of call for proposals for AMIF were announced only on 16 September 2015 – two and half months after the end of all NGOs projects for asylum seekers financed from ERF.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2016:	603
2. Number of asylum seekers in detention at the end of 2016:	203
3. Number of detention centres:	6
4. Total capacity of detention centres:	557

In 2016, 603 asylum seekers were detained, including 293 minors and 24 unaccompanied minors. On 31 December 2016, 203 foreigners were in asylum procedure, including 95 minors and 2 unaccompanied minors. Statistical data for the number of asylum seekers detained during the 2014-2015 period is not available. Given that 12,320 persons applied for asylum in Poland in 2016, it cannot be said that the majority of asylum seekers in Poland were detained. There were no cases of overcrowding in detention centres that year.³⁷⁸

However, what is worth noting is that many of the detainees are children.

No data was made available by the SG for the legal grounds for detention. Generally it can be said that the use of specific grounds depends on the particular centre – e.g. the majority of asylum seekers placed in detention in **Ketrzyn** are those returned to Poland within the Dublin proceedings and those who have children who should attend to schools. In the first case, the basis is irregular border crossing while leaving Poland.

Before the foreigners' admission to the guarded centre and in situations justified on grounds of safety and order, foreigners are subject to detail check. Foreigners have to take off all clothing and underwear. According to National Prevention Mechanism report, foreigners complained about the conditions in which the check was carried out,³⁷⁹ although Border Guard implemented new standardized guidelines on a two-stage checking of the alien, ie. from the waist up and after dressing up - from the waist down.³⁸⁰

According to the Office for Foreigners, the asylum cases of asylum applicants placed in detention are examined more quickly.³⁸¹ The interview is conducted through videoconference. If a vulnerable person is in detention, the interview is conducted in person and in the presence of a psychologist.

³⁷⁸ Letter from the Border Guard KG--OI-III.0180.5.2017.AP from 19 January 2017.

³⁷⁹ National Prevention Mechanism, Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Kętrzynie, available in Polish at: <http://bit.ly/2kPbgCA>.

³⁸⁰ *Ibidem*.

³⁸¹ Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW.

B. Legal framework of detention

1. Grounds for detention

Indicators: Grounds for Detention

1. In practice, are most asylum seekers detained
 - ❖ on the territory: ☐ Yes ☒ No
 - ❖ at the border: ☐ Yes ☒ No
2. Are asylum seekers detained in practice during the Dublin procedure? ☐ Frequently ☒ Rarely ☐ Never
3. Are asylum seekers detained during a regular procedure in practice? ☐ Frequently ☒ Rarely ☐ Never

Prior to the amendment of the Law on Protection, asylum seekers could only be placed in a detention centre if it was necessary to: (a) establish their identity; (b) prevent them from abusing the asylum procedure; (c) prevent them from constituting a threat to other people safety, health, life or property; or (d) protect the defence or safety of the state or public order and safety.³⁸² Moreover asylum seekers could be placed in detention, if: (a) they had illegally crossed or attempted to cross the border, unless they were coming directly from a territory of persecution or serious harm, submitted an application for asylum immediately and showed good cause for illegal entry; or (b) their conduct posed a threat to the safety, health or life of other foreigners staying in the reception centres or employees of the centre.³⁸³ They could also be detained for not fulfilling their duties foreseen in a decision to apply alternatives to detention.³⁸⁴

As of 13 November 2015, the grounds for detention have changed in the amended Law on Protection. Asylum seekers are now placed in a detention centre, if the alternatives to detention cannot be used and:³⁸⁵

- ❖ In order to establish or verify their identity;
- ❖ To gather information – with the asylum seeker's cooperation – connected with the asylum application, which cannot be possessed without detaining the applicant and where there is a significant risk of absconding;
- ❖ 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 the asylum applicant claimed for asylum to delay or prevent the return;
- ❖ When it is necessary for security reasons;
- ❖ 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:³⁸⁶

- ❖ 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.

³⁸² Article 87(1) Law on Protection (applicable until 12 November 2015).

³⁸³ Article 87(2) Law on Protection (applicable until 12 November 2015).

³⁸⁴ Article 88(2) Law on Protection (applicable until 12 November 2015).

³⁸⁵ Articles 87(1) and 88a(1) Law on Protection, as amended in November 2015.

³⁸⁶ Articles 87(2) and 88a(1) Law on Protection, as amended in November 2015.

Asylum seekers are not automatically detained on the territory of Poland or at the Polish border, although in some cases TCNs asking for asylum at a border were detained in order to prevent them from abusing the asylum procedure (which applied to first-time applicants).³⁸⁷ According to an NGO report, in 2012 1% of the applicants who asked for refugee status at the Polish border in Terespol were detained on the basis of the abuse of the asylum procedure, upon the request of the Head of the Office for Foreigners.³⁸⁸ In 2013 there were 640 cases in which the Head of the Office requested detention because of a risk of abuse of the asylum procedure. From 13 November 2015 the risk of abusing the asylum procedure is no longer a reason, explicitly specified in law, to detain an asylum applicant.

Detention is possible (in law and in practice) in all asylum procedures (admissibility, accelerated, Dublin procedure) especially in the case of illegally crossing the border and being transferred under Dublin. In the first half of 2015, all asylum seekers sent from Poland under a Dublin procedure were detained before a transfer.³⁸⁹ In 2016 many asylum seekers, who successfully applied for international protection in Poland at the border crossings in Terespol/Bresc and Medyka are placed in detention centers for at least 60 days. Courts justify detention citing numerous refusals of entry, the necessity to gather additional information, high probability of escape and the lack of permanent address.

In the appeal procedure, courts ignore foreigners' requests to be present during examinations of their appeal against a decision on detention, so they cannot present their standpoint. At the same time, foreigners are not informed about lodging the motion on prolonging their stay in a detention centre. Furthermore, the appeal has to be prepared in Polish, so foreigners are dependent on NGOs which provide limited legal assistance due to limited access to funds. Courts do not conduct evidentiary proceedings on child best interest and on torture victims.

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

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

Until 1 May 2014, there was only one alternative to detention provided under Polish law.³⁹⁰ An asylum seeker (or a person on whose behalf an application for asylum was made) could be ordered, by means of the decision rendered by the Head of the Office for Foreigners, to stay in a specified place, which they could not leave without permission. An asylum seeker could also be required to report to the authority indicated in the decision at specified intervals of time. The above mentioned decision could be issued if:

- ❖ An asylum seeker had not been placed in the detention centre because it could cause a serious threat to his or her life or health; or
- ❖ An asylum seeker was released from the detention centre on the basis of the Head of the Office for Foreigners' decision issued because the evidence of the case indicated that the asylum seeker

³⁸⁷ T. Sieniow, *op.cit.*, 57.

³⁸⁸ *Ibid.*

³⁸⁹ Letter from the Border Guard MAIL-KG-OI-614/III/15 from 18 August 2015.

³⁹⁰ Article 89c Law on Protection (applicable until 1 May 2014).

meets the conditions for being recognised as a refugee or for being granted subsidiary protection.³⁹¹

The problem with this measure was that detention was a measure “of first resort” and only if deemed impossible could the above mentioned alternative be applied instead. Moreover it was not used in practice.³⁹²

The above mentioned alternative is still applicable, but the Law on Protection, in force since 1 May 2014, introduces additional alternatives to detention for asylum seekers. These include:

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

SG can use more than one alternative in the case of any TCN.³⁹³ 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).³⁹⁴ Until 12 November 2015 the law did not explicitly require a proof that alternatives to detention cannot be effectively applied before asylum seekers can be detained. From 13 November 2015 an asylum seeker can be detained only if the alternatives to detention cannot be applied.³⁹⁵ In practice asylum seekers are placed in detention, and alternatives to detentions are not properly justified and explained.

In 2016, alternatives to detention were used in the case of 1,411 TCNs (including asylum seekers and returnees):

- ❖ 1,193 persons were obligated to report;
- ❖ 3 persons had bail options;
- ❖ 1,286 persons were obligated to stay in a designated place.³⁹⁶

3. Detention of vulnerable applicants

Indicators: Detention of Vulnerable Applicants

1. 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
2. Are asylum seeking children in families detained in practice?
☒ Frequently
☐ Rarely
☐ Never

According to the law, asylum seekers, whose psychophysical state leads to believe that they are victims of violence or have a disability or are unaccompanied minors are not placed in detention centres. This is also applicable to asylum seekers whose detention causes a serious threat to their life or health.³⁹⁷ Under the law, an asylum seeker should be released, if further detention constitutes a threat to their life or health.³⁹⁸ In practice it happens that those vulnerable asylum seekers are detained, even when they were diagnosed

³⁹¹ *Ibid.*

³⁹² Letters from the Head of the Office for Foreigners BWM-08-502/2012/AWJ from 1 August 2012 and BWM-08-03/2013/RW from 10 January 2013.

³⁹³ Article 88(1) of the Law on Protection, as amended in November 2015.

³⁹⁴ Articles 88(2) and 88b(2)-(3) Law on Protection, as amended in November 2015.

³⁹⁵ Article 88a(1) Law on Protection, as amended in November 2015.

³⁹⁶ Letter from the Border Guard KG-OI-III.0180.5.2017.AP from 19 January 2017.

³⁹⁷ Article 88a(3) Law on Protection, as amended in November 2015.

³⁹⁸ Article 406(1)(2) Law on Foreigners.

as having mental health problems as a result of past events.³⁹⁹ Indeed, a poor mental condition is hardly ever accepted by courts as sufficient grounds for not placing in or releasing an asylum seeker from detention. Courts do not accept psychological opinions submitted by independent psychologists (e.g. from NGOs).⁴⁰⁰ In practice, only courts of higher instance call on experts to give evidence. This makes proceedings last up to a couple of weeks.⁴⁰¹

Until 12 November 2015 Polish legislation did not include any provisions concerning effective methods of identification of vulnerable applicants. There was no definition of a “vulnerable person” in law. From 2014 SG applied a policy document titled “Algorithm for a SG’s conduct with foreigners belonging to the groups of special care”,⁴⁰² which defined aims, ways and rules for the SG actions in case of identifying a vulnerable person and defined a vulnerable person. The objective was to ensure optimal conditions guaranteeing the assistance of medical personnel and psychologists whenever needed.⁴⁰³ According to an NGO report,⁴⁰⁴ the SG was implementing the above mentioned procedure and looking for financial means for that purpose (from AMIF).

In October 2015 the SG informed that the above mentioned algorithm no longer applies and was replaced with a new document: “Rules on SG’s conduct with foreigners needing special treatment”.⁴⁰⁵ It was implemented on 18 September 2015. In the document the SG defined a third-country national needing special treatment, indicated personnel essential to identify a vulnerable person (social assistant – employee of the SG, psychologist, and therapist) and the course of action to take where the vulnerable applicant is placed in detention.

From 13 November 2015 foreigners, who need special treatment, are defined particularly as:⁴⁰⁶ minors, disabled people, elderly people, pregnant women, single parents, victims of human trafficking, seriously ill, mentally disordered people, victims of tortures and victims of violence (psychological, psychical, including sexual). Despite this amendment in law, still some vulnerable asylum seekers (even those mentioned above) can be detained, because only those foreigners seeking asylum cannot be detained whose psychophysical state leads to believe that they are victims of violence, disabled, unaccompanied minors and asylum seekers whose detention cause a serious threat to their life or health.⁴⁰⁷ It means that, for example, minors, if they stay in Poland with parents or other legal guardians, can still be detained, as can pregnant women if they are healthy.

In practice, vulnerable applicants are placed in the detention centres. SG claims it does not happen (SG admitted only that 8 pregnant women and 53 children were detained in the first half of 2015),⁴⁰⁸ but NGOs report such cases e.g. Halina Nieć Legal Aid Centre counted that just from January to April 2013 there were 85 vulnerable asylum seekers in detention centres.⁴⁰⁹

Apart from the provisions on vulnerable asylum seekers, generally no detention of a TCN should be ordered by a judge if it may cause a serious threat to their life or health.⁴¹⁰ In 2016 SG does not gather information how many foreigners were released on basis of their poor health. As the experience of some NGO lawyers’

³⁹⁹ T. A. Dębowczyk, J. Oleszkowicz, *Praktyka sądowa stosowania detencji cudzoziemców w Polsce (The jurisprudence of the use of foreigners’ detention in Poland)* in T. Sieniow *op. cit.*, 38.

⁴⁰⁰ Supreme Court, Judgment from 4 February 2015 no. III KK 33/14, available at: <http://bit.ly/1OiPpZE>.

⁴⁰¹ Legal Intervention Association, information obtained during an interview.

⁴⁰² The document is not public. It has not been assessed by any objective entity yet, so it hard to assess its effectiveness.

⁴⁰³ Letter from the Border Guard FAX-KG-CU-5944/IP/15 from 24 August 2015.

⁴⁰⁴ Centrum Pomocy Prawnej im. Haliny Nieć, K. Przybyłowska (Ed.), *op. cit.*, 26.

⁴⁰⁵ Letter from the Border Guard FAX-KG-CU-6765/IW/15 from 6 October 2015.

⁴⁰⁶ Article 68(1) Law on Protection, as amended in November 2015.

⁴⁰⁷ Article 88a(3) Law on Protection, as amended in November 2015.

⁴⁰⁸ Letter from the Border Guard MAIL-KG-OI-614/III/15 from 18 August 2015.

⁴⁰⁹ Centrum Pomocy Prawnej im. Haliny Nieć [Halina Nieć Legal Aid Centre] *Cudzoziemcy szczególnej troski w Polsce: identyfikacja, detencja, orzecznictwo. Analiza 2012-2013* [Vulnerable foreigners in Poland: identification, detention, jurisprudence. Analysis 2012-2013], available at <http://bit.ly/1dxieU4>, 21.

⁴¹⁰ Article 400(1) Law on Foreigners.

shows,⁴¹¹ the physical rather than the psychological condition is taken into account by the judges. Analysis of the justifications of the courts' rulings concerning detention leads to the conclusion that in a large number of cases mental health is not considered by judges or there is no reference to the health of the TCNs at all.⁴¹²

In 2015 a family tried to apply for an asylum a couple of times at the border crossing in Medyka at a Polish-Ukrainian border. After several attempts, they managed to submit their application, SG applied to the regional court to place them in a detention centre. Family members were tortured in country of origin and they have visible scars on a cheek. An SG's motion was justified that family tried several times to enter UE without visa, and that many of citizens of their country of origin had left Poland right away after applying for an asylum. During their stay in a detention centre, psychologist made two opinion confirming that they should not be in a detention due to children's' psychological condition. They were not released by the SG or Regional Court.

According to the law, unaccompanied asylum-seeking children should not be detained,⁴¹³ but in practice it happens when there are doubts as to their age or if they were placed in detention as irregular migrants (which is possible under the law) and only then applied for international protection. Unaccompanied children are placed only in a detention centre in Ketrzyn, where adequate rooms are separated.

Asylum-seeking children who are with the members of their family can be placed in detention centres together with accompanying adults.⁴¹⁴ In 2016, 292 children were placed with their parents in a detention centres. Total of all asylum seekers was 603 persons in whole 2016. In 2016 children were placed in detention centres in **Kętrzyn, Biała Podlaska** and **Przemyśl**. Still the best interest of the child is not considered in decisions concerning detention.⁴¹⁵

In 2011 a coalition of Polish NGOs started a public campaign to stop the detention of children in Poland.⁴¹⁶ The Polish Ombudsman (*Rzecznik Praw Obywatelskich*) also got involved in the matter and made numerous interventions in front of the Ministry of Interior.⁴¹⁷ The Ministry of Interior declared at the end of 2012 that their priority was to reduce to the minimum the period during which children are detained and to further adjust the detention conditions in the two guarded centres so that they are more suitable for children, but the Ministry will not introduce a general legal ban on the detention of children.⁴¹⁸ NGOs continue to advocate for the general ban on detention of children in 2015. The Law amending the Law on Protection, applicable from 13 November 2015, does not include the general ban on detention of the children.

From 13 November 2015 if the Head of the Office for Foreigners issues a decision to release a TCN from the detention centre and this asylum seeker is disabled, elderly, pregnant or single parent, SG is obliged to organise the transport to the reception centre, and – in justified cases – alimentation during the transport.⁴¹⁹

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? | 68 days |

⁴¹¹ For example from the Legal Intervention Association (*Stowarzyszenie Interwencji Prawnej*).

⁴¹² T. A. Dębowczyk, J. Oleszkowicz, *op. cit.*, 35.

⁴¹³ Article 88a(3) Law on Protection, as amended in November 2015.

⁴¹⁴ Although it happens in practice that some members of the family are placed in the reception centre and some in the detention - T. Sieniow, *Wnioski z monitoringu wraz z rekomendacjami (Conclusions from monitoring with recommendations)* in T. Sieniow ed., *op. cit.*, 50, 59.

⁴¹⁵ *Ibid*, 34.

⁴¹⁶ Information about a coalition of NGOs against the detention of child migrants at: <http://bit.ly/1UcHfoY>.

⁴¹⁷ More information: Biuletyn Rzecznika Praw Obywatelskich nr 11, Warszawa 2012, available <http://bit.ly/1RTIHbU>.

⁴¹⁸ Ministry of Interior's statement available at: <http://bit.ly/1f5pS9Z>.

⁴¹⁹ Article 88cb Law on Protection, as amended in November 2015.

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.⁴²⁰ If a TCN claims asylum during the stay in the detention centre (so he was initially detained as an irregular migrant), the period of his detention is prolonged only if the conditions to detain an asylum seeker mentioned before are met (e.g. it is necessary to verify or establish identity of the applicant). If so, then the applicant's stay in the detention centre is prolonged up to 90 days from the day of filing the asylum application.⁴²¹ 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 (no timeframes set in law other than the maximum total period of asylum seekers' detention – 6 months).⁴²² Prolongation is not possible, if the procedure concerning reasons of detention still lasts (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.⁴²³

The above mentioned rules on detention are partially new in Poland. Until 12 November 2015 the prolongation of the stay of an asylum seeker was possible only if a negative decision issued by the first instance authority was delivered to the asylum seeker prior to the expiry of the previous period of his detention.⁴²⁴

Until 1 May 2014, the period of stay in the guarded centre or in the detention centre for the purpose of expulsion could not exceed one year. This was the total time-limit of detention for all migration-related purposes, regardless of the proceedings a third country national was subject to.

From 1 May 2014 the maximum detention period for asylum seekers is 6 months.⁴²⁵ For failed asylum seekers and other migrants in return procedures it is 12 months, but detention can be prolonged for another 6 months if the person concerned submits a complaint to the administrative court against a return decision.⁴²⁶

In the first half of 2016 the average period of the TCNs' stay in detention centres was 68 days, although this number includes the stay of all TCNs: asylum-seeking and returnees.⁴²⁷ Data for the average duration of detention of asylum seekers is not available.

All the decisions concerning detention (placing in the detention centre or prolonging stay there) made by courts or the SG can be appealed by the asylum seeker to the higher instance authority. In the appeal procedure, courts ignore foreigners' requests to be present during examinations of their appeal against a decision on detention, so they cannot present their standpoint. At the same time, foreigners are not informed about lodging the motion on prolonging their stay in a detention centre. Furthermore, the appeal has to be prepared in Polish, so foreigners are dependent on NGOs which provide limited legal assistance due to limited access to funds. Courts do not conduct evidentiary proceedings on child best interest and on torture victims.

Asylum seekers have a right to request their release from detention anytime, by submitting a "motion for release". A release motion is directed to the SG managing the centre. Their decision can be appealed to the respective District Court, but only if the motion for release was submitted at least one month after the issuance of the decision on the application or prolongation of detention (up until one month's placement in detention an asylum applicant can ask for a release, the SG has to make a decision, but there is no

⁴²⁰ Article 89(1) Law on Protection, as amended in November 2015.

⁴²¹ Article 89(2)-(3) Law on Protection, as amended in November 2015.

⁴²² Article 89(4)-(5) Law on Protection, as amended in November 2015.

⁴²³ Article 89(4a) Law on Protection, as amended in November 2015.

⁴²⁴ Article 89(2) of the Law on Protection (applicable until 12 November 2015).

⁴²⁵ Article 89(5) Law on Protection, as amended in November 2015.

⁴²⁶ Article 404(5) Law on Foreigners, as amended in November 2015.

⁴²⁷ Information from the Border Guard from 5 January 2016.

possibility to appeal). The District Court has 7 days to examine it.⁴²⁸ This procedure generally focuses not on the lawfulness of detention but rather on changes in the person's personal situation (e.g.: the person becomes ill while in detention and a longer stay could put their life and health at risk).

Asylum seekers can also be released from a detention centre *ex officio* (e.g. on the basis of Polish authorities' decision). Moreover, the Head of the Office for Foreigners can release (ex *officio* or on motion) an asylum seeker from detention if his application for refugee status will be considered with a high probability as justified.⁴²⁹

According to an NGO report, detention orders lack individual reasoning and sometimes are brief, containing only two sentences.⁴³⁰ The Court assessment is generally based on the information provided by the Office for Foreigners and the SG relating mostly to the matter of illegal crossing of the border. The risk of absconding is assessed by the Court when ruling on detention of irregular migrants and asylum seekers. The necessity and proportionality test is not implemented. The best interest of a child is not considered, the court do not examine the best interest of a child, usually not even referring to their existence.

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

C. Detention conditions

1. Place of detention

Indicators: Place of Detention

1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? ☐ 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 to detain asylum seekers and foreigners subject to return procedures

Guarded centres for asylum seekers

These are 6 such centres with a total capacity of 510 places for foreigners, located in: Detention centres are situated in: **Biała Podlaska, Białystok, Lesznowola, Kętrzyn, Krosno Odrzańskie, Lesznowola and Przemyśl.**

⁴²⁸ Article 406 Section 2, 3, and 4 of the new Law on Foreigners.

⁴²⁹ Article 89b of the Law on Protection.

⁴³⁰ Sieniow Tomasz (ed.) Fundacja Instytut na rzecz państwa prawa [Rule of Law Institute] *Stosowanie detencji wobec cudzoziemców. Raport z monitoring i rekomendacje* [Detention of foreigners. Monitoring report and recommendations], 2013, 51-52, available in Polish at: <http://bit.ly/1f5g9QS>.

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

The term, literally translated as “arrests for foreigners”, replaced that of “pre-removal centres” as of 1 May 2014. These impose more rigorous conditions of detention than guarded centres.⁴³¹ Until mid-December 2012 there were 5 such centres. Currently, there is one centre with a capacity of 33 places in **Przemysł**.⁴³²

An asylum seeker can be placed in a more rigorous detention centres for TCNs 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.⁴³³ 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 wants (he is entitled only to two hours walk per day), etc.⁴³⁴

All detention centres are for migration-related purposes and the SG is in charge of their management. Asylum seekers are never placed in regular prisons with ordinary prisoners, but stay together with migrants in an irregular situation. There is no special facility where only asylum seekers are detained. The SG officers who run the centres are trained and there are no major issues reported concerning the staff behaviour. It was reported that in 2013 and in 2014 in some centres the SG addressed foreigners by numbers assigned to them in their administrative files or used bad language.⁴³⁵ NGOs visiting detention centres notice a positive change in that matter, although in 2016 foreigners with whom lawyers were talking on a duty days in detention centre knew their administrative numbers.

The design and layout of some of the centres create the impression of a very prison-like environment: thick walls, bars in the windows and on the corridors. In addition all centres are surrounded by high walls topped with barbed wires. In 2015 the Polish authorities decided to remove bars in the windows in the detention centres and install special secure windows in Lesznowola, and in one floor in **Kętrzyn**. Further renovation in **Kętrzyn** is planned in this year, and in **Biała Podlaska** in 2018.

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities

- | | | |
|---|---|--|
| 1. Do detainees have access to health care in practice? | ☒ Yes | ☐ No |
| ❖ If yes, is it limited to emergency health care? | ☐ Yes | ☒ No |

The Law on Foreigners, which entered into force on 1 May 2014, contains a section on detention conditions, rights and obligation of TCNs.⁴³⁶ It is much more detailed than the previous regulations. 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.

Six centres (**Białystok**, **Kętrzyn**, **Biała Podlaska**, **Przemysł**, **Lesznowola**, **Krosno Odrzańskie**) are relatively new and in good condition (they were built after 2008, **Krosno Odrzańskie** was renovated in 2015 and **Lesznowola** in 2015/2016), and **Lesznowola** has now reopened.

The main equipment in a room consists of beds, small wardrobes and a small table. If people placed in the centres cannot have all their belongings in their room, they have to place them in external storage space in the centre. Some of their belongings are also placed there for safety reasons and can be accessed only upon request. A sufficient space between beds is provided. As for privacy matters, the rooms cannot be

⁴³¹ 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, available (Zarządzenie nr 23 Ministra Spraw Wewnętrznych z dnia 1 lipca 2014 r. w sprawie wyznaczenia pomieszczeń, w których jest wykonywany areszt dla cudzoziemców).

⁴³² Letter from the Border Guard MAIL-KG-OI-614/III/15 from 18 August 2015.

⁴³³ Article 88a(2) Law on Protection, as amended in November 2015.

⁴³⁴ Centrum Pomocy Prawnej im. Haliny Nieć, K. Przybysławska (Ed.), *Monitoring of Forced Returns from Poland July 2014-June 2015*, 35-36.

⁴³⁵ HFHR, SIP, *Wciąż za kratami* (Still behind the bars), 2014, available at: <http://bit.ly/1JBxxXm>, 24.

⁴³⁶ Articles 410-427 Law on Foreigners.

locked at night and in some centres the SG checks per night if the detainees are present. There were also concerns about privacy in sanitary facilities in the men's part of the building in some centres.

In 2013 the detention centres' system was amended after the protest which took place in 4 out of 6 detention centres in October 2012 and subsequent monitoring held by the Ministry of the Interior and NGOs. Currently in two detention centres (**Białystok, Krosno Odrzańskie**) only men are held and in another two (**Kętrzyn, Biała Podlaska**) only families with children who are at a school age are held. In the detention centre in Przemysł families with children (not at a school age) and single men are placed. They are located in separated wings. In one of the centres (**Kętrzyn**), there is a separate part for unaccompanied irregular migrant children.⁴³⁷ Families are placed together in one room as far as possible both under the law⁴³⁸ and in practice.⁴³⁹ There is no separate space for other vulnerable persons.

In all guarded centres there is a sport and recreation space.⁴⁴⁰ In 2013 a number of significant changes were introduced. Previously, the time that detainees could spend outside generally did not exceed one or two hours per day and depended on the weather. The regime changed in 2013: free time outside is no longer strictly limited. The open-air space is of adequate size and sufficient recreational facilities are provided (e.g. playing field for volleyball or basketball, in **Białystok** there is an open-air gym and in **Kętrzyn** a well-equipped playground for children). In practice the detainees have the possibility to take part in outdoor exercises on a regular basis. There are no additional restrictions. In 2014 video game consoles were bought and provided to the detainees (**Kętrzyn, Biała Podlaska, and Białystok**). In all centres there is access to the internet and in all of them there are computers which can be used by detainees. Detainees can watch television without any limitations, even until late at night.⁴⁴¹

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

Detention centres provide rooms for religious practices.

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

In all centres each asylum applicant and irregular migrant has an officer appointed to their case with a scheduled meeting to discuss their case. The rules of stay in the detention centres are available in 16 languages: Arabic, English, Ukrainian, Russian, French, Armenian, Chinese, Georgian, Hindi, Spanish, Mongolian, Turkish, Persian, Urdu, Bengali and Vietnamese.⁴⁴² Not all the language versions are displayed, as the vast majority of asylum seekers are Russian-speaking. Depending on the centre they are available on each floor of the detention centre or in the common-rooms, etc.

Education

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

⁴³⁷ Letter from the Border Guard MAIL-KG-OI-614/III/15 from 18 August 2015; Article 414(4) Law on Foreigners.

⁴³⁸ Article 414(3) and (5) Law on Foreigners.

⁴³⁹ HFHR, SIP, *Wciąż za kratami* (Still behind the bars), 2014, 17.

⁴⁴⁰ Paras 2 and 9 of the Regulation on detention centres.

⁴⁴¹ HFHR, SIP, *Wciąż za kratami*, 2014; Letter from the Border Guard MAIL-KG-OI-614/III/15 from 18 August 2015.

⁴⁴² Letter from the Border Guard MAIL-KG-OI-614/III/15 from 18 August 2015.

not fulfilled in the case of children staying in guarded centres.⁴⁴³ None of the children staying there regularly attends school. Schools near the detention centres in **Kętrzyn** and **Biała Podlaska**, where the children in school age are placed, delegate teachers to work in detention facilities. In these centres special classrooms are prepared. This is the result of agreements between the SG, educational institutions and local authorities. However, education is limited in time to a couple of hours per week (e.g. in **Kętrzyn** 32 hours a week,) and teachers are not sufficiently prepared to work with TCNs children, so it mainly concentrates on Polish language lessons as a foreign language, Maths, and arts activities. In both centres where the school children are placed (**Biała Podlaska** and **Kętrzyn**) the organization of activities is the responsibility of the teachers and directors of the schools and each time the programme is adapted to the children who are currently in the detention centre. Additional hours of activities is organised by the workers of educational subdivision of detention centres. Classes are carried out in groups according to their age, level of education and fluency in Polish.

Generally the right to education for children in detention centres for asylum applicants is not properly implemented. Topics and activities offered to children do not meet the requirements of the general education curriculum. There are no legal regulations that specify the obligations of the SG, educational authorities and schools themselves in teaching children in detention centres. The law does not indicate, in particular, on what basis such teaching is to be executed or who should finance the lessons. The Ombudsman stated that the right to education of children placed in detention centres is not observed and they should have the possibility to attend public schools. The Ombudsman stressed that the SG should also ensure that classes are conducted by qualified teachers and that the curriculum be implemented. The programme must include lessons of Polish as a foreign language as well as lessons concerning other topics.⁴⁴⁴ In October 2016, representative of National Prevention Mechanism, who visited Guarded Centre in **Kętrzyn** underlined that providing the right to education in **Kętrzyn** is an example of a good practice since the law on foreigners and law on protection does not ensure it.⁴⁴⁵

In February 2015 the Polish Ombudsman wrote to Ministry of Education in purpose of improvement of the education system for TCNs in Poland, also for children placed in detention centres.⁴⁴⁶ As a result, a meeting with the Ministry of Education, SG, the Polish Ombudsman and directors of the schools was organised in April 2015, during which Ministry declared that they will create the law concerning the education of minors in detention centres.⁴⁴⁷ Up until now, there is no progress in this matter, despite of the efforts made by Border Guards.⁴⁴⁸

Health care

According to the law, all detainees have access to regular health care.⁴⁴⁹ In all centres, medical staff are present and working, there is at least one physician and one nurse, but there are often more. In case of an emergency or the need for a specialist (e.g. gynaecologist), detainees are transferred to hospitals or clinics.

Although in **Kętrzyn**, where families with children are placed, a paediatrician is not hired. A physician is an ophthalmologist and taking care of foreigners is one of his responsibilities. Also all physicians are male which impedes communication in case of women, whose culture of origin does not allow them to be touched or examined by a man. This situation is especially difficult for pregnant women or women with gynecological

⁴⁴³ HFHR, SIP, *Wciąż za kratami*, 2014, 46.

⁴⁴⁴ Polish Ombudsman, *Raport RPO (Implementation of the right to education for foreign minors. Polish Ombudsman report)*, 2013, 55.

⁴⁴⁵ National Prevention Mechanism, Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Kętrzynie, available in Polish at: <http://bit.ly/2kPbgCA>.

⁴⁴⁶ Letter from Polish Ombudsman to Ministry of Education from 9 February 2015, available in Polish at: <http://bit.ly/1FSiCtT>.

⁴⁴⁷ Rzecznik Praw Obywatelskich (Polish Ombudsman), K.Łakoma (ed.), *Działania Rzecznika Praw Obywatelskich na rzecz ochrony praw migrantów w latach 2010 - 2015 - wyzwania i osiągnięcia* (Activities of Polish Ombudsman to protect migrants rights in 2010-2015 – challenges and achievements), 2015, available in Polish at: <http://bit.ly/1L1KEQq>, 7.

⁴⁴⁸ Information from Border Guard on 5 January 2017

⁴⁴⁹ Articles 415(1)(5) and 417 Law on Foreigners.

problems, or women who are victims of violence, including sexual violence. An early identification of victims of torture and violence is not made during the preliminary examination of a foreigner on admission in practice. Additionally foreigners are not asked about any medical documentation which they could have from other EU country.⁴⁵⁰

The doctors present in the detention centres generally know some foreign languages (Russian, English). According to SG, every doctor hired in the centres has to know at least one foreign language.⁴⁵¹ In practice if they do not know the patient's mother tongue, an interpreter is made available. The interpreter is usually a SG employee working in the education section in the centre, which is a breach of doctor-patient confidentiality and a right to privacy.⁴⁵² In some centres (**Kętrzyn, Przemyśl**) it was stressed by the SG that they provide translation for rare languages, but there has been no possibility to confirm it in a concrete case.

There is also access to psychological care (according to SG in all centres there is an external psychologist hired who works at least two times a week for two hours and one psychologist from SG), but no therapy for serious disorders is provided.⁴⁵³ Accordingly to SG, every psychologist hired in the centres has to know at least one foreign language, if there is a problem with communication – an interpreter is made available.⁴⁵⁴ Although in **Kętrzyn** psychologist do not speak Russian fluent enough and Google Translate is used. Looking after foreigners is one of their responsibilities, and they provide psychological assistance only if there was a traumatic incident, and only on a request of a doctor who examined a patient. This means that foreigners cannot have access to psychologists on their request. In **Kętrzyn** only male psychologist are hired, which is an obstacle when identifying victims of torture, especially women.⁴⁵⁵

Situation of the vulnerable asylum seekers can be seen in a presented case. Family with three young children (2, 3, 5 years old) were placed in a detention centre on 13 October 2016. Mother was pregnant and a father had excessive reactions as a result of torture in the country of origin. While placing family in a detention centre, court did not notice that a physician had not signed a document on medical conditions to stop her and escort her to detention centre. In a documentations there were no information on psychologist consultations. Excessive reaction of a father or depression of a mother did not seem to attract the attention of medical personnel.

In the other case, single mother with three children (5, 8, 9, years) was placed in detention center. One of her children had been shot through the foot during the raid police at the house in the country of origin. She was also a victim of torture and family spent 3 weeks in a detention center and were released after the intervention of representative of National Prevention Mechanism.

According to representative of National Prevention Mechanism identification system of torture victims is not in place, is ineffective and do not secure torture victims is a sufficient way.⁴⁵⁶

In all detention centres information on the availability of medical and psychological care is displayed on boards in the corridors, but in practice sometimes detainees do not know about that.⁴⁵⁷

In some detention centres, the food is prepared on site, by external providers. In others, it is prepared in the centres. There are several specific diets e.g., vegetarian, vegan, adapted to Muslims, adapted to

⁴⁵⁰ National Prevention Mechanism, Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Kętrzynie, available in Polish at: <http://bit.ly/2kPbgCA>.

⁴⁵¹ Letter from the Border Guard MAIL-KG-OI-614/III/15 from 18 August 2015.

⁴⁵² National Prevention Mechanism, Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Kętrzynie, available in Polish at: <http://bit.ly/2kPbgCA>.

⁴⁵³ *Ibid.*

⁴⁵⁴ *Ibid.*

⁴⁵⁵ National Prevention Mechanism, Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Kętrzynie, available in Polish at: <http://bit.ly/2kPbgCA>.

⁴⁵⁶ *Ibid.*

⁴⁵⁷ *Ibid.*

pregnant or breastfeeding women, diabetic. Other diets can be respected on prescription of the physician.⁴⁵⁸

3. Access to detention facilities

Indicators: Access to Detention Facilities

1. Is access to detention centres allowed to

- | | | | |
|-------------------|---|----------------------------------|-----------------------------|
| ❖ Lawyers: | ☒ Yes | ☐ Limited | ☐ No |
| ❖ NGOs: | ☒ Yes | ☐ Limited | ☐ No |
| ❖ UNHCR: | ☒ Yes | ☐ Limited | ☐ No |
| ❖ Family members: | ☒ Yes | ☐ Limited | ☐ No |

The law allows for lawyers, NGOs or UNHCR to have access to detention centres.⁴⁵⁹ Detained asylum seekers are entitled to maintain contact with UNHCR and organisations dealing with asylum issues or granting legal assistance (directly and by means of correspondence and telephone calls). Direct contact with UNHCR and organisations can be limited or restricted completely by the head of the detention centre if it is necessary to ensure safety and public order or to observe the rules of stay in the detention centre. The decision of the head of the centre is final.⁴⁶⁰ The Head of the Office for Foreigners and UNHCR should be informed about it.⁴⁶¹ This provision is not used in practice. NGOs provide legal assistance, but unfortunately not on a regular basis. In 2016 all NGOs had to diminish their assistance (also legal) in the detention centres, because of lack of financial means as a result of delay in the implementation of AMIF, announcement of call for proposals results cofinanced by AMIF.

As a general rule, NGOs have to ask for the consent of a manager of the detention centre to meet with a specific asylum seeker. Lawyers, family members and friends, or NGOs can meet with a detainee during visiting hours. There are no limitations concerning the frequency of such visits. UNHCR Poland notes that they are not limited in accessing detention centres. The media and politicians have access to detention centres under general rules; they have to ask for the consent of the SG unit managing the detention centre.

In practice, NGOs who want to meet with more than one or with unspecified asylum seekers, monitor conditions in a detention centre etc. must ask the SG Commander in Chief in writing for permission to visit a detention centre. Since March 2013 till end of 2016 such consent is given by the Commander of the Regional Unit of the SG.⁴⁶² In 2017 rules changed, and permission is authorised by Border Guards Headquarter. Nevertheless visits are generally not limited to visiting hours. Non-governmental organisations generally do not face problems in accessing the centres.

Visits from relatives, friends or religious representatives are authorised. Anyone 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.⁴⁶³ 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).⁴⁶⁴

Detainees are able to maintain regular contact with people outside the centre. There is no limitation in using cell phones (without audio- and video recording system) or public phones. The SG's have several hundreds of substitute cell phones without a camera which they provide to foreigners in case they only have

⁴⁵⁸ *Ibid.*

⁴⁵⁹ Article 415(1)(2), (3), (19) Law on Foreigners and Article 89a(1)(2) Law on Protection.

⁴⁶⁰ According to the amended Law on Protection, it will be a possibility only to limit such contact.

⁴⁶¹ Article 89a(1) and (2) Law on Protection.

⁴⁶² Letter from Border Guard Commander in Chief FAX-KG/CU/1981/IW/13 from 13 March 2013.

⁴⁶³ Para 21 of the Rules of foreigners' stay in guarded centre and arrest for foreigners (Annex to the Regulation on detention centres).

⁴⁶⁴ Para 23 of the Rules of foreigners' stay in guarded centre and arrest for foreigners (Annex to the Regulation on detention centres).

smartphones. The cell phones are handed over for the whole day for free. The foreigners can also use public phones, sufficient privacy is provided. In both cases detainees themselves pay for the calls. There is a possibility to order a phone card. The SG officers go and do shopping for detainees usually twice a week. If the asylum applicant does not have money to buy a telephone card, there is a possibility of using the SG's equipment in justifiable cases.

The Law on Foreigners which came into force on 1 May 2014 introduced 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.⁴⁶⁵

When deciding upon the application of either of these two sanctions, the SG Regional Commander takes into account the general behaviour of the detainee, the level of disobedience, cultural background, etc. Before adopting the law, such punishments were applied in practice without any legal basis. In 2015 and in 2016, such punishment was used 26 times.⁴⁶⁶

D. Procedural safeguards

1. Judicial review of the detention order

Indicators: Judicial Review of Detention

1. Is there an automatic review of the lawfulness of detention? ☐ Yes ☒ No
2. If yes, at what interval is the detention order reviewed?

Detention is ordered by the District Court upon request of the SG on specific grounds (see section on grounds for detention). Prolongation of the detention is also ordered by the District Court upon request of the SG. Asylum seekers stay in the detention centre can be prolonged if before the end of the previous period of the detention, the final decision concerning the application for international protection is not issued and the reasons to detain the applicant still exist.⁴⁶⁷

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. From 1 May 2014 the court has a clear obligation to hear the person concerned before rendering a decision.⁴⁶⁸ In all guarded centres, when the person is admitted to the centre, there is a meeting during which a detainee receives information about the centre. Although, in practice asylum seekers do not understand the reasons of their detention and have a basic information on their rights. For example it 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 the appeal proceedings. In one of such cases, during the detention hearing a foreigner reportedly supported the SG request to detain him despite the fact that his child had epilepsy.

The national legislation provides for a judicial review of the lawfulness of detention.⁴⁶⁹ Asylum seekers can appeal against a District Court ruling to the Regional Court within 7 calendar days from the day the ruling is pronounced (in prolongation cases it is 7 days from the delivery of the ruling to an asylum seeker).⁴⁷⁰ In

⁴⁶⁵ Article 421(2) Law on Foreigners.

⁴⁶⁶ Letter from the Border Guard KG-OI-III.0180.5.2017.AP from 19 January 2017.

⁴⁶⁷ Article 89(4) Law on Protection, as amended in November 2015.

⁴⁶⁸ Article 88b(1) Law on Protection.

⁴⁶⁹ Article 88b(3) Law on Protection; Article 403(8) Law on Foreigners.

⁴⁷⁰ 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.

this appeal the detainee can dispute the grounds of their detention. Asylum seekers receive rulings in the language they understand (it is a literal translation of a ruling rendered in Polish). Until 1 May 2014, there were no specified time limits for the Regional Court to decide on the appeal, but it should have been done “immediately”.⁴⁷¹ In practice there were no legal consequences for not examining the appeal immediately. Sometimes the appeals were not even examined before the period for which an asylum seeker was placed in a detention centre finished.⁴⁷² The Law on Foreigners envisages 7 days for the examination of the appeal.⁴⁷³

Some courts – although they have such a legal obligation – do not provide information about the right to legal representative. Automatic periodic review of the detention is ensured by limiting the period of time within which a ruling on detention is issued (up to 90 days or up to 60 days). The rule that the prolongation of the stay in the detention centre cannot exceed 90 days, no longer applies. Currently a stay can be prolonged for a time needed to issue a final decision concerning the application for international protection, no longer than in total 6 months. Previous practice of the courts and the SG raises concerns that prolongation will be judged for a maximum possible period (so for 6 months in total). A monitoring of the legality and correctness of the detention is carried out by a penitentiary judge of the regional court from 1 May 2014.⁴⁷⁴ A penitentiary judge can visit the detention centre any time, without limits, view documents and talk with TCNs staying in the detention centre.⁴⁷⁵

The court procedure concerning detention orders is not considered effective. Courts are very often deciding 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. The court’s approval of the SG’s request to detain a TCN is often automatic, and TCNs are not heard in the appeal procedure before the District Court.⁴⁷⁶

NGOs have highlighted this problem for some time, but in 2013 the President of the District Court in **Biała Podlaska**, which handles a lot of asylum seekers’ detention cases (**Terespol** border crossing point is covered by this court’s jurisdiction) addressed a letter to the SG Commander in Chief about cases concerning prolongation of detention. The President of the Court noted in her letter,⁴⁷⁷ that the SG often submits the motions for extending the detention of asylum seekers on the last day of their stay, which does not give the court enough time to look into the case and analyse all the circumstances, inform the legal representative of the prolongation of detention for the asylum seeker, hear the person concerned, etc. In the opinion of the President of the Court, this may infringe the right to a fair trial.⁴⁷⁸ In 2015 it is still a problem. In 2016 Border Guard submitted motions for prolongation of a foreigners’ stay in detention in an adequate time.

Every TCN is entitled to compensation and redress for wrongful detention from the State Treasury.⁴⁷⁹ In 2016 HFHR lawyer represented two clients: one case is right now in Supreme Court of the Republic in Poland, the second one is considered by Regional Court in Radom.

⁴⁷¹ Article 106 Law on Foreigners (applicable until 1 May 2014).

⁴⁷² T. Sieniow, *op. cit.*, 56.

⁴⁷³ Article 88b(3) Law on Protection; Article 403(8) Law on Foreigners.

⁴⁷⁴ Article 426 Law on Foreigners.

⁴⁷⁵ Article 426(3) Law on Foreigners.

⁴⁷⁶ P. Nikiel, *Raport o stosowaniu detencji wobec osób starających się o nadanie statusu uchodźcy w Polsce. Analiza orzecznictwa sądów* (Report on detention of asylum seekers in Poland. Analysis of the jurisdiction), Centrum Pomocy Prawnej im. H. Nieć, 2010, 20, available at: <http://bit.ly/1JA4RAR>; T. Sieniow, *op. cit.*, 49-50, 54-55.

⁴⁷⁷ The letter of the President of the District Court in Biała Podlaska to the Border Guard Commander in Chief from 12 April 2013 nr adm. 5102-8/2013/K/VII. The letter was also sent to other institutions, including HFHR.

⁴⁷⁸ See also T. Sieniow, *op. cit.*, 60.

⁴⁷⁹ Article 407 Law on Foreigners.

The basic problem concerning grounds of detention is an automaticity applied by courts in all TCN detention cases.⁴⁸⁰ In practice courts accept SG applications to detain all TCNs without an in-depth analysis of the individual situation of the asylum seeker and the law in force. The following examples illustrate this practice.

The following quotation from the justification of one of the detention decision can demonstrate the common position of courts on the detention of children, according to which stay in the detention centre can be considered as a good thing for the child: “Moreover, when staying in the detention centre, the supervision and care will be provided for the foreigner and his child”. In the other case, which considered a family with two minor children, the medical and psychological examination of a child was not in-depth analysed. Family was placed in the detention centre in **Biała Podlaska** for two months, and then their stay was prolonged for the next three months. In the justification of the prolongation decision court neither refer to the presence of children or assessed their best interest. But two weeks later the family was released from the detention, under the decision of the Chef Commander of the BG Station in Biała Podlaska, due to the poor medical condition of one of the children, a 6-years-old boy. According to the psychiatrist’s opinion: “the medical condition of the child required his pharmacological treatment and the change of the environment as well as the care of his parents”. Psychiatrist recommended releasing the family from the detention centre and placing them instead in the reception centre for foreigners for the sake of the well-being of the child.

In the other case, on 7 October 2016 family with three minor children (2,4,8 years) was detained in a detention centre in **Kętrzyn**, after the transfer under the Dublin Regulation from Germany. During their transfer, family had all medical records with them which confirmed (also during their arrest in Germany, in German) that the physical and mental health state of two members of the family, was not only inadequate to make the transfer, but also certainly did not allowed them to be placed in a detention centre. According to the document issued by hospital – one of the members of family was hospitalized in July 2016 and in August 2016 in a psychiatric clinic because of PTSD, major depressive disorders with suicidal thoughts. They developed as a direct result of violence (including torture) which this person suffered from in the country of origin. None of the medical documents was taken into consideration neither by SG when issuing a motion to the court nor by the regional court during placing them in a detention centre. Information about their current health state and the treatment they had received during their stay in Germany was not secured properly by the German police which was crucial while issuing a motion to detain foreigners in a detention centre. Furthermore, physician in a guarded centre in **Kętrzyn** on admission he did not check the documents from Germany. In the family files, there were no record of a diagnosis of PTSD, depression or suicidal crisis, which resulted in the hospitalization of the patient in Germany. Family was released after 3 weeks. In the opinion of National Prevention Mechanism representatives, being for 3 weeks in a detention centre was inadequate to their health condition and caused further traumatization.⁴⁸¹

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 |

⁴⁸⁰ J. Bialas, *Automatism in foreigners’ detention in: Insearch of protection. Selected problems concerning the enforcement of rights of foreigners who apply for refugee status and are under international protection in the years 2012-2014. Observations of the Legal Assistance for Refugees and Migrants Programme of the Helsinki Foundation for Human Rights*, 2014, available in Polish at: <http://bit.ly/1eiVxDF>, 61-63; Centrum Pomocy Prawnej im. Haliny Nieć, K. Przybyłowska (Ed.), *Monitoring of Forced Returns from Poland July 2014-June 2015*, 25.

⁴⁸¹ National Prevention Mechanism, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Kętrzynie*, available in Polish at: <http://bit.ly/2kPbgCA>.

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.⁴⁸² 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.⁴⁸³ From 13 November 2015 the court has a clear obligation to inform asylum seekers in a language understandable to them about the right to ask for legal assistance.⁴⁸⁴ Although in practice it happens rarely. Most asylum seekers do not know about such a possibility. 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 all NGOs limited their actions and do not visit detention centres on a regular basis to provide such assistance whenever needed.

It can be said that generally legal assistance in detention centres is not effective because of the lack of a centralised or well-managed system of granting it. NGOs pay visits to the detention centres mostly depending on the project they currently implement, which does not happen very often nowadays.

The Law amending the Law on Protection has created a state legal aid system. It includes lawyers' visits to the detention centres if necessary and it concerns only preparing the appeal of a negative asylum decision. A State legal system for asylum seekers is planned to start operating from 1 January 2016.⁴⁸⁵ 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 difference in treatment of specific nationalities in detention in Poland.

⁴⁸² Articles 78 and 87a Law of 6 June 1997 on the Code of Penal Proceedings, Journal of Laws 1997 no 89 position 555, available at: <http://bit.ly/1UcUEO3> (Ustawa z dnia 6 czerwca 1997 r. Kodeks Postępowania Karnego, Dz. U. 1997 nr 89 poz. 555).

⁴⁸³ Article 78 and 87a Code of Penal Proceedings.

⁴⁸⁴ Article 88b(4) Law on Protection, as amended in November 2015.

⁴⁸⁵ Article 69(c)-(m) Law on Protection, as amended in November 2015.

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 unlimited period of time. Recognized refugee obtains 3-years residence card (*karta pobytu*).⁴⁸⁶ The first card is issued ex officio.⁴⁸⁷ The card will be renewed after this period for next 3 years on the refugee's demand.⁴⁸⁸

Subsidiary protection is granted for unlimited period of time. Subsidiary protection beneficiary obtains 2-years residence card (*karta pobytu*).⁴⁸⁹ The first card is issued ex officio.⁴⁹⁰ The card will be renewed after this period for next 2 years on the foreigner's demand.⁴⁹¹

Humanitarian protection (*zgoda na pobyt ze względów humanitarnych*) is granted for unlimited period of time. The beneficiary of the humanitarian protection obtains a 2-years residence card (*karta pobytu*).⁴⁹² The card will be renewed after this period for next 2 years.⁴⁹³ The first and subsequent card are issued on the foreigner's demand.⁴⁹⁴

Application for the renewal of the residence card should be submitted 30 days before the expiration date of the current residence card.⁴⁹⁵ Foreigners are often not aware of this rule.

Issuance of the residence card is paid (50 PLN for the card).⁴⁹⁶ Only the first residence card is issued free of charge.⁴⁹⁷ Payment can be diminished by 50% if a foreigner is in difficult material situation (only if he/she obtains social assistance benefits) or is a minor (up to 16 years old).⁴⁹⁸ There is no possibility of the full release of the payment. Obligation to pay even only 25 PLN sometimes prevents foreigners from obtaining a new residence card. Moreover, in case of culpable loss or damage of the card, the new one will be issued after raised payment (max. 150 PLN).⁴⁹⁹

The Office for Foreigners, which is responsible for the issuance and renewal of the residence cards for refugees and subsidiary protection beneficiaries,⁵⁰⁰ is situated in Warsaw. In case of the humanitarian protection beneficiaries, an authority responsible for residence card's renewal is a Border Guard unit having the jurisdiction over the foreigner's current place of stay.⁵⁰¹

⁴⁸⁶ Article 89i (1) Law on Protection.

⁴⁸⁷ Article 229 (2) Law on Foreigners.

⁴⁸⁸ Article 89i (2a) Law on Protection.

⁴⁸⁹ Article 89i (2) Law on Protection.

⁴⁹⁰ Article 229 (2) Law on Foreigners.

⁴⁹¹ Article 89i (2a) Law on Protection.

⁴⁹² Article 243 (1) (4) Law on Foreigners.

⁴⁹³ Article 243 (2) (3) Law on Foreigners.

⁴⁹⁴ Article 229 (1) and Article 229 (4) (3) Law on Foreigners.

⁴⁹⁵ Article 230 (2) Law on Foreigners.

⁴⁹⁶ Article 235 (1) Law on Foreigners.

⁴⁹⁷ Article 236 (1)(a-c) Law on Foreigners.

⁴⁹⁸ Article 237 (1) and (2) Law on Foreigners.

⁴⁹⁹ Article 238 Law on Foreigners.

⁵⁰⁰ Article 89n (2) Law on Protection.

⁵⁰¹ Article 245 (4-5) Law on Foreigners.

The residence card has to be received in person. A card for a minor under 13 years old, should be received in person by his/hers legal representative.⁵⁰² There is no other possibility to receive a card by a representative or by post. Moreover, foreigners are obliged to give their fingerprints any time they renew a residence card.⁵⁰³ If they refuse to give their fingerprints, the residence card will not be issued.⁵⁰⁴ 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/she has to travel to **Warsaw** (in case of the refugees and subsidiary protection beneficiaries) or another town (in case of the humanitarian protection beneficiaries) twice, even if he/she lives far away. It is time-consuming and costly. The Office for Foreigners informed that in 2016 in two cases of serious illness they resigned from the obligation to collect fingerprints from an applicant.⁵⁰⁵ Lack of the legal possibility to release the foreigner fully from the above mentioned payment, obligation of personal presence twice - upon application and collecting the document and possibility to be issued a residence card only in one place may postpone receiving new residence cards by foreigners.

Lack of the fulfillment of the obligation to renew a residence card can be punished by fine, but it rarely happens in practice (no cases in 2015 and 2016).⁵⁰⁶

Moreover, Polish law requires presenting – as a condition to issue or renew residence card – recent photographs of a foreigner. Photos presenting face with covered hair are not allowed (hair has to be visible on the picture), which is often problematic for Muslim women.⁵⁰⁷

Since 1 May 2014 all residence cards should have the annotation “access to the labour market”, if the foreigner is entitled to work in Poland.⁵⁰⁸ Even though cards issued for refugees and subsidiary protection beneficiaries do not have such annotation, which can impede their access to labour market and to some social benefits (as the ones in the frames of the “Family 500+” programme).⁵⁰⁹

2. Long-term residence

Indicators: Long-Term Residence

1. Number of long-term residence permits issued to beneficiaries in 2016: 23

The EU long-term residence permit (*zezwole nie na pobyt rezydenta długoterminowego UE*) is issued on a foreigner's demand if:⁵¹⁰

- ❖ he/she resides in Poland legally and continuously for at least five years immediately prior to the submission of the application for EU long-term residence permit,
- ❖ he/she has, stable and regular resources which are sufficient to maintain himself/herself and the dependent family members,
- ❖ he/she has appropriate sickness insurance.

⁵⁰² Article 248 (1-2) Law on Foreigners.

⁵⁰³ Article 246 (2) Law on Foreigners.

⁵⁰⁴ Article 247 Law on Foreigners.

⁵⁰⁵ The Office for Foreigners' letter to HFHR from 1 February 2017 no BSZ.WAiSM.0361.7.2017/TB.

⁵⁰⁶ Article 465 (4) Law on Foreigners.

⁵⁰⁷ Rozporządzenie Ministra Spraw Wewnętrznych z dnia 29 kwietnia 2014 r. w sprawie dokumentów wydawanych cudzoziemcom Dz. U. 2014 poz. 589 (Ordinance of the Minister of Interior of 29 April 2014 on the documents issued for foreigners, Journal of Laws 2014 pos. 589), available in Polish at: <http://bit.ly/2l7o9n0>.

⁵⁰⁸ Article 244 (1) (11) Law on Foreigners.

⁵⁰⁹ Helsinki Foundation for Human Rights' letter of 1 April 2016 to the Head of the Office for Foreigners, available at (in Polish): <http://bit.ly/2lR4SXA>, article in English: “Poland: social benefit ‘500 PLN per child’ not for refugees (unofficial translation)” available at: <http://bit.ly/2lLCBFK>. However, there was an important judgement of the Voivodeship Administrative Court in Warsaw, which interpreted the provisions in favour of the beneficiaries of international protection – the case is summarized on EDAL database: <http://bit.ly/2l8Mj26>.

⁵¹⁰ Article 211 (1) Law on Foreigners.

Resources are considered sufficient, if for 3 years immediately prior to the submission of the application a foreigner had income higher than the amount which entitles to social assistance in Poland.⁵¹¹

Whole period of refugee's stay in Poland during asylum procedure is taken into account in the calculation of the 5-years period, if asylum procedure lasted more than 18 months. In other cases, half of this period is taken into account⁵¹². If the previous asylum procedure ended with refusal of the international protection, the period of this procedure is not taken into account at all.⁵¹³

Procedure concerning the EU long-term residence permit is not initiated, if a foreigner is a humanitarian protection beneficiary or is currently in an asylum procedure.⁵¹⁴

Foreigner to be granted EU long-term residency has to pay 640 PLN.

An authority responsible for issuance of the EU long-term residence permit is Voievode having a jurisdiction over the current place of stay of the applicant.⁵¹⁵ The Office for Foreigners is a second instance administrative body competent to handle appeals against first instance decisions. The procedure should last one month or two, if it is a complicated case. In practice though it lasts often much longer.

3. Naturalisation

Indicators: Naturalisation

- | | |
|---|----------------|
| 1. What is the waiting period for obtaining citizenship? | up to 10 years |
| 2. Number of citizenship grants to beneficiaries in 2016: | n/a |

Polish citizenship can be obtained in two procedures. Firstly, citizenship can be granted by the Polish President.⁵¹⁶ Any foreigner can apply to President to be granted Polish citizenship – there are no specific conditions and criteria for obtaining citizenship in this procedure. Foreigner only has to submit a form with information about himself/herself and justification, why he/she applies for Polish citizenship, to a Consul or a Voievode, who hands on the application to the President.⁵¹⁷ Knowledge of Polish language is not required. The citizenship is granted free of charge. President's refusal cannot be appealed – it is a final decision.

Secondly, the foreigner can be declared as a Polish citizen if he/she fulfils criteria specified in law.⁵¹⁸ Both, refugees and subsidiary protection beneficiaries have to obtain first permanent residence permit (*zezwoleńie na pobyt stały*) or EU long-term residence permit in Poland. Permanent residence permit is granted to the refugees and subsidiary protection beneficiaries, on their demand, if they continuously stay in Poland for at least 5 years immediately before the submission of the application (asylum procedure is taken into account in this calculation).⁵¹⁹ A refugee who was granted permanent residence permit and stays continuously on this basis in Poland for two more years can be declared as a Polish citizen.⁵²⁰ There is no similar rule concerning subsidiary protection beneficiaries. To be declared as Polish citizens, they have to fulfil the same criteria as any other foreigner who obtained permanent residence permit or EU long-term residence permit in Poland (i.e. 2-3 years stay in Poland on this basis or 10 years of legal stay in Poland independently on the basis of the stay, stable and regular resources, legal entitlement to stay in a residential property or marriage with Polish citizen).⁵²¹

⁵¹¹ Article 211 (2) Law on Foreigners.

⁵¹² Article 212 (1) (2) and (3c) Law on Foreigners.

⁵¹³ Article 212 (2) (8) Law on Foreigners.

⁵¹⁴ Article 213 (1) (e-f) Law on Foreigners.

⁵¹⁵ Article 218 (1) Law on Foreigners.

⁵¹⁶ Article 18 Law of 2 April 2009 on Polish citizenship (Journal of Laws 2012 pos. 161).

⁵¹⁷ Article 19-21 Law of 2 April 2009 on Polish citizenship (Journal of Laws 2012 pos. 161).

⁵¹⁸ Article 30 Law of 2 April 2009 on Polish citizenship (Journal of Laws 2012 pos. 161).

⁵¹⁹ Article 195 (1) (6) and article 195 (3) Law on Foreigners.

⁵²⁰ Article 30 (1) (3) Law of 2 April 2009 on Polish citizenship (Journal of Laws 2012 pos. 161).

⁵²¹ Article 30 (1) (1,2,6) Law of 2 April 2009 on Polish citizenship (Journal of Laws 2012 pos. 161).

Both, refugees and subsidiary protection beneficiaries, to be declared as a Polish citizen have to prove that they know Polish language.⁵²² Foreigner should present a document confirming that he/she has graduated from Polish school or that he/she has passed State's exam from Polish language as a foreign language. Those exams are organized rarely (e.g. only twice in 2016), costly and only on three levels (B1, B2 and C1).⁵²³

Foreigner submits the application for declaration as a Polish citizen to Voievode who has a jurisdiction over the current place of stay of a foreigner.⁵²⁴ Foreigner to be declared as a Polish citizen has to pay 219 PLN. Voievode decision can be appealed to the Minister of Interior.⁵²⁵ The procedure should last one month or two, if it is a complicated case. In practice though it lasts often longer.⁵²⁶

4. 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

Refugee status is ceased or revoked, if a foreigner:⁵²⁷

- ❖ has voluntarily settled in the country, which he/she had left in a fear of persecution;
- ❖ has voluntarily accepted protection of a country he/she is a citizen of;
- ❖ has voluntarily accepted the citizenship of the country of origin, which he/she had lost before;
- ❖ has acquired new citizenship and he/she is under the protection of the state whose citizen he/she has become;
- ❖ cannot any longer refuse to accept the protection of the country he/she is a citizen of, because the reasons why he/she was granted a refugee status no longer exist, and he/she did not present convincing arguments, why he/she cannot accept this protection;
- ❖ as a stateless person, he/she cannot any longer refuse to accept the protection of the country he/she had previously a permanent place of residence, because the reasons why he/she was granted a refugee status no longer exist, and he/she did not present convincing arguments, why he/she cannot accept this protection;
- ❖ has withheld information or documents, or presented false information or documents of significance for the asylum proceedings;
- ❖ has committed a crime against peace, a war crime or a crime against humanity, as understood by international law;
- ❖ 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.

Subsidiary protection is ceased or revoked, if:⁵²⁸

- ❖ 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;

⁵²² Article 30 (2) Law of 2 April 2009 on Polish citizenship (Journal of Laws 2012 pos. 161).

⁵²³ Information from the official exams' website: <http://bit.ly/2l2xVvk>.

⁵²⁴ Article 36 (1) Law of 2 April 2009 on Polish citizenship (Journal of Laws 2012 pos. 161).

⁵²⁵ Article 10 (4) Law of 2 April 2009 on Polish citizenship (Journal of Laws 2012 pos. 161).

⁵²⁶ Information from Presidents Office, letter 19 January 2017, nr BOŁ.0605.1.2017

⁵²⁷ Article 21 (1) Law on Protection.

⁵²⁸ Article 22 (1) Law on Protection.

- ❖ it has been revealed that a foreigner has withheld information or documents or presented false information or documents of significance for the asylum proceedings;
- ❖ 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;
- ❖ 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;
- ❖ 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;
- ❖ 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/her home country for the sole purpose of avoiding punishment.⁵²⁹

Cessation procedure is initiated by the Head of the Office for Foreigners *ex officio* or on other authority's demand.⁵³⁰ The procedure should last no longer than 6 months.⁵³¹ During the procedure a refugee or a subsidiary protection beneficiary should be interviewed particularly in order to present reasons why he/she should not be deprived of the protection. A foreigner can also present arguments in writing.⁵³²

A decision on deprivation of the international protection is issued by the Head of the Office for Foreigners and can be appealed to the Refugee Board. Appeal has a 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/she can make the complaint to the Voivodeship Administrative Court in Warsaw. This onward appeal does not have automatic suspensive effect, but a foreigner can ask the court to suspend final decision on deprivation of the international protection. However, it takes sometimes even a couple months to suspend the decision by court on the foreigner's demand. During that period a foreigner stays illegally in Poland and is endangered with starting and executing return proceedings to his/hers country of origin.

Only some refugees and subsidiary protection beneficiaries are entitled to free legal assistance in cessation proceedings, namely those whose income is not higher than 100% criteria qualifying them to social assistance.⁵³³ Free legal assistance is only provided in an appeal procedure (it is not including first-instance procedure).⁵³⁴ In a court procedure the foreigner can apply for free legal assistance following the general rules.

In 2016, 8 persons had their refugee status ceased or revoked and 21 had their subsidiary protection ceased or revoked.⁵³⁵ In 2015 16 foreigners were deprived of the refugee status in Poland: 11 citizens of Afghanistan, 4 citizens of Iraq, 2 citizens of Russian Federation and 1 citizen of Somalia. In this year 21 Russian Federation citizens were deprived of subsidiary protection.⁵³⁶ In 2014 only 3 foreigners were

⁵²⁹ Article 22 (4) Law on Protection.

⁵³⁰ Article 54b Law on Protection.

⁵³¹ Article 54a Law on Protection.

⁵³² Article 54d (1) Law on Protection.

⁵³³ Article 69d (2) Law on Protection.

⁵³⁴ Article 69b Law on Protection.

⁵³⁵ The Office for Foreigners' letter to HFHR from 1 February 2017 no BSZ.WAiSM.0361.7.2017/TB.

⁵³⁶ Informacja Szefa Urzędu do Spraw Cudzoziemców o stosowaniu w roku 2015 ustawy z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej (Dz. U. z 2003 r. nr 128, poz. 1176 z późn. zm.) w zakresie realizacji zobowiązań Rzeczypospolitej Polskiej wynikających z Konwencji Genewskiej dotyczącej statusu uchodźców oraz Protokołu Nowojorskiego dotyczącego statusu uchodźcy (Head of the Office for Foreigners, Information concerning application in 2015 of the Act on Protection, Geneva Convention and New York Protocol), available in Polish at : <http://bit.ly/2kT8jQ1>.

deprived of the refugee status in Poland: 2 citizens of Serbia and Montenegro and citizen of Belarus. In 2017, 22 Russian Federation citizens were deprived of subsidiary protection.⁵³⁷

Concerning those data it is clear that mostly Russian Federation citizens are deprived of international protection in Poland. Cessation is not applied to them systematically though. In 2015 137 Russian Federation citizens obtained international protection in Poland,⁵³⁸ and 136 in 2014.⁵³⁹ The Helsinki Foundation for Human Rights concludes that mostly Russian Federation citizens were deprived of protection as a result of travels to their country of origin after they obtained international protection.⁵⁴⁰

There is no systematic review of the protection status in Poland.

A foreigner who was deprived of international protection is obliged to return the residence card immediately to the Head of the Office for Foreigners, not later than 14 days from the moment when a decision concerning cessation of the international protection becomes final.⁵⁴¹ Lack of the fulfillment of the obligation to renew a residence card can be punished by fine,⁵⁴² but rarely happens in practice (no known cases in 2015 and 2016).

5. 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

See section on [Cessation and review of protection status](#).

⁵³⁷ Informacja Szefa Urzędu do Spraw Cudzoziemców o stosowaniu w roku 2015 ustawy z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej (Dz. U. z 2003 r. nr 128, poz. 1176 z późn. zm.) w zakresie realizacji zobowiązań Rzeczypospolitej Polskiej wynikających z Konwencji Genewskiej dotyczącej statusu uchodźców oraz Protokołu Nowojorskiego dotyczącego statusu uchodźcy (Head of the Office for Foreigners, Information concerning application in 2014 of the Act on Protection, Geneva Convention and New York Protocol), available at (in Polish): <http://bit.ly/2kT8jQ1>.

⁵³⁸ Urząd do Spraw Cudzoziemców (Office for Foreigners), Dane liczbowe dotyczące postępowań prowadzonych wobec cudzoziemców w 2015 r. (Statistical data concerning foreigners' procedures in 2015), available at: <http://bit.ly/1WI17Rm>.

⁵³⁹ Urząd do Spraw Cudzoziemców (Office for Foreigners), Dane liczbowe dotyczące postępowań prowadzonych wobec cudzoziemców w 2014 r. (Statistical data concerning foreigners' procedures in 2014), available at: <http://bit.ly/1WI17Rm>.

⁵⁴⁰ This reasoning was confirmed by the Supreme Administrative Court in Warsaw in a judgment of 23.02.2016 no. II OSK 1493/14 (source: Lex.pl, "NSA: uchodźcy z Czeczenii muszą wrócić do kraju" ("SAC: refugees from Chechnya have to come back to their country"), 26.02.2016, available at (in Polish): <http://bit.ly/2kSVF3s>.

⁵⁴¹ Article 89l (1) and (3) Law on Protection.

⁵⁴² Article 465 (4) Law on Foreigners.

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?
☐ Yes ☒ No
❖ If yes, what is the time limit?
3. Does the law set a minimum income requirement? ☐ Yes ☐ No

There is no waiting period for family reunification in Poland, nor is there a time limit. However, foreigners who have obtained refugee status or subsidiary protection are eligible for a simplified family reunification procedure. If they submit a relevant application with a Voivode of proper venue within 6 months from the date of obtaining protection within the territory of Poland, they are not obliged to comply with the conditions of having health insurance, a stable source of income, or accommodation in Poland. It must, nonetheless, be remembered that when the residence permit is granted, the foreigner's member of 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.⁵⁴³

There are no differences between refugees in subsidiary protection as to the family reunification conditions.

Data on family reunification was not provided. The main problem is the lengthy procedure and formalities before arriving to Poland (e.g. paying several visits to the consulate). The definition of the family is also problematic (civil partners are not recognised as family members).⁵⁴⁴

2. Status and rights of family members

Family members are granted a temporary residence permit, not a residence card issued for beneficiaries of international protection. The temporary residence permit in order to facilitate family reunification of beneficiaries of international protection is granted for 3 years. The foreigner is then issued a residence card upon arrival to Poland with an expiry date conforming to the expiry date of the permit that was granted. The card contains the foreigner's personal data, residence address, annotation confirming of 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 a refugee status or of subsidiary protection holders 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.

⁵⁴³ HFHR, Family Reunification of Foreigners in Poland, Law and Practice, June 2016, available at (EN): <http://bit.ly/2ILG1IB>, p. 19-20.

⁵⁴⁴ HFHR, Family Reunification of Foreigners in Poland, Law and Practice, June 2016, available at (EN): <http://bit.ly/2ILG1IB>, p. 13-15 and 24-25.

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 does 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.

Provision of material conditions is not subject to actual residence in a specific place.

Refugees and subsidiary protection beneficiaries are not assigned to a specific residence for reasons of public interest or public order.

2. Travel documents

Refugees obtain travel documents mentioned in the Geneva Convention, which is valid for 2 years from a day of issuance.⁵⁴⁵ Subsequent travel documents are issued on the refugee's demand.⁵⁴⁶ It is issued free of charge (first travel document as well as the subsequent ones). The authority responsible for issuance of the Geneva travel documents is the Head of the Office for Foreigners.⁵⁴⁷ The procedure concerning Geneva travel document should last one month or two, if it is a complicated case.

A Geneva travel document has to be received in person. A travel document for a minor under 13 years old, should be received in person by his/hers legal representative.⁵⁴⁸ In case of *vis maior* preventing a foreigner to receive a document in person, the Geneva travel document can be received by a proxy.⁵⁴⁹ Foreigners are obliged to give their fingerprints any time they apply for Geneva travel document.⁵⁵⁰ 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 PLN 100.⁵⁵¹ A Polish travel document will be issued only if a beneficiary of subsidiary protection:⁵⁵²

- ❖ has lost his/hers passport or the passport has been damaged or its validity has expired, and
- ❖ he/she is unable to obtain a new passport from the authorities of the country of origin.

Inability to obtain a new passport from the authorities of the country of origin is often understood by the Polish authorities as a necessity to present by beneficiaries of subsidiary protection a written evidence that they contacted the embassy of their country of origin and that this authority refused to issue a passport for them. Often foreign authorities are unwilling to issue a document confirming those facts. Moreover some beneficiaries of subsidiary protection are afraid to contact authorities of their country of origin, because the previous actions of those authorities were the reason they sought protection in Poland.

⁵⁴⁵ Article 89i (1) and (3) Law on Protection.

⁵⁴⁶ Article 89m Law on Protection.

⁵⁴⁷ Article 89n (1) Law on Protection.

⁵⁴⁸ Article 89ib (1) and (2) Law on Protection.

⁵⁴⁹ Article 89ib (4) Law on Protection.

⁵⁵⁰ Article 89i (4) and article 89m Law on Protection.

⁵⁵¹ Article 257 (1) Law on Foreigners.

⁵⁵² Article 252 (3) Law on Foreigners.

The procedure concerning Polish travel document for a foreigner should last one month or two, if it is a complicated case. In practice though it lasts often 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.⁵⁵³ After that period, a beneficiary of subsidiary protection needs to apply for another such document. Even in case of an application for a subsequent Polish travel document, after the previous one expires, beneficiaries of subsidiary protection are expected to take measures in order to obtain the passport from their country of origin.⁵⁵⁴

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 2016 | 1959 |

Beneficiaries of international protection are allowed to stay in the centres for 2 months after being served with the positive decision.

The state does not provide housing (some municipalities provide singular flats annually – 5 in **Warsaw**, max. 2 in **Gdansk**). Within the 12-month long Individual Integration Program (IPI) there is a financial benefit to pay a flat, but according to social assistants in the Centre for Social Assistance in Wolman, the owners are not willing to rent flats to refugees and often demand higher fees.⁵⁵⁵ Many NGOs are of the opinion that beneficiaries of international protection face homelessness and destitution in Poland.⁵⁵⁶

E. Employment and education

1. Access to the labour market

Refugees and beneficiaries of subsidiary protection have access to labour market on the same rules as Polish citizens. There is no difference between refugees and subsidiary protection beneficiaries. Access to employment is not limited to certain sectors.

In practice they have access to employment although they face obstacles, e.g. language skills, qualifications. 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 Program (IPI).

Professional qualifications are recognised, although that procedure is very difficult and time-consuming. Very often recognised refugees and beneficiaries of subsidiary protection do not have any documents confirming their education and skills. Sometimes foreigners have to pass an additional Polish language exam.

⁵⁵³ Article 253 Law on Foreigners.

⁵⁵⁴ Article 254 Law on Foreigners.

⁵⁵⁵ *No housing for refugees*, Rzeczpospolita Newspaper, October 2015, available at: <http://bit.ly/2lQYYJS>.

⁵⁵⁶ Foundation “Ocalenie” for a newspaper Wyborcza, November 2016: <http://bit.ly/2kqrrpE>. There was an extended research on this for UNHCR in 2013: <http://bit.ly/2kKwLAI>.

2. Access to education

The situation does not differ from the situation of asylum seekers. The situation of beneficiaries can be actually worse because the schools near the accommodation and reception centres are more familiar with the issue and possible problems.

F. 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.⁵⁵⁷ It means that in practice free health care is conditional on the payment of health care insurance with the National Health Fund (NFZ). Refugees and subsidiary protection holders, within their 12-month Individual Integration Program (IPI), are obliged to register within regional job centre and are granted health insurance. After the IPI has been completed, the obligation to pay insurance lies with: the employer (if a refugee has a work contract), a regional job centre of social assistance centre (if they are registered as unemployed) or the refugees themselves if they wish to cover the costs of insurance.⁵⁵⁸

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.⁵⁵⁹

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.⁵⁶⁰ The Polish Centre for Rehabilitation of Torture Victims, run by the Foundation International Humanitarian Initiative, provides assistance to torture victims and other traumatised persons within projects.

⁵⁵⁷ Article 3(1)2 of the Law of 27 August 2004 on healthcare services financed from public funds (Journal of Laws 2004 no 210 position 2135 with amendments).

⁵⁵⁸ M. Szczepanik, *Right to healthcare and access to medical services for asylum seekers and beneficiaries of international protection in Poland*, to be published in Legal Dialogue Journal, February 2017.

⁵⁵⁹ Article 27(1) and (3) of the Law on healthcare services financed from public funds.

⁵⁶⁰ M. Szczepanik, *Right to healthcare and access to medical services for asylum seekers and beneficiaries of international protection in Poland*, to be published in Legal Dialogue Journal, February 2017.

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 (Dz.U. 2014, poz. 1004)	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)