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# SEEKING REFUGE IN POLAND: A FACT-FINDING REPORT ON ACCESS TO ASYLUM AND RECEPTION CONDITIONS FOR ASYLUM SEEKERS

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aida
Asylum Information
Database

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This report was written by Eleonora Testi of the European Council for Refugees and Exiles (ECRE), with the support of Ewa Ostaszewska-Żuk, a lawyer at the Helsinki Foundation for Human Rights (HFHR), and Maja Łysienia, Strategic Litigation Expert at the Association for Legal Intervention (SIP).

The visit to Poland was conducted as part of the Asylum Information Database (AIDA) managed by ECRE, which provides up-to-date information and analysis of the legal framework and practice with regard to asylum procedures, reception conditions, detention and content of international protection in 23 European countries. This report complements and should be read together with the AIDA Country Report on Poland.

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The information contained in this report is valid as of 28 February 2022, unless otherwise stated.



Cover picture: Grupa Granica, Górny Gród, gm. Dubicze Cerkiewne /Puszcza Białowieska, November 2022.

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# GLOSSARY

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|---|---|
| **Asylum seeker(s) or applicant(s)** | Person(s) seeking international protection, whether through recognition of refugee status or as a beneficiary of subsidiary protection. |
| **Dublin system** | System establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application under Regulation (EU) No 604/2013. |
| **First reception centre** | The reception facility where asylum seekers should register to access material reception conditions. Asylum seekers must register at the first reception centre two days after the asylum application has been made. If an asylum seeker does not register within this timeframe, their procedure is discontinued, unless they state that they have another place to stay. |
| **Immediate removal** | Decision ordering an immediate removal from Poland of persons intercepted near the border issued by the Border Guard, based on Article 303b of the Act on Foreigners. |
| **Preventions of irregular crossings of the border** | Statistics provided by the Polish Border Guard, including both persons who managed to avoid interception at the border and those who were returned to Belarus in accordance with the Regulation of the Ministry of the Interior and Administration of 13 March 2020 on the temporary suspension or restriction of border traffic at certain border crossing points, as amended in August 2021. |
| **Special Act** | The Act of 12 March 2022 on assistance to Ukrainian citizens in connection with the armed conflict on the territory of that state (referred to as the Special Act). |

# LIST OF ABBREVIATIONS

| | |
|---|---|
| **BIPs** | Beneficiaries of International Protection |
| **CJEU** | Court of Justice of the European Union |
| **ECtHR** | European Court of Human Rights |
| **FRONTEX** | European Border and Coast Guard Agency |
| **GG** | Grupa Granica |
| **HFHR** | Helsinki Foundation for Human Rights \| Helsińska Fundacja Praw Człowieka |
| **SIP** | Association for Legal Intervention \| Stowarzyszenie Interwencji Prawnej |
| **OFF** | Office for Foreigners \| Urząd do Spraw Cudzoziemców |
| **SG** | Border Guard \| Straż Graniczna |
| **UNHCR** | United Nations High Commissioner for Refugees |

# THE ASYLUM INFORMATION DATABASE (AIDA)

The Asylum Information Database is a database containing information on asylum procedures, reception conditions and detention and content of international protection across 23 European countries. This includes 19 European Union (EU) Member States (Austria, Belgium, Bulgaria, Cyprus, Germany, Spain, France, Greece, Croatia, Hungary, Ireland, Italy, Malta, Netherlands, Poland, Portugal, Romania, Sweden and Slovenia) and four non-EU countries (Switzerland, Serbia, Turkey and the United Kingdom).

The overall goal of the database is to contribute to the improvement of asylum policies and practices in Europe and the situation of asylum seekers by providing all relevant actors with appropriate tools and information to support their advocacy and litigation efforts, both at the national and European level. These objectives are carried out by AIDA through the following activities:

- **Country reports**

  AIDA contains national reports documenting asylum procedures, reception conditions, detention and content of international protection in 23 countries.

- **Comparative reports**

  AIDA comparative reports provide a thorough comparative analysis of practice relating to the implementation of asylum standards across the countries covered by the database, in addition to an overview of statistical asylum trends and a discussion of key developments in asylum and migration policies in Europe. Annual reports were published in 2013, 2014 and 2015. From 2016 onwards, AIDA comparative reports are published in the form of thematic updates, focusing on the individual themes covered by the database. Thematic reports have been published on reception (March 2016), asylum procedures (September 2016), content of protection (March 2017), vulnerability (September 2017), detention (March 2018), access to the territory and registration (October 2018), reception (May 2019), asylum authorities (October 2019), digitalisation of asylum procedures (January 2022) and family reunification (February 2023).

» **Fact-finding visits**

  AIDA includes the development of fact-finding visits to further investigate important protection gaps established through the country reports, and a methodological framework for such missions. Fact-finding visits have been conducted in Greece, Hungary, Austria, Croatia, France, Belgium and Germany.

» **Legal briefings**

  Legal briefings aim to bridge AIDA research with evidence-based legal reasoning and advocacy. With the assistance of information gathered from country reports, these short papers identify and analyse key issues in EU asylum law and policy and identify potential protection gaps in the asylum acquis. Legal briefings so far cover: (1) Dublin detention; (2) asylum statistics; (3) safe countries of origin; (4) procedural rights in detention; (5) age assessment of unaccompanied children; (6) residence permits for beneficiaries of international protection; (7) the length of asylum procedures; (8) travel documents for beneficiaries of international protection; (9) accelerated procedures; (10) the expansion of detention; (11) relocation; and (12) withdrawal of reception conditions.

» **Statistical updates**

  AIDA releases short publications with key figures and analysis on the operation of the Dublin system across selected European countries. Updates have been published for 2016, the first half of 2017, 2017, the first half of 2018, 2018, the first half of 2019, 2019 and the first half of 2020, 2020 and 2021.

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# INTRODUCTION

At the beginning of the crisis at the Belarusian border in 2021, Poland became the centre of attention in Europe for its response to what it defined as a "hybrid attack" from the Lukashenko regime. Other voices were raised in concern about the conditions in which migrants, having been forced to the border by Belarusian border guards, were left to survive in Polish forests and the violent pushbacks to which they were subjected. On this occasion, Poland also introduced specific legislative changes allowing for the immediate removal of individuals encountered while irregularly crossing the country's "green border." The national and European focus rapidly shifted to another Polish border after the outbreak of war in Ukraine. A very different response was given to the new arrivals, with Polish authorities and civil society organisations working together to grant access to Ukrainian refugees.

ECRE's research has focused on Poland as part of the Asylum Information Database (AIDA), against a backdrop of increasing numbers of asylum seekers in the country, the challenges faced by migrants attempting to access Polish territory at the Polish-Belarusian border since mid-2021, and the unprecedented numbers of arrivals as a result of the Russian invasion of Ukraine's territory. The purpose of ECRE's visit was to examine conditions and access to the asylum procedure and temporary protection, as well as reception conditions in the country, and to understand whether the large number of new arrivals has put the system under strain.

This report analyses practices at the border and their implications for access to asylum and the reception conditions provided within the country. It also focuses on detention conditions for asylum seekers, an issue various stakeholders have raised as an area of concern in Poland.

The report sets out the results of a fact-finding visit to Poland conducted between 7 November and 10 November 2022. During this period, the ECRE delegation visited:

- **Warsaw**, where it met with the Supreme Administrative Court; the Polish Border Guard; the Ministry of the Interior; the Office for Foreigners; UNHCR, Frontex's Fundamental Rights Officer; the Polish Commissioner for Human Rights, and the following civil society organisations: the Helsinki Foundation for Human Rights; the Association for Legal Intervention, the Ocalenie Foundation and the Club of Catholic Intelligentsia (KIK);
- **Białystok** and the surrounding area, where it met with the Regional Office of the Border Guard, as well as the organisations KIK and Egala;
- The First Reception Centre of Dębak, temporarily undergoing renovation but which usually functions as a first reception centre where applicants register their asylum applications;
- Białystok Reception Centre.

The information and data collected from interviews and observations made at the various sites visited are complemented by desk research and authoritative sources on the treatment of people at Polish borders, as well as at reception and detention facilities.

The report is structured into two chapters: **Chapter I** documents the evolving situation of access to Polish territory, especially as regards the border with Belarus. It also briefly focuses on the situation of asylum seekers in that country and any potential related protection risks. Contextually, it also considers the different response given to the displacement crisis from Ukraine. **Chapter II** assesses the situation asylum seekers face in reception and detention facilities in the country. Although reception does not appear to constitute a major problem in the country, various concerns emerged regarding migration detention, including shortfalls in terms of access to procedural safeguards and guarantees for vulnerable applicants, as well as particular challenges relating to access to legal assistance and psychological support for detainees. The final section contains general conclusions and recommendations for the Polish authorities.

# CHAPTER I: ACCESS TO ASYLUM

The response of the Polish authorities in the immediate aftermath of the outbreak of war in Ukraine has been regarded as very positive. Mobilisation was well-coordinated and involved national and regional authorities, the Border Guard, civil society and international organisations.[1] Most people who fit the eligibility criteria for support were able to receive the benefits and services associated with temporary protections status, although some delays in registration were observed, mainly as a consequence of the unprecedented scale of arrivals in the country.[2] Similarly, between 2021 and 2022 the country accepted a large number of Belarusian nationals, most of them accessing the territory through humanitarian visas issued at the Polish consulate in Minsk. Between January and October 2022, 41,000 Belarusians reached Poland and were given access to additional pathways for regularisation, besides international protection.[3] After the Taliban takeover of Afghanistan in 2021, the country also welcomed approximately 1,100 Afghan evacuees who were channelled into the asylum process and rapidly obtained refugee status.[4]

In contrast, Poland's border with Belarus has a complex history regarding migration and asylum. The Terespol border crossing was the main entry point into Poland for asylum seekers for many years. Refugees from countries in the former Soviet Union travelled from Russia through Belarus to seek international protection in Poland. A particularly high proportion came from Chechnya. In recent decades, there have also been reports of people denied access to the territory in Terespol. The situation deteriorated in 2016 and led to the country being condemned by the European Court of Human Rights (ECtHR) on multiple occasions.[5] As a side note, since 2012 Poland has steadily remained among the three EU countries receiving the largest number of asylum applications from Russian nationals.[6] Until 2020, this group also represented the most common nationality of asylum applicants in the country.[7]

Following the presidential elections in Belarus in 2020 and post-election protests, to which the national authorities were accused of responding with massive political repression,[8] an increasingly high number of Belarusian nationals were forced to leave the country. Significantly, they represented the main group of asylum seekers registered in Poland in 2021.[9]

The events unfolding in Belarus also prompted the European Union to respond by discontinuing funds and suspending or terminating cooperation projects with Belarus. In the summer of 2021, there was a sharp increase in the number of people from Middle Eastern countries trying to cross the border with Poland irregularly. Most of them were from Afghanistan, Iraq and Syria, and had received "group tourist visas" issued by Belarus. This unprecedented occurrence[10] was described as an attempt by the Belarusian regime to "instrumentalise" migrants in response to EU sanctions.[11] Poland responded by denying those reaching the border access to its territory. As these individuals were then also subjected to pushbacks from Belarusian border guards and security forces, they found themselves stranded at the border, unable to access asylum procedures in either country.

1. Information provided by UNHCR Poland, 7 November 2022.
2. Council of Europe, Report of the fact-finding mission to Poland by Ms Leyla Kayacik, Special Representative of the Secretary General on Migration and Refugees 30 May – 3 June 2022, available at: https://bit.ly/3w3eiWd.
3. Information provided by the Office for Foreigners and the Ministry of the Interior, Warsaw, 10 November 2022.
4. Gazeta Prawna, Afghans evacuated to Poland have support, news article, 3 January 2022, available at: https://bit.ly/3Mcr37E.
5. AIDA Country Report Poland, February 2017; AIDA Country Report Poland, February 2018.
6. Eurostat, Asylum applicants by type of applicant, citizenship, age and sex - annual aggregated data, MIGR_ASYAPPCTZA, available at: https://bit.ly/3H4CMDF.
7. Eurostat; Asylum applicants by type of applicant, citizenship, age and sex - annual aggregated data, MIGR_ASYAPPCTZA, https://bit.ly/3H4CMDF; AIDA Country Report Poland – Updates from 2013 to 2020.
8. Humana Constanta, Report on the situation with the refugees and asylum-seekers from the Middle East in Belarus, October 2022, available at: http://bit.ly/3iAmbzm.
9. AIDA Country Report Poland, May 2022.
10. Previous cooperation between the Polish and Belarusian Border Guards was reportedly efficient. Information provided by the Polish Border Guard, Bialystok, 9 November 2022, as well as by the Ministry of the Interior and the Polish Border Guard, Warsaw, 10 November 2022.
11. Proposal for a Regulation of the European Parliament and of the Council addressing situations of instrumentalisation in the field of migration and asylum COM(2021) 890 Final, available at: https://bit.ly/3QGCUgW. ECRE and numerous civil society organisations have commented extensively on the risk posed by approval of the Regulation in terms of limiting access to asylum systems in Europe and the risk of introducing derogations that would invalidate the functioning of the Common European Asylum System (CEAS). See: ECRE, ECRE Comments On The Commission Proposal for a Regulation of the European Parliament and of the Council Addressing Situations Of Instrumentalisation in the field of Migration and Asylum COM(2021) 890 Final, January 2022, available at: https://bit.ly/3iAmjyQ; Joint Statement: NGOs call on Member States: Agreeing on the Instrumentalisation Regulation will be the Final Blow to a Common European Asylum System (CEAS) in Europe, September 2022, available at: http://bit.ly/3ZGGdsA.

After a state of emergency was declared in Podlaskie and Lubelskie Voivodeship in September 2021, the situation on the border quickly escalated. The border area became inaccessible to civil society organisations and many reported pushback practices, leaving increasingly numbers of people stranded at the border without access to food, water and shelter, or medical and humanitarian assistance.[12] At the end of the year, the Border Guard reported almost 40,000 attempted irregular crossings at the Polish border with Belarus.[13]

## 1. Changes to the legal framework

One of the national authorities' first responses to the beginning of the crisis on the Belarusian border was the introduction of legislative changes, effectively making it harder for migrants to access the country's territory.

First, on 20 August 2021 the Ministry of the Interior and Administration approved an amendment to the Regulation on the temporary suspension or restriction of border traffic at certain border crossing points. This enabled the Border Guard to return persons who were not authorized to access Polish territory to the state borderline, purely on the basis of a verbal instruction.[14] The amendment was criticised by the Polish Commissioner for Human Rights on the basis that, although it did not directly refer to persons seeking international protection, in practice it made it significantly harder for them to access Polish territory and, consequently, the procedure for international protection.[15] It also raises questions as regards compliance with Poland's international obligations and EU law in terms of the right to asylum and an effective remedy, as well as the principle of non-refoulement.

Secondly, in October 2021 changes were made to the Act on Foreigners and the Act on Granting Protection to Foreigners. These changes enabled the Border Guard to return migrants apprehended while attempting to cross into Poland outside the official crossing points to the "green border" and the Office for Foreigners (OFF) to discontinue asylum applications if the person concerned was apprehended while attempting to cross the border irregularly.[16] The scope of these amendments only covers persons apprehended immediately after an unauthorised crossing of the border.[17] However, it should be noted that in a recent judgement a court concluded that someone apprehended 60 km from the border could still be considered as falling within the scope of the amendments.[18]

Under the new procedure and if applicable, the Border Guard issues persons apprehended at the border with a decision on immediate removal under the new provisions of the Foreigners Act – rather than issuing a return order in line with the provisions of the Returns Directive[19] – and a prohibition of entry to Poland and the Schengen area for a period ranging from six months to three years, regardless of their individual protection needs. The return order is effective immediately. It can be appealed but the appeal has no suspensive effect.[20] Additionally, the amendments allowed the Office for Foreigners (OFF) to disregard an application for international protection submitted by a foreigner who crossed the border in an unauthorized manner, unless they came directly from the territory where their life or freedom was threatened by persecution or serious harm, they present reliable reasons for illegal entry and they applied for international protection as soon as they had crossed the border.[21]

12. For a detailed overview of these practices, please refer to the AIDA Country Report Poland, May 2022, pp19-22.
13. Polish Border Guard, News: Illegal Border Crossing with Belarus in 2021, available at: http://bit.ly/3wcaCkI.
14. Regulation of the Ministry of the Interior and Administration of 13 March 2020 on temporary suspension of limitation of cross-border movement on some border crossing points, available at: https://bit.ly/3GEjUsC, Amended in 2021 by https://bit.ly/3gwTtKX; see also Protecting rights at borders, Beaten, punished and pushed back, January 2023, available at: https://bit.ly/3kYwJc9.
15. Letter from the Polish Ombudsman to the Ministry of the Interior and Administration, https://bit.ly/3K8KVa2.
16. Article 303b of the Act on Foreigners, Article 33(1b) of the Act on Granting Protection to Foreigners.
17. G. Baranowska, Legalność i dopuszczalność procedury push-back (wywózek) i ocena prób ich legalizowania w Polsce [Legality and admissibility of push-back procedures and assessment of attempts to legislate for push-backs in Poland], (in) W. Klaus (ed) Poza prawem. Prawna ocean działań Państwa Polskiego w reakcji na kryzys humanitarny [Outside the law. Legal assessment of the actions of the Polish state in reaction to the humanitarian crisis]. NA GRANICY POLSKO-BIAŁORUSKIEJ [Outside the law], Warsaw 2022.
18. Polish Commissioner for Human Rights, Małoletni Syryjczyk zawrócony na Białoruś. Skarga Rzecznika uwzględniona przez WSA w Białymstoku, 29 November 2022, available at: http://bit.ly/3Io8ZGt; see also the Polish Commissioner for Human Rights appeal against the decision: Sprawa pushbacków cudzoziemców na Białoruś. Skarga kasacyjna RPO do NSA, 24 January 2023, available at: http://bit.ly/3IL5ewb.
19. Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.
20. OHCHR, End of visit statement of the Special Rapporteur on human rights of migrants, Felipe González Morales, on his visit to Poland and Belarus (12–25 July 2022), 28 July 2022, https://bit.ly/3ZSvAmp, pp6-7.
21. Article 33(1a) of the Law on Protection.

In September 2021, UNHCR published its legal observations on the amendments to the Act on Granting Protection to Foreigners, expressing concerns that the Act imposes restrictions on the ability of people intercepted in the border area to apply for asylum.[22] UNHCR reiterated that it represents a significant step backwards in terms of access to asylum by enabling the Border Guard to deny entry to people crossing the border irregularly, without properly examining whether they have protection needs and without giving them the access to legal remedies.[23] (The government has countered that, as per the Returns Directive Article 2(2)(a), a member state may decide not to apply the provisions of the Directive to a foreign national apprehended or intercepted by the competent authorities in connection with an irregular crossing of the border.)

Similarly, the Fundamental Rights Officer (FRO) at Frontex raised concerns before the Agency's Board about the aforementioned legislative changes. However, the FRO observed that missions conducted at official border crossing points have shown that a complaints mechanism, as well as a system for reporting serious incidents, is available in the country.[24] The Ombudsman's office confirmed the existence of the national complaints mechanism and highlighted that most of the complaints received by the Ombudsman on the topic of migration concern how individuals are treated by the Border Guard.[25] However, the Ombudsman's powers to respond to such complaints remain relatively limited in terms of any action that might be taken.[26]

Additionally, reports from NGOs highlight the fact that accessing asylum at authorised border crossing points on the Belarusian border has often proved difficult,[27] incentivizing third-country nationals to use irregular entry pathways. The practice of denying access to people in need of protection at authorised border crossing points has also been condemned by the ECtHR (see below). Additionally, Poland recently announced the closure of a land border crossing point with Belarus, to leave only two official crossing points open.[28]

An important distinction should be drawn between refusals of entry on the basis of the amended Foreigners law and those made under the Regulation on the Suspension of Cross-border Movement which also covers data collection. For example, according to statistics from the Border Guard on decisions made under Article 303b of the Act on Foreigners, 2,549 third-country nationals were ordered to leave Poland immediately in 2022.[29] Similar numbers were registered in 2021 when 2,384 decisions ordering an immediate removal from Poland were issued.[30] Meanwhile, the OFF reported that over the course of the year it only disregarded five international protection applications due to the applicants' irregular access to the territory.[31] However, more frequently decisions to refuse entry are based on the Regulation on the temporary suspension or restriction of border traffic at certain border crossing points. This regulation was criticised by the Polish Ombudsman and has been examined by the Polish Courts, something that will be discussed further below.[32] By way of illustration, in 2022 the Border Guard registered 12,144 "preventions of irregular crossings of the border". The number of applications registered at the green border were 726 in 2021 and 505 by November of 2022, concerning 1367 and 925 applicants respectively.[33] [34]

### 1.1. Practical implementation of the new rules

Migrants detected while crossing the border outside official points are taken to a Border Guard post. Border guards then draft a report on any persons who have been arrested for an irregular border crossing and have the option of either granting them access to the asylum procedure, initiating a return procedure under the provisions of the Act on Foreigners incorporating the provisions of the Return Directive,[35] or issuing a decision to remove them from the territory of the Republic of Poland under Article 303b of the Act on Foreigners. In practice, the last option appears to be the most common outcome of apprehensions at the

22. UNHCR, Observations on the draft law amending the Act on Foreigners and the Act on Granting Protection to Foreigners in the territory of the Republic of Poland (UD265), 16 September 2021, available at: https://bit.ly/3oxgAth.
23. Information provided by UNHCR Poland, Warsaw, 7 November 2022.
24. Information provided by FRONTEX, Fundamental Rights Office, Warsaw, 8 November 2022.
25. Information provided by the Polish Commissioner for Human Rights, Warsaw, 10 November 2022.
26. The Polish Commissioner for Human Rights is entitled to communicate with national authorities, request information with regards to potential violations, suggest changes in law and practice or provide an opinion on how an individual case should be handled, and monitor implementation of the recommended actions. It can also present third-party interventions in the appeal of asylum cases. Additionally, the Commissioner for Human Rights is the body which acts as the National Mechanism for the Prevention of Torture. Within this mechanism, unannounced monitoring visits to detention centres for foreigners can be conducted. See: Commissioner for Human Rights, What we do, available at: http://bit.ly/3SnSNte; Art. 14 Commissioner for Human Rights Act, available at: https://bit.ly/3XRwCNw.
27. Protecting rights at borders, Beaten, punished and pushed back, January 2023, available at: https://bit.ly/3kYwJc9, p14; Council of Europe, Communication from an NGO (Helsinki Foundation for Human Rights) (22/04/2022) in the case of M.K. and Others v. Poland (Application No. 40503/17), 3 May 2022, available at: http://bit.ly/3KuZvf7.
28. Euractiv, Belarus says Poland closing border crossing point is 'catastrophic', 10 February 2023, available at: http://bit.ly/3IV3Ffr.
29. Protecting rights at borders, Beaten, punished and pushed back, January 2023, available at: https://bit.ly/3kYwJc9, p13.
30. Information provided by Border Guard Headquarters, letter No. KG-OI-VIII.0180.63.2022.BK, 8 April 2022.
31. Letter from the Office for Foreigners to HFHR No. BSZ.WKSI.0656.3.2022/RW, 26 January 2022.
32. Information provided by Helsinki Foundation for Human Rights (HFHR), Warsaw, 7 November 2022.
33. Protecting rights at borders, Beaten, punished and pushed back, January 2023, available at: https://bit.ly/3kYwJc9, p13.
34. Information provided by Polish Border Guard, Bialystok, 9 November 2022.
35. Arts. 302-331 of the Act on Foreigners, not including Art. 303b introduced through the 2021 legal amendments.

border. The decision made under this procedure is provided via a 1-page document stating that the person crossed the border illegally and has been "re-directed" to Belarus. While the decision can be appealed within seven days, it has no suspensive effect. Moreover, the appeal (which may be submitted in Polish or the language of the appellant with a translation requested via a representative) must be registered in the Polish postal office system within the same timeframe, but people filing appeals from Minsk are often not registered on time.[35] Some Polish NGOs reported that in the second half of 2022 most people encountered by activists providing humanitarian support close to the Belarusian border did not possess documents attesting to their first removal from Polish territory. Further, many of those assisted by NGOs indicated that when they had been apprehended by the Border Guard they had not received proper information about the asylum procedure or access to legal counsel as Border Guard posts cannot be accessed by lawyers and NGOs.[36]

When the same individual is apprehended again, the immediate return takes place under the provisions of the Regulation on the temporary suspension or restriction of border traffic at certain border crossing points. This regulation does not require a legal procedure or a return order to be initiated against the migrant to be removed from Polish territory. In this case, the individual's data (name, surname, etc.) are not collected. The Border Guard only records how many returns to the border were conducted on a given day. From various accounts, it appears that repeated pushbacks of the same individual are a common occurrence; in those cases, only the first removal decision is recorded which makes it challenging to obtain clear data on such practices. Concerns also emerged over the lack of access to information about the right to apply for international protection and legal aid for persons apprehended at the borders.[37]

Medical and material assistance is provided by the regional offices of the Polish Border Guard, in cooperation with local health services and civil society organizations such as Caritas and the Polish Red Cross. Such assistance is provided to people whose conditions require it prior to their expulsion or detention. According to the Regional Office of the Border Guard in Bialystok, 637 emergency calls for medical support were received in 2021 and 477 persons were provided with specialised medical care in hospitals. The Border Guard, with support from various services including the Air Ambulance, the Fire Service, the Polish Armed Forces, also conducts rescue operations when detecting cases of migrants stranded in floodplains. In 2021, 11 such missions were conducted between January and the beginning of November.[38] However, in some cases people hospitalised were subsequently pushed back to Belarus.[39]

As explained in more in detail below, at the beginning of the border crisis in 2021 activist organisations also started providing humanitarian and medical assistance to migrants stranded in Polish forests. Between October and November 2022 alone, organisations forming part of Grupa Granica reported that they had received requests for humanitarian aid from 1,104 people.[40]

## 2. Case law on summary removals to a third country from Poland

Pushbacks at the Polish-Belarusian border are not a new occurrence, as demonstrated by various judgements handed down by the ECtHR regarding cases filed by Chechen applicants in 2017. All found multiple violations of the ECHR (including Articles 3 and 13 of the ECHR and Article 4 of Protocol No. 4).[41]

At national level, the Supreme Administrative Court (SAC) issued a judgment in 2018 on a case concerning the widespread practice of refugees being refused entry at the eastern border, revoking the entry refusal

35. Information provided by the Ocalenie Foundation, Warsaw, 7 November 2022.
36. Information provided by the Association for Legal Intervention (SIP), online interview, 23 November 2022.
37. Information provided by the Polish Commissioner for Human Rights, Warsaw, 10 November 2022. Information also provided by the Ocalenie Foundation, Warsaw, 7 November 2022; and the Association for Legal Intervention (SIP), online interview, 23 November 2022. See also: OHCHR, End of visit statement of the Special Rapporteur on the human rights of migrants, Felipe González Morales, on his visit to Poland and Belarus (12–25 July 2022), 28 July 2022, https://bit.ly/3ZSvAmp, pp6-7.
38. Information provided by the Polish Border Guard, Bialystok, 9 November 2022.
39. As attested, for example, by the ECHR in cases K.A. v. POLAND and M.A. v Poland, 52405/21 and 53402/21, available at: http://bit.ly/3IbivwE, involving five Syrian nationals pushed back several times at the Polish-Belarusian border, one after receiving medical assistance at a Polish hospital. See also: K. Czarnota and M. Górczyńska, The Lawless Zone: Polish-Belarusian Border Monitoring, HFHR, June 2022, available at: http://bit.ly/3KsPvD8, p.16; Grupa Granica, 'Situation on the Polish-Belarusian border July - October 2022', available at: http://bit.ly/3IKM6hO, p4; Fundacja Ocalenie, 'Przemoc państwa i działania oddolne', May 2022, available in Polish at: http://bit.ly/3IHMvR9, pp41-42; Stowarzyszenie EGALA, 'Relacja pełnomocniczki wywiezionego obywatela Syrii', 13 October 2022, available in Polish at: http://bit.ly/3IWqwho; HFHR, 'Wojewódzki Sąd Administracyjny w Warszawie uchylił decyzję Straży Granicznej o zawróceniu obywatela Syrii do granicy z Białorusią', 10 June 2022, available in Polish at: http://bit.ly/3xGNYC3.
40. HFHR, Grupa Granica: October – November 2022. Summary and challenges, 13 December 2022, available at: http://bit.ly/3EwQUoG.
41. M.K. and Others v. Poland, Nos. 40503/17, 42902/17 and 43643/17, 23 July 2020; D.A. and Others v. Poland, No. 51246/17, 8 July 2021; A.I. and Others v. Poland, No. 39028/17, 30 June 2022; A.B. and Others v. Poland, No. 42907/17, 30 June 2022; T.Z. and Others v. Poland, No. 41764/17, 13 October 2022.

decision issued by the Border Guard to a Chechen applicant trying to cross the Terespol border crossing point.[42] Although these judgements do not appear to have influenced the practice of national authorities concerning access to the Belarusian border,[43] a more proactive approach seems to have been adopted by Polish district courts recently, arguing that Polish legislation limiting access to its territory – in the form of the Regulation on temporary suspension or restriction of border traffic at certain border crossing points, as amended in 2021 – is in breach of both Polish and EU law.

On 28 March 2022, the district court of first instance in Hajnówka, Poland, ruled that the detention of three Afghan nationals upon apprehension at the border by the Border Guard was unlawful and unjustified. Further, the court established that the individuals in these cases were returned to Belarus without a proper assessment of their protection needs.[44]

On 15 September 2022, the Voivodship Administrative Court in Białystok issued a judgment – reiterated in two subsequent decisions[45] – establishing that, in the individual cases examined, there had been a violation of the Polish Constitution, Protocol IV to the ECHR and the Geneva Convention in implementing the Regulation that allows the Border Guard to turn people back without examining their protection needs if apprehended while trying to cross the borders irregularly. In addition, the court affirmed that the regulation is not compliant with the Foreigners Act. The Ombudsman has filed complaints in all three cases.[46] Further similar judgements were issued in recent months.[47]

The Border Guard staff in Białowieża organised protests following these judgments,[48] fearing that they would be held responsible for illegal actions. However, no immediate changes to Border Guards' practices have been observed in response to irregular crossings.[49] Representatives of the Border Guard Regional Unit in Białystok[50] and their headquarters[51] indicated that the judgments have no effect on the legality of the provisions in the Polish legal framework because they refer to individual cases and the lack of proper assessment of the risk of non-refoulement in these individual cases.

The court stated that the Border Guard should present more detailed reasoning on individuals' lack of protection needs and should better present the assessment of the lack of risk of refoulement. Currently, both the Ministry of the Interior and the Border Guard report that they are in the process of evaluating a strategy to improve proceedings at the border. This could include recording statements from people apprehended while crossing the border irregularly. However, various Polish NGOs are of the view that, in the light of the recent judgements, the Polish authorities should repeal any legal amendments that are not in line with Polish, EU or international law, and ensure that access to asylum and the principle of non-refoulement are respected.

By February 2023, one of these cases had reached the Supreme Administrative Court but the outcome is still unknown.[52] In previous rulings,[53] the Court had expressed the position that all foreigners requesting access to the territory should be properly interviewed and asked about the reasons for their (irregular) entry.[54]

42. Supreme Administrative Court, II OSK 2766/17, 17 May 2018, available at: http://bit.ly/3XQmlS3.
43. For a more detailed analysis, see: Hungarian Helsinki Committee, Implementing judgments in the field of asylum and migration on odd days, November 2022, available at: https://bit.ly/3j2Kfei.
44. District Court in Bielsk Podlaski, VII Local Criminal Division in Hajnówka, Sygn. akt VII Kp 203/21, 28 March 2022, available at: http://bit.ly/3xzBuMc. See also: Wyborcza, Court: pushback illegal – the first judgement concerning the deportation of migrants with Belarus, 29 March, 2022, available at: http://bit.ly/3DakDmz; SIP, Pushbacks are inhumane, illegal and based on illegal regulation – the Court says, 31 March 2022, available at: https://bit.ly/3IbLPD2.
45. Voivodship Administrative Court in Białystok, II SA/Bk 492/22 - Wyrok WSA w Białymstoku, 15 September 2022, available at: http://bit.ly/3XWvybq; II SA/Bk 493/22 - Wyrok WSA w Białymstoku, 15 September 2022, available at: http://bit.ly/3Wzt2XC; I SA/Bk 494/22 - Wyrok WSA w Białymstoku, 15 September 2022, available at: http://bit.ly/3H8XsKw.
46. Information provided by the Polish Commissioner for Human Rights, Warsaw, 10 November 2022.
47. See the compilation of information on similar court cases from HFHR, available at: http://bit.ly/3S8lPgn; see also: Provincial Administrative Court in Warsaw (Wojewódzki Sąd Administracyjny w Warszawie), Decision of 5 October 2022, No. IV SA/Wa 1031/22; Provincial Administrative Court in Białystok (Wojewódzki Sąd Administracyjny w Białymstoku), Decision of 27 October 2022, No. II SA/Bk 558/22, more about the case at: http://bit.ly/415rQ1o.
48. Wyborcza.pl, Bunt pograniczników. Boją się, że dowódcy zepchną na nich odpowiedzialność za pushbacki, 6 November 2022; HFHR, 'Sądy orzekają, że pushbacki są nielegalne, a funkcjonariusze Straży Granicznej boją się odpowiedzialności', 8 November 2022, available at: http://bit.ly/42y8lPO; HFHR, 'Informacja prawna dla funkcjonariuszy Straży Granicznej odbywających służbę na granicy polsko-białoruskiej', 28 November 2022, available at: http://bit.ly/42y8lPO.
49. Information provided by the Polish Commissioner for Human Rights, Warsaw, 10 November 2022, by the Ocalenie Foundation, Warsaw, 7 November 2022, and the Association for Legal Intervention (SIP), online interview, 23 November 2022.
50. Information provided by the Polish Border Guard, Bialystok, 9 November 2022.
51. Information provided by the Polish Border Guard and Polish Ministry of the Interior, Warsaw, 10 November 2022.
52. Information provided by SIP.
53. II OSK 2109/18; II OSK 1965/19; II OSK 1627/18; II OSK 1627/18.
54. Information provided by the Supreme Administrative Court of the Republic of Poland, Warsaw, 10 November 2022.

Notwithstanding the abovementioned changes to Polish law, it can be argued that Poland's removals from its territory without due process, as described in the previous sections of the reports, violate EU law, including the Charter of Fundamental Rights. The Charter guarantees the right to asylum and due respect of asylum procedures, under which any expression of intent to seek asylum should promptly be forwarded to the competent authorities for assessment based on the person's individual grounds for seeking asylum.

It should also be noted that, in connection with the situation on the Polish-Belarusian border, between 20 August 2021 and 18 February 2022, the ECtHR granted interim measures in 61 cases. The court indicated to the Polish authorities that the applicants could not be returned to Belarus and, if necessary, they had to be provided with medical assistance.[55] The ECtHR also communicated three cases to the Polish government concerning pushbacks carried out in November 2021.[56]

The court also issued two judgements - A.B. and others v. Poland[57] *and A.I. and others v. Poland*[58] - which became final in November 2022, condemning Poland for violations of the principle of non-refoulement at the Terespol border crossing point. Two additional cases of alleged violations of the non-refoulement principle - R.A. v. Poland and Sherov v. Poland -[59] are pending before the court.

Among the infringements of EU law,[60] the European Commission identifies non-conformity or non-compliance of national legislation with EU legislation, as well as incorrect or poor application of EU law by national authorities.[61] However, it has been reluctant to address the situation at the Polish border with Belarus, maintaining that all allegations of pushbacks must be "fully and credibly" investigated by EU countries.[62]

With regard to the Court of Justice of the European Union (CJEU), no cases regarding the situation at the Polish-Belarusian border have so far been examined by the court. However, it should be noted that in a recent judgement on Lithuanian border policies the CJEU held that Article 6 and Article 7(1) of Directive 2013/32/EU must be interpreted as precluding legislation of a Member State under which, in the event of a declaration of a state of war or a state of emergency or in the event of the declaration of a state of emergency on the grounds of a massive influx of foreign nationals, illegally staying third-country nationals are effectively deprived of the possibility of having access to the procedure for examining an application for international protection on the territory of that Member State. Moreover, "Article 8(2) and (3) of Directive 2013/33/EU must be interpreted as precluding legislation of a Member State under which, in the event of a declaration of martial war or of a state of emergency or in the event of a declaration of an emergency due to a mass influx of aliens, an asylum seeker may be placed in detention for the sole reason that he or she is staying illegally on the territory of that Member State."[63]

## 3. Shifting scenarios

In 2021, asylum applicants in Poland numbered 7,698, an already a significant increase compared to previous years (almost four times more than in 2020 and almost double the number of applicants in 2019 and 2018).[64] In 2022, 9,240 individuals applied for asylum in the country.[65] According to the Office for Foreigners, a significant increase in the number of applicants was registered at the Terespol border crossing point where new applicants mainly came from Belarus, Ukraine, Tajikistan and Uzbekistan.[66] However, these numbers are not an accurate reflection of the situation at the Polish borders and within the territory. Many more accessed the country in 2022 as persons entitled to temporary protection, while others were denied entry at the

55. ECtHR, Update on interim decisions concerning member States' borders with Belarus, available at: https://bit.ly/3wrWDYe.
56. K.A. v. POLAND and M.A. v Poland, Applications No. 52405/21 and 53402/21, available at: http://bit.ly/3IbivwE; F.A. AND S.H. v. Poland, Application No. 54862/21, available at: http://bit.ly/3KfZtHR.
57. ECtHR, A.B. and Others v. Poland (Application No. 42907/17), 30 June 2022 – final 14 November 2022, available at: http://bit.ly/3WzBlCM.
58. ECtHR, A.I. and Others v. Poland (Application No. 39028/17), 30 June 2022 – final 14 November 2022, available at: http://bit.ly/3Hyc3R6.
59. ECtHR, R.A. and Others v. Poland, (Application No. 42120/21), available at: http://bit.ly/3Iaf8G1; ECtHR, Jama Sherov and Others v. Poland, Application No. 54029/17, available at: http://bit.ly/40W20No.
60. For a detailed overview of the infringement practices of the European Commission, see: The Greens/EFA, Infringement Proceedings and Conditionality in EU Funding Instruments, June 2022, available at: https://bit.ly/3jFprdi.
61. Commission Staff Working Document, Part I: General Statistical Overview Accompanying the document Report from the Commission Monitoring the application of European Union law 2017 Annual Report, SWD (2018) 377 final, p5.
62. EU Observer, EU calls for 'firm' Belarus border control by Poland, 24 November 2022, available at: http://bit.ly/3XSb7fP.
63. CJEU, ECLI:EU:C:2022:505, 30 June 2022, available at: http://bit.ly/3R8ljP0.
64. AIDA Reports Poland, 2021, 2020, 2019 and 2018 updates.
65. Polish Border Guard, Statystyki SG - Komenda Główna Straży Granicznej, available at: http://bit.ly/3I5NVEB.
66. Information provided by the Office for Foreigners and the Ministry of Interior, Warsaw, 10 November 2022.

Belarusian border. These refusals involved both cases of irregular border crossings and persons trying to access the territory through official border crossing points.

Various actors have already highlighted how the 2021 response of the Polish authorities to the crisis at the Belarusian border was in stark contrast to the one given to the displacement crisis of people fleeing Ukraine.[67] It is therefore relevant to provide an overview of how the situation at Poland's different borders evolved throughout 2022. This emerged as a major point of interest throughout ECRE's visit, with particular focus on the situation at the Belarusian border.

### 3.1. Polish–Belarusian border

According to the Border Guards Unit in Białystok, the number of people detected and detained after irregularly crossing the green border with Belarus in the region spiked in 2021. The unit recorded 2,412 people (only 117 were registered in 2020). In 2022, this number decreased significantly, amounting to only 357 people as of 6 November 2022. However, the number of individuals apprehended at the border and "removed" from Poland was much higher, reaching 37,833 in 2021 and 11,862 as of the beginning of November in 2022.

In interviews with the Border Guard, it was suggested that the increase in the number of removals compared to the number of apprehensions followed by detention was related to the profile of the people arriving. In 2021, arrivals were mostly families intending to stay in Poland meaning that the outcome was the latter: people apprehended were more likely to be detained pending the necessary security checks. In 2022, the new arrivals at the border were mostly single young men, often with limited interest in remaining in Poland (although the predominant countries of origin were still Syria, Afghanistan and Iraq).[68] With respect to these numbers it should be noted that, according to the organization Egala, official statistics do not necessarily give a full picture of the current situation as regards new arrivals as some people manage to access Polish territory without being detected and move to other European countries, while others are pushed back to Belarus without being registered.[69]

The external border with Belarus is 247 km long in total and can be divided in two sections: a 186 km land border and a 61 km river border (small rivers and swamps). There is a partially constructed electronic barrier which will eventually cover a total of 206 km of the Belarusian border.[70]

Poland lifted the state of emergency in the border area in June 2022[71] and a 186 km steel wall was constructed on the border to stop irregular crossings.[72] Although the state of emergency was lifted, a prohibition for unauthorized individuals to access the area in the immediate proximity of the wall was established. The ban, stemming from a Regulation by the Podlaski Voivodeship,[73] initially prevented access to an area extending 200 m from the wall. Recently, this has been reduced to 15 m.[74]

Various stakeholders highlighted the fact that, thus far, the wall has not constituted a particularly effective barrier to irregular entries into the EU - although that might change with the introduction of additional surveillance tools. Firstly, it is possible to climb over it with ladders or dig under it. Secondly, numerous parts of the border area are not suitable for the extension of this barrier for geographical reasons due to the presence of swamps and rivers. It has been observed that, since its construction, increasing numbers of people who have managed to cross and request support from organizations active in the border area are presenting with more serious health conditions than in the previous year. Those who cross at the part of the border containing rivers and swamps risk hypothermia due to having to swim in cold water. Those who try to climb over the wall, which is covered in razor wire, have wounds and sprained or broken limbs.[75] Swamps are particularly dangerous as they are not always visible (they can be covered in grass and mud) and

67. See for example, Politico, Poland's two very different borders, 14 April 2022, available at: http://bit.ly/3JhYpTl.
68. Note that for what concerned statistical information, the Polish Ombudsman highlighted how available statistics might not fully reflect the actual number of attempted border crossings (Information provided by Polish Ombudsman, Warsaw, 10 November 2022).
69. Information provided by Egala, Bialystok, 9 November 2022.
70. Information provided by the Polish Border Guard, Bialystok Unit, 9 November 2022.
71. HRW, Poland Finally Lifts State of Emergency at Belarus Border, 7 July 2022, available at: http://bit.ly/3XBQ8Oy.
72. Info Migrants, Poland completes Belarus border wall to prevent migrant crossings, 1 July 2022, available at: https://bit.ly/3kEsYIF.
73. Biuletyn Informacji Publicznej, Podlaski Urząd Wojewódzki w Białymstoku, Wojewoda podpisał rozporządzenie ws. zakazu przebywania na obszarze 200 m od linii granicy państwowej, 15 June 2022, available at: http://bit.ly/3ZZdqQ9.
74. ROZPORZĄDZENIE Nr 7/2021 WOJEWODY PODLASKIEGO z dnia 1 września 2021 r. w sprawie wprowadzenia zakazu przebywania na całym odcinku pasa drogi granicznej.
75. Information provided by the Helsinki Foundation for Human Rights, Ocalenie Foundation, Warsaw, 7 November 2022, by the Club of Catholic Intelligentsia (KIK), Bialystok surroundings, 8 November 2022, as well as by the Association for Legal Intervention (SIP), online interview, 23 November 2022.

people can easily fall into them. An exact calculation of how many people have actually lost their lives in the forest is therefore not possible. According to the organisation Egala, the most difficult area is the Białowieża Primeval Forest where there is no internet connection, the woods are particularly thick, and it is very hard to move about. A 700 m walk might take about half an hour due to the state of the ground and the presence of fallen trees.[76]

*Changing patterns for irregular entries*

All the stakeholders interviewed by the ECRE delegation confirmed that there are some major differences in terms of the profile of the migrants trying to cross the green border compared to 2021.

Firstly, the most represented nationalities are different. In 2021, migrants were chiefly citizens from Iraq, Syria and Afghanistan. People from Iraq and Syria were mainly arriving by air through tourist visas issued by Belarus, while Afghans came by land routes. In most cases, people arrived in family groups.

In 2022, newly arrived migrants were mostly young men and there were fewer families with children. In addition, the pattern of nationalities involved was different. There were more people from African and Asian countries – as well as a few from Cuba and Haiti - and a decrease in the number of people from Iraq, probably due to the suspension of flights from Iraq to Belarus. Nonetheless, the Regional Unit of the Border Guard in Białystok reported that the main countries of origin of migrants summarily returned to Belarus in 2022 were still Iraq, Syria, Turkey, Iran, Sudan and Afghanistan.[77]

Another difference is that new arrivals do not appear to be organised directly by Belarus. These migrants generally obtained a visa – often either a work or study one – in Russia and remained in the country for a few weeks or, in some cases, years, trying to reach Europe via Belarus once the visa had expired.

Some people reported being victims of trafficking but most had come directly into contact with smugglers.[78]

According to representatives of the Border Guards' Regional Unit in Bialystok, Russia may have had a significant role in opening up this new migratory route.[79] However, the Ministry of the Interior does not so far regard it as a case of "instrumentalisation" as newly arrived migrants appear to have voluntarily decided to begin their journey. An existing risk is that Russia might increase violence towards migrant communities which would cause people to decide to migrate to Europe, by illegal means in some cases.[80]

Some changes have also been recorded in terms of how people try to access Polish territory. For example, more attempts to cross rivers with dinghies or other makeshift boats were registered and a relatively large number of people has been apprehended while trying to cross into Poland from Lithuania. This group represents an unprecedented number of cases of arrivals due to secondary movement from another country. The reason seems to be that the Lithuanian border is less heavily guarded and currently relatively easy to cross, while on the Polish side the recently constructed makes crossings more difficult.[81] Since the barrier was constructed, more people have reportedly crossed over using ladders. These are either created by migrants themselves or provided by the Belarusian Border Guard.

The Border Guard, the police and the Polish army work together on border management. In practice, the number of arrivals has probably been reduced because the border area is now very well guarded by the Border Guard with support from the police and the Polish army.[82] The Regional Unit of the Border Guard in Białystok indicated that it will increase its staff.[83] However, activists report meeting more people than before who say that they managed to cross the border without meeting Border Guard officials or soldiers. In the light of this situation, it is quite difficult to identify a specific pattern to define the reasons for these differences with

76. Information provided by EGALA, Bialystok, 9 November 2022.
77. Information provided by the Polish Border Guard, Bialystok, 9 November 2022.
78. Information provided by the Ocalenie Foundation, Warsaw, 7 November 2022.
79. Information provided by the Polish Border Guard, Bialystok, 9 November 2022.
80. Information provided by representatives of the Polish Ministry of the Interior, Warsaw, 10 November 2022.
81. Information provided by representatives of the Polish Ministry of the Interior, Warsaw, 10 November 2022.
82. Information provided by the Association for Legal Intervention (SIP), online interview, 23 November 2022.
83. Information provided by the Polish Border Guard, Bialystok, 9 November 2022.

any clarity.[84]

*Continued pushback allegations*

Even once the barrier was constructed and the state of emergency lifted, NGOs and activist organisations present at the Polish-Belarusian border have reported assisting individuals alleging that they had been pushed back multiple times after trying to cross the green border.[85] Most of them indicated that the Polish authorities had failed to consider their protection needs and neglected to take them to border stations to process their asylum cases,[86] similar to what had been reported in previous months.[87]

At the peak of the 2021 border crisis, the European Ombudsperson and the Commissioner for Human Rights of the Council of Europe visited the border on various occasions, supported by local NGOs. The latter highlighted, following visits, the alarming nature of the humanitarian and human rights situation along Poland's border with Belarus. Urgent action was needed to protect the lives of people stranded in the border region.[88] In early October 2021, Frontex's former Executive Director, Fabrice Leggeri, visited the Poland-Belarus border,[89] and assessed that Polish forces were sufficient to face the migratory situation, which resulted from hybrid actions implemented by the Belarusian Side. The Polish authorities cooperate with the Agency in other areas, in particular on readmission programmes.[90]

Frontex's Fundamental Rights Office carried out a number of visits at different border crossing points and did not report observing any major issues. However, visits are limited to official crossing points and monitoring visits are carried out in agreement with the national authorities and FRONTEX staff. This means that they have to be planned in advance.[91] UNHCR also indicated that its monitoring activities are conducted at official border crossing points, Border Guard posts and registration centres along the Polish-Belarusian border.[92] In practice, UNHCR has noted an increase in reports of refused access to the territory and asylum procedures for persons expressing their intention to seek asylum. This was particularly evident in the summer of 2021 in the area along the border with Belarus, in the Podlaskie and Lubelskie Voivodeships. UNHCR's observations are based on visits near the border, direct testimony recorded on both sides of the border (from individuals who managed to enter Poland and those who were 'pushed back' or denied entry and attended UNHCR's office in Minsk) and reports from other organizations present in the area, including the Polish Commissioner for Human Rights. Estimates of 'pushbacks' are difficult to assess as official statistics are not sufficiently detailed.[93]

The Polish Ombudsman carried out a number of visits to the borders up until May 2022, the date of the last visit. Currently, the Ombudsman is still in touch with NGOs working on the border but the Office has shifted most of its focus to supporting the Ukraine displacement crisis. The visits were carried out both at border posts and in the forests. Cooperation with national authorities was reportedly positive. However, various actors highlighted the fact that it was considered likely that, in the absence of monitoring bodies, people have been sent away from Poland without having their protection needs properly assessed.[94]

84. Information provided by the Ocalenie Foundation, Warsaw, 7 November 2022, and by the Association for Legal Intervention (SIP), online interview, 23 November 2022.
85. For an overview, see: Protecting rights at borders, Beaten, punished and pushed back, January 2023, available at: https://bit.ly/3kYwJc9.
86. Information provided by the Helsinki Foundation for Human Rights and by the Ocalenie Foundation, Warsaw, 7 November 2022, as well as by the Association for Legal Intervention (SIP), online interview, 23 November 2022.
87. HRW, Die Here or Go to Poland, November 2021, available at: https://bit.ly/3wSsvWt; HRW, Violence and Pushbacks at Poland-Belarus Border, 7 June 2022, available at: http://bit.ly/3XXBGQM; Balkan Insight, Polish Forests Full of Fear, available at: https://bit.ly/3HbaaII.
88. Council of Europe, Commissioner calls for immediate access of international and national human rights actors and media to Poland's border with Belarus to end human suffering and violations of human rights, 19 November 2021, available at: http://bit.ly/41h9Npj.
89. Frontex, Frontex Executive Director visits Poland's border with Belarus, 4 October 2021, available at: http://bit.ly/3XReByz.
90. Information provided by representatives of the Polish Ministry of the Interior, Warsaw, 10 November 2022.
91. Information provided by Frontex, Fundamental Rights Office, Warsaw, 8 November 2022.
92. Information provided by UNHCR Poland, Warsaw, 7 November 2022.
93. Submission by the Office of the United Nations High Commissioner for Refugees in the case of R.A. and Others v. Poland (Appl. No. 42120/21) before the European Court of Human Rights, available at: https://bit.ly/404Yhf8.
94. Council of Europe, Communication from an NGO (Helsinki Foundation for Human Rights) (22/04/2022) in the case of M.K. and Others v. Poland (Application No. 40503/17), 3 May 2022, available at: http://bit.ly/3KuZvf7. Similar concerns were raised by the former deputy Ombudsman Hanna Machinska, see: Tvn24, Hanna Machińska: to, co się dzieje na granicy polsko-białoruskiej, to będzie hańba oceniona przez historię, 4 January 2023, available at: http://bit.ly/3Hxhyzv, and by the Polish MEP Janina Ochojska, founder and director of Polish Humanitarian Action (information provided by Janina Ochojska, Brussels, in-person meeting, 8 February 2023).

In the second half of 2022, there were also reports of pushbacks at regular border crossing points on the Polish-Belarusian border, mainly involving Russian nationals. Some of the individuals who approached those check points and asked for international protection were denied entry and issued with a decision on refusal of entry due to a lack of documents required to cross the border.[95]

Although individual cases of pushbacks have been confirmed in various cases through court judgements and numerous reports from civil society actors, it has not been possible to draw any final conclusions as to the scale of such practices. Therefore, it is essential that systematic border monitoring activities, not limited to border crossing points but extended to the green border, be conducted. Furthermore, the Regulation on the temporary suspension or restriction of border traffic at certain border crossing points should be repealed. If it is to be maintained within national legislation, it should not be used as a basis for carrying out summary returns to Belarus without proper examination of individual protection needs.

*Returns to Belarus and risk of refoulement*

The Polish authorities note that Belarus is a signatory to the Geneva Convention, despite its controversial recent history. As such, refoulement for persons in need of protection should not be considered a common occurrence as a general rule. While recognising that episodes of violence against migrants occur in Belarus, the Polish Ministry of the Interior does not consider it to be a structural problem in the country. Rather, it is related to the 2021 border crisis and "instrumentalisation" attempts.[96]

Various reports had already brought to light the extreme violence used by Belarusian Border Guards against migrants during the peak of the border crisis. Human Rights Watch revealed, for example, that people pushed back from Poland to Belarus "were routinely subjected to various types of abuse by Belarusian border guards, including beatings and detention in open air spaces for extended periods of times."[97]

In March 2022, Belarus closed the makeshift Bruzgi camp near the Kuznica crossing point, a temporary logistics centre established by the Belarusian authorities to host migrants during the border crisis. Violence against migrants at the camp was extremely common and brutal. Approximately 700 people – including vulnerable individuals and children – were left without any shelter or support.[98]

With regard to the possibility of accessing asylum processes in Belarus, there were reports in 2021 that the Belarusian authorities expelled asylum seekers who, after crossing Belarus, tried to apply for asylum in the EU, were denied access to asylum procedure and then tried to apply for asylum in Belarus once they had been returned to that country. For example, an Iraqi journalist was forced to board a plane to Syria within two hours of attempting to apply for asylum in Minsk in November 2021.[99] On 3 December 2021, it was reported that the Belarusian authorities had threatened Syrian nationals stranded at the Belarus-Poland border with deportation to Syria if they did not cross the border into Poland.[100] The first return flight for Syrian nationals reached Damascus on 8 December 2021.[101] According to Amnesty International, by April 2022 the Belarusian authorities had forcibly returned most migrants present in the country to their countries of origin, without granting them access to fair asylum procedures.[102]

Several thousand people in transit were taken to their home countries on evacuation flights at the beginning of 2022. Belarus' anti-NGO policy means that it is not currently possible to establish the current situation of potential asylum applicants in the country. However, information on the situation of migrants in the country raises serious concerns in terms of their ability to access the asylum procedure and have their asylum claim

95. Protecting rights at borders, Beaten, punished and pushed back, January 2023, available at: https://bit.ly/3kYwJc9.
96. Information provided by representatives of the Border Guard and of the Polish Ministry of Interior, Warsaw, 10 November 2022.
97. HRW, Die Here or go to Poland, November 2021, available at: https://bit.ly/3wSsvWt.
98. The first news, Belarus to close migrant camp near Polish border, 22 March 2022, available at: https://bit.ly/3kLLn6s; Amnesty International, Poland: Cruelty not Compassion, at Europe's Other Borders, April 2022, available at: http://bit.ly/3Rm3iwT, pp14-16.
99. New York Times, "Iraqi migrants say they face beatings on both sides of the Belarusian border", 10 November 2021, available at: http://bit.ly/3XSG189; Зеркало, "Курдский журналист прилетел в Беларусь и попросил здесь убежище — его сразу же депортировали. Мы с ним поговорили", 15 November 2021, available in Russian at: http://bit.ly/3kUGkAW.
100. Новая Газета, "Билет на тот свет. Минск дал сирийским беженцам три дня, чтобы прорваться в Европу. В противном случае их ждет рейс в Дамаск", 3 December 2021, available in Russian at: http://bit.ly/3WRudla.
101. Al-Monitor, "Would-be Syrian refugees flown back from Belarus despite visas" (14 December 2021), available at: http://bit.ly/3Hk0ThK.
102. Amnesty International, Poland: Cruelty not Compassion, at Europe's Other Borders, April 2022, available at: http://bit.ly/3Rm3iwT, p1.

properly assessed.[103]

Additionally, it should also be recalled that the European Court of Human Rights found that Belarus does not have an effective asylum system.[104] As such, Belarus should not be considered a country where return would be safe for individuals in need of protection.

*Conditions of migrants at the border and the impact on local communities*

Migrants who manage to cross the green border without being detected often find themselves facing critical conditions. According to the Regional Unit of the Border Guard in Bialystok, a number of emergency operations were needed for cases of migrants falling into swamps while trying to cross the forest.[105] Grupa Granica indicated that, although it is true that migrants arrived prepared for the woods in some limited cases, most of the people they support arrive at the border and forest area with no idea of the situation that awaits them.

Grupa Granica therefore continues to provide in the woods both humanitarian assistance (for example, bringing thermal clothes, blankets and food for those stranded in the forest) and legal assistance as required.[106] The Italian organisation InterSOS started operating there in November 2022, providing medical support.[107] Between October 2021 and early January 2022, Médecins Sans Frontières (MSF) tried to provide assistance to people arriving from Belarus, but stated that it had been forced to leave after the authorities had refused to let it access the border area.[108] MSF has now resumed its operations at the border, providing medical assistance.

Activist organisations reported that there had been a particular clash with the Polish authorities between November 2021 and March 2022 when many were stopped by the police or the Border Guard and accused of supporting smugglers.[109] On one occasion in March 2022, KIK activists were questioned and their personal belongings were confiscated. They were only returned in September 2022.[110]

According to Grupa Granica, people living on the border showed great solidarity at the beginning of the crisis in 2021. However, views among the local population are now extremely polarised. While many still want to provide support to activists and migrants, others are supportive of the idea that national borders should be protected.

More broadly, the increasing presence of both Belarusian and Ukrainian nationals has highlighted the existence of an equivocal reaction to migration within the Polish population. A line appears to be drawn between individuals deserving of protection and support – mainly Belarusian and Ukrainian nationals – and those fleeing from Asian and African countries. The latter are considered *a priori* both "weapons" used by a hostile regime and as having chiefly socioeconomic reasons for migrating, rather than being in need of protection. According to various stakeholders,[111] national media have played a significant role in cultivating fear of migrants at the Belarusian border. They are depicted as being thieves and rapists, and more broadly a national security

103. Humana Constanta, Report on the situation with the refugees and asylum-seekers from the Middle East in Belarus, October 2022, available at: http://bit.ly/3iAmbzm. According the Association for Legal Intervention (SIP), migrants present in Belarus at the moment seem to be either encouraged or forced to cross into Poland. However, migrants who manage to cross the Polish border report that people holding a valid passport who are pushed back into Belarus are now brought to Minsk, with the objective of returning them to their countries of origin.
104. Ruling in the case of M.K. and Others, §§ 116-117; see also M.A. AND OTHERS v. Lithuania.
105. Information provided by the Polish Border Guard, Bialystok, 9 November 2022.
106. Information provided by the Club of Catholic Intelligentsia (KIK), Bialystok surroundings, 8 November 2022, as well as by Egala, Bialystok, 9 November 2022 and the Association for Legal Intervention (SIP), online interview, 23 November 2022.
107. InterSos, Poland, medical assistance project on the border with Belarus kicks off, 1 December 2022, available at: https://bit.ly/3l77kgl.
108. See MSF Poland, available at: http://bit.ly/3JW2lcU.
109. Information provided by the Club of Catholic Intelligentsia (KIK), Bialystok surroundings, 8 November 2022, as well as by Egala, Bialystok, 9 November 2022 and the Association for Legal Intervention (SIP), online interview, 23 November 2022. See also: HRW, Polish Activists Arrested for Saving Lives, 1 April 2022, available at: http://bit.ly/3Y1ngzE, Amnesty International, Poland: Cruelty not Compassion, at Europe's Other Borders, April 2022, available at: http://bit.ly/3Rm3iwT, pp13-14; PICUM, Resilience and Resistance: the Criminalisation of Solidarity across Europe, June 2022, available at: https://bit.ly/3Hln0nG.
110. Information provided by the Club of Catholic Intelligentsia (KIK), Bialystok surroundings, 8 November 2022.
111. Information provided by the Club of Catholic Intelligentsia (KIK), Bialystok surroundings, 8 November 2022; Egala, Bialystok, 9 November 2022, Association for Legal Intervention (SIP), online interview, 23 November 2022; Janina Ochojska, Founder and director of Polish Humanitarian Action, MEP, Brussels, in-person meeting, 8 February 2023.

problem. The media have also painted a bleak picture of the future of a multicultural society.[112]

*Poland as a transit country*

When stopped at the borders, migrants are asked for their country of destination and the purpose of their journey. According to the Białystok Regional Unit of the Border Guard, most individuals apprehended either while crossing the green border or after being detected on national territory have no intention of remaining in Poland.

According to representatives of the Border Guard, many people cross the border irregularly hoping to avoid being registered as asylum seekers in Poland because they are aware of the existence of the Dublin rules. The same representatives declared, however, to take into account every situation where the life or health of migrants is at risk or when a person wants to apply for asylum after crossing the border when determining protection needs.[113]

While confirming that in cases of migrants assisted in the woods most individuals expressed no intention of remaining in Poland, the activist organisation Egala pointed out that most of them would not want to do so after being subjected to pushbacks and due to their fear of having to return to their home countries. According to the organisation, this fear stems from the perception migrants have of the hostility against them within the country. Additionally, the organisation highlighted the fact that most migrants crossing the green border informed them that they had family members in other European countries – mainly Germany and France – who they wanted to reach as soon as possible.[114] A similar interpretation was given by members of the Club of Catholic Intelligentsia (KIK). They also reported that most migrants supported in the woods would spend between two and three days in the forest on average, subsequently being collected by taxi drivers collaborating with the smugglers assisting them to reach the German border.[115]

As reported by the Border Guard, smuggling channels are managed by criminal organisations which provide their services to ensure that migrants reach their desired country of destination. A complete trip costs an average of between 5,000 and 9,000 Euros. In terms of counter-smuggling operations, it was reported that 800 organisers and facilitators were detained in 2021 (mostly Polish, Ukrainian, German and Georgian nationals).[116]

Despite these activities, according to activist organisations[117] most people still manage to cross the border, after experiencing various pushbacks, and often move on to other EU countries.

Finally, most of the stakeholders that met with ECRE's delegation observed with regard to the current situation at the Belarusian border that the migration route that has opened will probably remain active in the coming years. On one hand, it remains a safer migration path than the Mediterranean one; on the other, it is still relatively easy, particularly for nationals of many African and Asian countries, to obtain a visa to travel to Russia or Belarus and later attempt a crossing at European borders.

Although the focus of most of the media and the institutions has moved on in response to the Ukrainian border crisis in the past year, it is essential that the situation on the Belarusian border is properly addressed. The national authorities should ensure that the protection needs of applicants are always properly examined and that procedural safeguards – particularly the provision of information and legal assistance – are accessible to all migrants reaching Polish territory, regardless of how they entered. Were they to be considered a threat to national security after due process, the possibility of channelling them into return procedures would remain.

### 3.2. Poland's other borders

112. On Polish views regarding migration, see also: Witold Klaus, Monika Szulecka, Departing or Being Deported? Poland's Approach towards Humanitarian Migrants, Journal of Refugee Studies, 2022, available at: https://doi.org/10.1093/jrs/feac063, 4; Monika Gabriela Bartoszewicz, Otto Eibl, Magdalena El Ghamari, Securitising the future: Dystopian migration discourses in Poland and the Czech Republic, Futures, Volume 141, 2022, 102972, ISSN 0016-3287, available at: https://bit.ly/3WZ3WS3; K. Hargrave, K. Homel, L. Dražanová, Public narratives and attitudes towards refugees and other migrants, January 2023, available at: http://bit.ly/3WWc7yl, p27.
113. Information provided by the Polish Border Guard, Bialystok, 9 November 2022.
114. Information provided by EGALA, Bialystok, 9 November 2022.
115. Information provided by the Club of Catholic Intelligentsia (KIK), Bialystok surroundings, 8 November 2022.
116. Information provided by the Polish Border Guard, Bialystok, 9 November 2022.
117. Information provided by the Club of Catholic Intelligentsia (KIK), Bialystok surroundings, 8 November 2022; Egala, Bialystok, 9 November 2022, Association for Legal Intervention (SIP), online interview, 23 November 2022.

*Kaliningrad*

Another critical border for Poland is the one it shares with the Russian enclave of Kaliningrad. Poland has declared its intention to build an additional wired fence to cover all 200 km of the border.[118]

This decision came in response to an agreement signed by Russia with Syrian and Turkish airlines which might open up new migratory routes in the future. Although the Ministry of the Interior did not consider it an immediate threat, it was important to prevent the occurrence of a migration crisis similar to the one that occurred in 2021.[119]

According to statistics from the Polish Border Guard,[120] arrivals of Russian nationals on Polish territory through the Kaliningrad border remained relatively limited. After the partial mobilisation declared by Russia in September 2022, the main focus of attention became monitoring how this would affect crossings into Polish territory from the country's border with Russia. Despite initial fears, so far there have not been any significant numbers seeking to enter from across the Russian border.[121]

*Ukraine, a different response*

Poland's immediate response to the displacement crisis from Ukraine was very different to the one it gave to the crisis at the Belarusian border. The Polish authorities, assisted by civil society and international organisations, swiftly responded to the unprecedented number of people fleeing Ukraine, opening the country's borders to the displaced and granting rapid access to humanitarian assistance and regular stay. Many Polish citizens hosted Ukrainian families within their own homes.[122]

By the end of January 2023, Poland had recorded more than 9.3 million border crossings from Ukraine and more than 1.5 million displaced people from Ukraine were present in the country.[123]

The government had explained the difference in treatment by indicating that, while the crisis at the Belarusian border was artificially created by Lukashenko, the new crisis was caused by the war waged by Russia against Ukraine.[124]

Several people who spoke to ECRE underlined the fact that non-Ukrainian third-country nationals were among those encountering more problems accessing the country via the Ukrainian border, especially during the initial phases of the conflict.[125]

The Polish Commissioner for Human Rights indicated that he had carried out visits to the border during the first phase of the conflict. The body's activities are currently more focussed on monitoring the reception conditions provided to temporary protection beneficiaries.[126]

UNHCR has had a regular presence on the border since the emergency began with a rotating multifunctional team supporting access to information, identification of the most vulnerable, access to immediate humanitarian support and referrals, and monitoring conditions in group centres. It has offices in two border regions (Rzeszow covering Podkarpackie and Lublin covering the Lubeskie region), enabling regular border monitoring. Currently, UNHCR is supporting government-led efforts via a multisectoral response focussing on ensuring access to status and documentation, assisting those most at risk and facilitating socioeconomic inclusion. UNHCR and partners are also present at border crossing points and in refugee hosting areas to provide information on rights and services, identify and support vulnerable refugees, strengthen reception capacities and support

118. BalkanInsight, Fearing New Hybrid War Front, Poland to Build Wall on Kaliningrad Border, 2 November 2022, available at: https://bit.ly/40saziH.
119. Information provided by representatives of the Ministry of the Interior, Warsaw, 10 November 2022.
120. Available at: http://bit.ly/40nAoQb.
121. Information provided by Frontex, Fundamental Rights Office, Warsaw, 8 November 2022.
122. See: UNHCR, Ukraine Refugee Situation Operational Update – Poland, 15 June 2022, available at: http://bit.ly/3XbVq2n; Council of Europe, Report of the fact-finding mission to Poland by Ms Leyla Kayacik Special Representative of the Secretary General on Migration and Refugees 30 May – 3 June 2022, available at: https://bit.ly/3w3eiWd; OHCHR, End of visit statement of the Special Rapporteur on the human rights of migrants, Felipe González Morales, on his visit to Poland and Belarus (12 – 25 July 2022), 28 July 2022, https://bit.ly/3ZSvAmp, pp.2-4.
123. UNHCR, Ukraine Refugee Situation, Latest updated data 31 January 2023, available at: https://bit.ly/3YbUFHI.
124. Politico, Poland's two very different borders, 14 April 2022, available at: https://bit.ly/3JhYpTl.
125. Information provided by the Ocalenie Foundation, Warsaw, 7 November 2022; Association for Legal Intervention (SIP), online interview, 23 November 2022.
126. Information provided by the Polish Commissioner for Human Rights, Warsaw, 10 November 2022.

longer-term solutions.[127]

Monitoring of the situation at the border is carried out by NGOs[128] along with comparative assessments of the situation for people temporarily moving to and from Ukraine while covered by the Temporary Protection Directive in Poland and in other EU member states.[129]

127. Information provided by UNHCR Poland, Warsaw, 7 November 2022.

128. SIP, Niepokojące odmowy wjazdu na granicy ukraińskiej, 25 November 2022, available at: http://bit.ly/3xvmj6R; see also: Protecting rights at borders, Beaten, punished and pushed back, January 2023, available at: https://bit.ly/3kYwJc9.

129. ECRE, Movement to and from Ukraine under the Temporary Protection Directive, January 2023, available at: https://bit.ly/3w7enbp; SIP, Polskie prawo o ochronie czasowej jest niezgodne z prawem UE. Piszemy do Komisji Europejskiej, 15 December 2022, available at: http://bit.ly/3lutGlg.

# CHAPTER II: RECEPTION CONDITIONS AND DETENTION OF ASYLUM SEEKERS

This chapter focuses on specific elements of the reception and detention systems in Poland identified during discussions with the authorities, UNHCR and civil society organisations, as well as the visits to the Dębak and Białystok Reception Centres on 8 and 9 November 2022.

## 4. Reception system

The Office for Foreigners, supervised by the Ministry of the Interior and Administration, is the main body responsible for the reception of asylum seekers in Poland. However, it can delegate responsibility for management of centres to private stakeholders. Asylum seekers in the country are entitled to material reception conditions during all asylum procedures. These are granted only from the moment an asylum seeker registers at a reception centre. At the end of 2022, nine reception centres were operating in Poland, providing 1,714 places for asylum seekers.[130]

### 4.1. Access to reception

Asylum applicants in Poland who want to access reception conditions have to present themselves at first reception centres. Normally, the Dębak centre would operate as both a reception and first reception centre where applicants can register after making an application with border guards. However, since 25 August 2022 it has been under partial reconstruction. The centre in Biała Podlaska was therefore the only one operating as a first reception centre at the end of 2022. A poster at the entrance to the Dębak centre's premises indicated that applicants should make their own way to Biała Podlaska to access reception conditions. The Helsinki Foundation for Human Rights has highlighted the fact that having only one first reception centre constitutes a problem for many asylum seekers as they are asked to travel to it through their own means. Additionally, asylum seekers must register at the centre within two days – unless they can indicate that they have alternative accommodation – in order to have access to reception conditions and to prevent their application being

130.. OFF, Informator Departamentu Pomocy Socjalnej, available at: http://bit.ly/3IlxtXi.

discontinued (although the decision can be appealed).[131] The renovations to the Dębak centre have now been completed and, as of February, it had resumed operations as a first reception centre.

### 4.2. Reception conditions

Polish NGOs highlight the fact that some broader issues exist with regards to the reception of asylum seekers in Poland. These are mainly connected to the remoteness of the reception centres - which in turn causes difficulties for people wishing to integrate into local communities – and a lack of medical and psychological support staff.[132]

The Dębak centre, for example, is located in the woods approximately 3 km from the nearest bus stop. However, staff at the centre indicated that a taxi ride from the centre to the bus stop 3 km away costs approximately 10 Polish Zloty which can be shared among asylum seekers hosted at the centre. They also said that the centre provides two daily buses to Otrebusy, the nearest suburban railway station. Thanks to an agreement with the suburban railway operator, the residents of the centre can then use the trains free of charge.[133]

The lack of comprehensive and effective programmes aimed at social inclusion for asylum seekers and beneficiaries of protection is another issue connected to the reception system. Asylum seekers usually spend between six and seven months at reception centres. After receiving international protection, beneficiaries are granted two additional months' stay at reception centres before they have to find their own accommodation. Asylum seekers report experiencing a number of difficulties integrating with local communities and finding employment opportunities. They do not have the right to work during the first six months after they arrive and many spend long periods in detention before accessing the reception system. This delays their path to inclusion.[134]

During the visits to the Dębak and Białystok reception centres, local staff said that both centres offer language classes and work with civil society organisations providing specific activities such as legal assistance, integration support, training courses specifically directed at women, and language lessons. As a result of evacuation operations, Afghan evacuees were hosted at various reception centres in the country. In Bialystok, four Afghan cultural mediators were employed between September 2021 and May 2022 to provide targeted assistance and interpretation services for the hosts once or twice a week.[135] However, according to various NGOs these programmes should be enhanced.

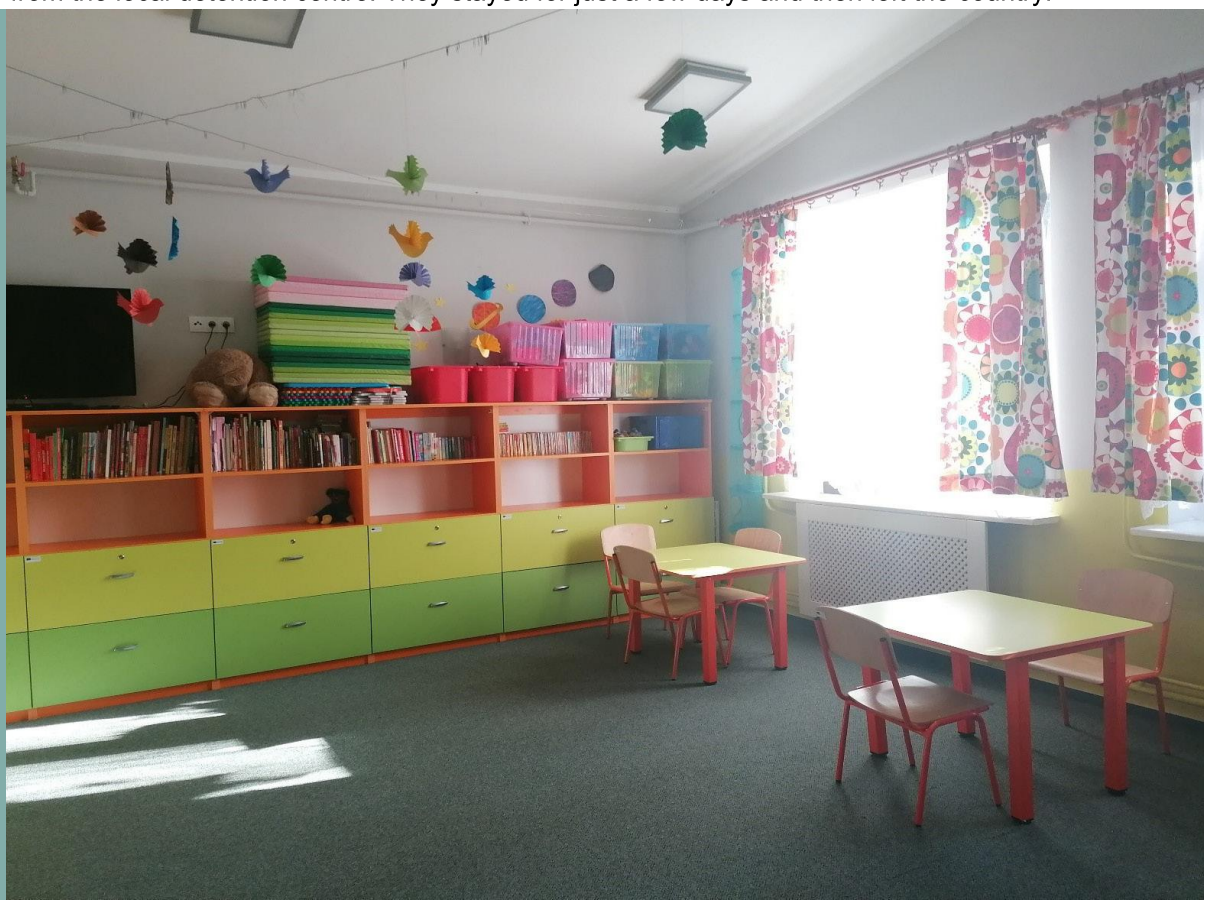
Financial support for asylum seekers housed at reception centres did not increase in 2022, despite inflation, although food allowances did increase (up to 11.70 zl per person per day can be corresponded).[136]

For people who choose to live in the community and receive a financial allowance, the amount given to asylum seekers living outside the reception centres is reportedly not sufficient to cover all their expenses for their stay in Poland, particularly rent.[137]

Health care services are provided by the Petra Medica company throughout asylum proceedings. Asylum seekers can see a doctor or a psychologist at all the reception centres. However, according to local NGOs[138] the psychological treatment available to asylum seekers is generally insufficient.[139] Staff at the Dębak and Białystok centres said that medical staff operate at the centres on a daily basis and state regulations set out the number of medical staff required based on the number of people housed at the centres.[140]

131. Information provided by the Helsinki Foundation for Human Rights, Warsaw, 7 November 2022.
132. Information provided by the Helsinki Foundation for Human Rights, the Ocalenie Foundation and the Association for Legal Intervention (SIP), Warsaw, 7 November 2022.
133. Information provided by staff from Dębak Reception Centre, 8 November 2022.
134. Information provided by the Helsinki Foundation for Human Rights, the Ocalenie Foundation and the Association for Legal Intervention (SIP), Warsaw, 7 November 2022.
135. Information provided by staff from the Dębak and Białystok Reception Centres, 8-9 November 2022.
136. Information provided by the Office for Foreigners during the visit to the Białystok Reception Centre, 9 November 2022.
137. See: AIDA Country Report Poland, May 2022.
138. Information provided by the Helsinki Foundation for Human Rights, the Ocalenie Foundation and the Association for Legal Intervention (SIP), Warsaw, 7 November 2022.
139. See: AIDA Country Report Poland, May 2022.
140. Information provided by the Office for Foreigners during the visit to the Dębak and Białystok Reception Centres, 8-9 November 2022.

Overcrowding does not appear to be an issue. The Dębak centre, which has a capacity of 250, was only housing 36 applicants in November 2022 (this was also due to the fact that it was undergoing renovation). The centre in Białystok has a maximum capacity of 198 but was housing 132 people, mostly Chechens. Both centres operated close to maximum capacity for a short period after the arrival of Afghan evacuees as a consequence of the Taliban takeover of Afghanistan in August 2021. In total, 1,100 evacuees reached Poland, a relatively high number for the Polish reception system which has a total of 1,714 reception places.[141] Dębak was the focus of the news in Autumn 2021 when two Afghan children died after eating poisonous mushrooms collected in the woods surrounding the centre. Criminal proceedings were opened but were discontinued and the deaths were recorded as unfortunate accidents. It was concluded that the Afghan family had access to food at the Dębak centre.[142] After the incident, warning signs in various languages were displayed in all reception centres.[143] However, only a very limited number of the Afghan families housed at the Białystok reception centre remained in Poland after receiving international protection because most of them had already expressed the desire to move to Germany or the United Kingdom, generally to be reunited with other family members. Similarly, in 2021 the centre housed approximately four families from Iraq who were moved there directly from the local detention centre. They stayed for just a few days and then left the country.[144]



During the 2021 Belarus border crisis, the Border Guards were given two reception centres to be used as detention centres temporarily. One was in Biala Podlaska and the other was in Czerwony Bór. Both of them subsequently went back to acting as reception centres.[145]

Overall, although some specific aspects could be improved – particularly regarding the provision of more efficient inclusion programmes and better access to medical and psychological services –, reception conditions in Poland appear to have improved in recent years[146] and do not represent a major cause for concern in the country. The centres do not operate at full capacity and many asylum seekers choose to live in the community instead of the centres while receiving financial support.[147] The Polish Supreme Administrative Court has not

141. Information provided by the Office for Foreigners during the visit to the Dębak Reception Centre, 8 November 2022.
142. I. Kacprzak, G. Zawadka, 'Tragiczne grzybobranie Afgańczyków – koniec śledztwa', 3 January 2022, available in Polish at: https://bit.ly/35UyG20.
143. See: AIDA Country Report Poland, May 2022.
144. Information provided by the Office for Foreigners during the visit to the Białystok Reception Centre, 9 November 2022.
145. Information provided by the Office for Foreigners during the visit to the Białystok Reception Centre, 9 November 2022.
146. See AIDA Country Report on Poland, May 2022.
147. Information provided by the Helsinki Foundation for Human Rights (HFHR), Warsaw, 7 November 2022.

recently received cases on reception conditions.[148] The national Commissioner for Human Rights has not reported on any major issues affecting the country's reception system, apart from the centre's limited preparation for housing people with disabilities[149] and the fact that asylum applicants face problems getting to reception centres after being released from detention.[150] More broadly, however, Polish NGOs report that asylum seekers face problems when trying to find private accommodation as rents have increased markedly over the last few years and the financial allowances they receive are inadequate to pay for life's necessities.

### 4.3. Reception for beneficiaries of temporary protection

Although the report does not specifically focus on temporary protection, many of the actors met by ECRE's delegation mentioned some relevant aspects of reception for TP beneficiaries that are worth highlighting.

After the outbreak of the war in Ukraine in February 2022, the local authorities and volunteers rapidly set up reception centres close to the borders. According to the FRA, although the provision of food was adequate, there was a lack of medical staff and psychological support at those reception centres.[151]

UNHCR indicated that it has a dedicated operation focusing on monitoring the reception arrangements for refugees from Ukraine. It highlighted the fact that in some cases it has proven challenging to monitor protection risks, mostly because of the significant reliance on private hosting arrangements, particularly during the initial phases of the crisis.[152] Currently, UNHCR is strengthening its outreach and active identification of persons with specific needs through a network of over 48 protection monitors across Poland's main cities. As of 1 January 2023, UNHCR and its partner (REACH) have conducted 52,388 protection monitoring and profiling interviews in 13 Voivodeships.[153] Similarly, the Polish Commissioner for Human Rights indicated that it has started to monitor the situation closely, with a specific focus on Warsaw where most displaced people are now housed.[154]

Other sources reported that some vulnerable categories are not able to access specific reception measures[155] and some cases of discrimination have been reported, especially against people who are part of the Roma minority.[156]

According to recent amendments to the Special Act,[157] the social assistance covered by the law and available to Ukrainian citizens (including accommodation and all-day meals) will be granted for no more than 120 days from the date of entry to Poland and will be further reduced in the coming months, although the changes will not apply to some particular vulnerable categories.[158]

## 5. Detention

Although the main focus of the visit was access to asylum and reception, various stakeholders met by ECRE's delegation highlighted the fact that detention practices involving individuals in need of protection are a cause of concern in the Polish asylum system. The information presented in Chapter 5 is based solely on NGO sources and open source information.

Poland's domestic law allows for the detention of migrants and asylum seekers at guarded centres for foreigners. These are closed immigration detention facilities run by the Polish Border Guard.

In the case of asylum seekers, detention can be used to establish or verify their identity; to gather (with the

148. Information provided by the Supreme Administrative Court of the Republic of Poland, Warsaw, 10 November 2022.
149. Information provided by the Polish Commissioner for Human Rights, Warsaw, 10 November 2022.
150. Polish Commissioner for Human Rights, RPO pyta o pomoc dla cudzoziemców zwalnianych z ośrodków strzeżonych. Straż Graniczna odpowiada, 7 February 2023, available at: http://bit.ly/3S6jVNo.
151. Fundamental Rights Agency, The War in Ukraine — Fundamental Rights Implications within the EU, March – April 2022, available at: https://bit.ly/3RIswpq.
152. Information provided by UNHCR Poland, Warsaw, 7 November 2022; see also UNHCR, Lives on Hold: Profiles and Intentions of Refugees from Ukraine #1, 12 July 2022, available at: http://bit.ly/3JYfphW; UNHCR, Ukraine Refugee situation, available at: http://bit.ly/3HUbEY6.
153. UNHCR, Poland Protection Monitoring Brief #1, available at: http://bit.ly/3LgJSID.
154. Information provided by the Polish Commissioner for Human Rights, Warsaw, 10 November 2022.
155. ICMPD, Temporary protection in Poland: What solutions for vulnerable groups, 6 September 2022, available at: http://bit.ly/3Ib2VSR.
156. Information provided by the Polish Commissioner for Human Rights, Warsaw, 10 November 2022.
157. The Act of 12 March 2022 on assistance to Ukrainian citizens in connection with armed conflict on the territory of that state, available at: https://bit.ly/3leeb7Q.
158. See ECRE, Information Sheet – Measures in response to the arrival of displaced people fleeing the war in Ukraine, January 2023, available at: https://bit.ly/3IfGMCN.

asylum seeker's cooperation) information connected to the asylum application which cannot be obtained without detaining the applicant and where there is a significant risk the applicant might abscond; in order to make or execute a return decision if an asylum seeker had a possibility of claiming asylum previously and there is a justified assumption that they claimed asylum to delay or prevent the return; when it is necessary for security reasons; and when there is significant risk of an asylum seeker absconding and immediate transfer to another EU country is not possible, in accordance with Article 28 of the Dublin III Regulation.[159]

The "risk of asylum seekers absconding" exists particularly if they, inter alia, crossed or attempted to cross the border illegally.[160] As such, detention in Poland has been widely used both in cases of migrants apprehended after irregularly crossing the green border or after incoming transfers under the Dublin Regulation. People who are considered high risk because of their health or if there is a presumption that the application will be accepted should instead be accommodated in open centres.

Despite the possibility provided for in Polish law to use alternatives to detention, the Polish courts appeared routinely to direct individuals intercepted at the Polish-Belarusian border to closed facilities, on the basis of an "application" from the Polish Border Guard to place an individual in a guarded facility.[161]

## 5.1. Detention conditions

*Information derived solely from NGO sources and open source information.*

The situation in detention centres dramatically worsened in 2021 due to the crisis at the Polish- Belarusian border. According to the Polish Commissioner for Human Rights, although the number of detention centres increased overcrowding became a common issue, even at centres dedicated to housing families and unaccompanied minors. The number of social assistants was insufficient and the provision of information and legal assistance services were lacking.[162] Overcrowding also occurred because on 13 of August 2021 a new amendment was made to the Ordinance of the Ministry of the Interior and Administration of 24 April 2015 on guarded centres and detention centres for foreigners. This temporarily allowed for the minimum space per person in detention centres to be reduced from 4 to 2 $m^2$ per person for a maximum of 12 months.

159. Articles 87(1) and 88a(1) of the Law on Protection.
160. Articles 87(2) and 88a(1) of the Law on Protection.
161. OHCHR, End of visit statement of the Special Rapporteur on the human rights of migrants, Felipe González Morales, on his visit to Poland and Belarus (12 – 25 July 2022), 28 July 2022, https://bit.ly/3ZSvAmp, pp8-9.
162. Polish Commissioner for Human Rights, Situation of foreigners in guarded centres during the Poland-Belarus border crisis, August 2022, available at: https://bit.ly/3Xjk54U.

The Belarus border crisis caused a significant spike in the use of immigration detention in the country: in the first half of 2021, 482 people were admitted to detention centers; in the second half of 2021, that number increased to 3,570.[163] As reported by Amnesty International, people crossing the border irregularly were systematically detained in substandard conditions without privacy, adequate sanitary facilities, access to doctors or psychologists, or legal assistance.[164] In addition, people present at the border during the crisis in 2021 spent a number of months in detention.[165] Some were detained for more than six months, the maximum time allowed from the start of the procedure – a procedure to which they only had access several months after the beginning of their detention period as they were unable to receive proper information about the asylum procedure once detained.[166]

According to recent information, it appears that some improvements have been recorded with regards to the number of immigration detainees. Their number started falling after the spring in 2022.[167] Following a visit conducted in the country in July 2022, the UN Special Rapporteur on the human rights of migrants observed that efforts had been made by Polish Border Guards to improve the conditions for asylum seekers housed in closed facilities. However, the Rapporteur highlighted the fact that some structural issues remained, particularly regarding the lack of access to independent legal counselling and insufficient mental health services.[168] Polish NGOs also report that access to psychological care in detention is particularly restricted as the specialised NGOs providing these services are not allowed to access the centres.[169] The Supreme Chamber of Control recently stated that from August 2021 until the end of the year the work of the Health Service did not ensure proper access to medical care for foreigners residing at the detention centre in Białystok which housed families with children for a period.[170]

### 5.2. Lack of access to services and procedural safeguards

The provision of material help from civil society organisations at detention centres is complicated by the fact that they can only access detention centres after being directly contacted by a detainee. After receiving such a request, they have to make an appointment with the Border Guard and access a visitor room to meet the detainee who contacted them. A similar procedure has to be followed by organisations providing assistance to migrants and which offer material support to detainees, as well as legal counselling. Access to the internet – albeit limited – is possible from detention centres so migrants are able to contact organisations via email and volunteers can then request to see them at detention centres.[171]

In addition, Polish law provides for access to free legal assistance for the review of detention before the courts[172] but this is rarely the case in practice.[173] Moreover, immigration detainees are either not informed about the date of court proceedings or they are only informed (in Polish) on the same day. As a result, they are unable to submit a request for a lawyer on time.[174]

According to the Polish Commissioner for Human Rights, lack of access to legal support might constitute an issue for individuals in detention. However, it is more concerning that access to legal aid is not guaranteed for individuals apprehended after irregularly crossing the border. This often results in people in need of protection only being able to present their asylum application after being detained and channelled into return procedures.[175]

Furthermore, issues in terms of accessing psychologists and specific medical services have been reported,

163. Polish Commissioner for Human Rights, KMPT diagnozuje sytuację cudzoziemców w strzeżonych ośrodkach i przedstawia zalecenia dla władz, 20 June 2022, available at: http://bit.ly/3FfFOET.
164. Amnesty International, Poland: Cruelty not Compassion, at Europe's Other Borders, April 2022, available at: http://bit.ly/3Rm3iwT, p4.
165. For a complete overview, see AIDA Country Report on Poland, May 2022.
166. Information provided by the Ocalenie Foundation, Warsaw, 7 November 2022.
167. Information provided by Nomada, online interview, 5 December 2022.
168. OHCHR, End of visit statement of the Special Rapporteur on the human rights of migrants, Felipe González Morales, on his visit to Poland and Belarus (12 – 25 July 2022), 28 July 2022, https://bit.ly/3ZSvAmp, pp8-9.
169. Information provided by the Helsinki Foundation for Human Rights, the Ocalenie Foundation and the Association for Legal Intervention (SIP), Warsaw, 7 November 2022.
170. Najwyższa Izba Kontroli, Przygotowanie organów państwa na wypadek masowego napływu cudzoziemców do Polski (Supreme Control Chamber, Preparation of state authorities in the event of a mass influx of foreigners to Poland), 22 November 2022, available in Polish at: http://bit.ly/3XRxdhV.
171. Information provided by Egala, Białystok , 9 November 2022.
172. Articles 78 and 87a of the Law of 6 June 1997 on the Code of Criminal Procedure.
173. Information provided by the Helsinki Foundation for Human Rights (HFHR), Warsaw, 7 November 2022.
174. SIP, Annual Report 2019, April 2020, available in Polish at: https://bit.ly/3sloolp.
175. Information provided by the Polish Commissioner for Human Rights, Warsaw, 10 November 2022.

especially for women.[176] Psychological support is only available from staff employed by the Border Guard. This results in detainees being reluctant to access the service due to a lack of trust.[177] In this respect, UNHCR[178] and other organisations[179] have been advocating for the possibility of introducing an external service to provide this kind of support.

### 5.3. Detention of vulnerable applicants

If there is an assumption that an individual was the victim of violence or has health issues, the law prescribes they should not be placed or held in detention.[180] The procedure to issue a detention order requires the Border Guard to write a motion to the competent Court which has 48 hours to accept it.

According to the Polish Commissioner for Human Rights, Courts generally trust the Border Guards' judgment on the matter and do not assess specific factors before approving a request. On the other hand, Border Guard staff allege that they do not having the necessary skills to judge whether someone was a victim of violence or torture. Nevertheless, they generally request that the individual should be detained.[181]

UNHCR also highlighted the fact that the lack of appropriate mechanisms for identifying victims of violence is a longstanding issue in the country.[182] The problematic detention conditions under which migrant women and children are held in Poland were also highlighted by the UN Special Rapporteur on Women and Girls in the statement released after the visit to the country between 27 February and 9 March 2023. The Rapporteur highlighted the fact that these vulnerable applicants "have inadequate access to health services, including sexual and reproductive health, psycho-social support, translation, and information services as well as education for children".[183]

Various stakeholders[184] highlighted the fact that the extensive use of child detention in the country should be considered a cause for particular concern. This situation involves both children who are placed in detention with their families and unaccompanied minors who are often placed in detention despite being recognised as unaccompanied because of a lack of places in foster homes. The persistence of the problem can be demonstrated by the fact that between 2018 and 2023 five different ECtHR judgements condemned Poland for detaining children for several months in prison-like conditions. Despite the aforementioned judgements, the practice does not appear to have stopped.[185] Recently, a new case from the detention centre in Biała Podlaska was communicated to the Polish Government.[186]

### 5.4. Detention and Dublin returnees

According to Polish law, asylum seekers can be placed in detention when, among other things, there is a high risk that they might abscond. From UNHCR observations, it would appear that this legal premise is used by the BG and judges to place people who had left Poland for other EU countries and were then returned on the basis of the Dublin procedure in detention.[187]

176. Information provided by UNHCR Poland, Warsaw, 7 November 2022; see also Polish Commissioner for Human Rights, Situation of foreigners in guarded centres during the Poland-Belarus border crisis, August 2022, available at: https://bit.ly/3Xjk54U.
177. Information provided by UNHCR Poland, Warsaw, 7 November 2022 and the Polish Commissioner for Human Rights, Warsaw, 10 November 2022.
178. UNHCR, Poland factsheet, available at: https://bit.ly/3RSEHQy.
179. See SIP, SIP files a complaint against the refusal to admit psychologists to guarded centres, 1 July 2022, available at: http://bit.ly/411Y0Ln.
180. Article 400, Act on Foreigners.
181. Information provided by the Polish Commissioner for Human Rights, Warsaw, 10 November 2022; the Helsinki Foundation for Human Rights; the Ocalenie Foundation; the Association for Legal Intervention (SIP), Warsaw, 7 November 2022; Nomada, online interview, 5 December 2022. See also AIDA Country Report on Poland, May 2022.
182. Information provided by UNHCR Poland, Warsaw, 7 November 2022.
183. United Nations Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem, Official visit to Poland 27 February – 9 March 2023, Preliminary Findings and Recommendations, 9 March 2023, available at: https://bit.ly/3Fk8UD1.
184. Information provided by the Helsinki Foundation for Human Rights; the Ocalenie Foundation; the Association for Legal Intervention (SIP), Warsaw, 7 November 2022; Polish Commissioner for Human Rights, Warsaw, 10 November 2022; Janina Ochojska, Founder and Director of the Polish Humanitarian Action, MEP, Brussels, in-person meeting, 8 February 2023. See also Polish Ombudsman, Situation of foreigners in guarded centres during the Poland-Belarus border crisis, August 2022, available at: https://bit.ly/3Xjk54U.
185. See: Bistieva and Others v. Poland, No. 75157/14, 10 April 2018; Bilalova and Others v. Poland, No. 23685/14, 26 March 2020; A.B. an Others v. Poland, Nos. 15845/15 and 56300/15, 4 June 2020; Nikoghosyan and Others v. Poland, No. 14743/17, 3 March 2022; R.M. and Others v. Poland, No. 11247/18, 9 February 2023.
186. ECtHR, V.M. and Others v. Poland, Application No. 40002/22, communicated on 10 January 2023, available at: http://bit.ly/3IwjJnn.
187. Information provided by UNHCR Poland, Warsaw, 7 November 2022.

The Polish Ministry of the Interior indicated that as of the beginning of November 2022 the country had accepted transfers from France and Germany involving 72 individuals in total – three transferred from FR and 69 from DE (47 from Iraq, 10 from Afghanistan, 10 from Syria, 5 from Somalia and 1 from Palestine). One of the reasons for this relatively limited number is that, as a consequence of the outbreak of war in Ukraine, Dublin transfers to the country were temporarily suspended until August. In addition, the number of requests actually received was higher as the figures provided above only refer to accepted requests.

According to the NGO Nomada, which provides assistance at various detention centres, in the second half of 2022 Dublin returnees were not detained upon arrival in most cases, in a change from previous practices. Instead, they were sent to the Border Guard offices on the German border. From that point, it is up to the Border Guard to request detention measures, but in practice many courts seem to have denied approval of these requests over the last few months. Instead, many people are left at the train station and are expected to make their own way to Biala Podlaska which is the only operational first reception centre in the country at the moment. Most of the time, Dublin returnees are not well informed about their situation and what they have to do next. Nomada reported that it had received information from the Border Guard regarding the expected arrival of approximately 300 Dublin returnees from Germany in the coming months.[188]

### 5.5. Detention for the purposes of return

One of the purposes of immigration detention provided for in Polish law is for making or executing a return decision. However, according to UNHCR in some instances immigration detention is also used for individuals for whom there is no serious prospect of return, such as Syrians and Afghans with regard to whom returns are suspended.[189] The organisation Nomada reported that people who cannot be returned to their country can spend up to one and a half years in detention. Most of the organisation's Afghan clients spent at least five months in detention before being subsequently released by the Office for Foreigners on the basis of their high chance of obtaining protection status.[190] However, according to the Polish Border Guard in such cases detention may be justified if the detainee is considered a threat to public security or, alternatively, detention may be necessary for identification purposes. Foreign nationals from countries to which return is suspended (such as Syria and Afghanistan) are also released if they are to be transferred to another member state under the Dublin procedure or under a readmission agreement. If a person's identity has been confirmed, they are released from detention. Persons in the afore-mentioned categories who have identity documents are not placed in guarded centres.[191]

In Poland, voluntary returns are facilitated by IOM while the Border Guard is responsible for issuing and enforcing return decisions. Forced returns are carried out in direct cooperation with Frontex which covers the cost of tickets, as well as the cost of monitors. The Polish authorities also cooperate with Frontex to develop reintegration programmes. National staff are also trained to explain reintegration programmes to people facing forced returns. Nonetheless, not many access this option. In the whole of 2022, only six people participated in the programme. By early November 2022, 176 Georgian citizens had been returned, as well as 114 Iraqis, 22 Moldovans, 21 Uzbeks and 16 Vietnamese nationals. Cooperation on returns is reportedly positive with some countries, notably Georgia, Moldova and Vietnam. In 2021, 10,349 return decisions were issued with a 62 per cent return rate. In 2020, the return rate was at 77 per cent.[192]

Analysis of the information provided above points to some serious issues affecting the country's immigration detention system: systematic detention of migrants without proper vulnerability checks, a lack of access to legal assistance prior to detention, long periods of detention, a lack of access to psychological health services and widespread use of child detention. Specific measures should be taken by the national authorities to ensure access to services and procedural safeguards for migrants and asylum seekers held in detention. In parallel, alternatives to detention should be prioritised, especially in the case of children.

188. Information provided by Nomada, online interview, 5 December 2022.
189. Information provided by UNHCR Poland, Warsaw, 7 November 2022.
190. Information provided by Nomada, online interview, 5 December 2022.
191. Information provided by the Polish Border Guard, Warsaw, 10 November 2022.
192. Information provided by the Polish Border Guard, Warsaw, 10 November 2022.

# CONCLUSIONS & RECOMMENDATIONS

The treatment of asylum seekers at the Polish border with Belarus raises critical questions in terms of the effectiveness of procedural safeguards for protecting those trying to enter the country from refoulement and those surrounding arbitrary detention, as well as access to a fair and high quality asylum procedure. These issues become particularly noticeable when compared to the different response given to displacement from Ukraine, especially initially after war broke out in that country.

Those fleeing persecution and conflict who manage to reach Poland through Belarus may find themselves subjected to a preliminary examination of their protection claim with reduced procedural safeguards. Frequently, they are then removed from Polish territory and must appeal against the decision from Belarus, a country which does not grant fair access to asylum procedures, despite being a signatory of the Geneva Convention. As illustrated throughout this report, the procedure established at the border for determining whether applicants can access Polish territory for protection purposes poses particular challenges in terms of procedural fairness and respect for the principle of non-refoulement.

Those who access the territory irregularly and are not removed often face long periods of detention before being able to access the asylum procedure, including nationals from countries to which returns are suspended. As proper procedures for identifying vulnerabilities appear to be lacking, detention is also frequently used for vulnerable applicants, including children, and access to legal counselling and mental health services while in detention is often limited. On the other hand, reception conditions appear to have improved in the country and only limited concerns were reported in that respect. However, it would appear that more funding still needs to be allocated, both to raise the amount of individual allowances for asylum seekers and to increase the number of staff employed at the centres. Among other things, this would ensure that asylum applicants are properly supported in their journey to inclusion within local communities.

Based on the findings in this report, ECRE makes the following recommendations:

*Access to the territory and the asylum procedure*

> ECRE urges the Polish authorities to investigate thoroughly any allegations of push-back practices at Poland's external borders and to allow international organisations and expert human rights organisations to conduct systematic border monitoring activities.
>
> ECRE recommends that the Ministry of the Interior and Border Guard proactively inform third-country nationals apprehended at the border of the possibility of applying for international protection before any steps are taken with a view to readmitting them to Belarus, in line with their obligations under Article 8 of the recast Asylum Procedures Directive. Adequate interpretation services and access to free legal advice and counselling must be made available at the police stations where third-country nationals are held pending the procedure. Regardless of an explicit expression of the intention to apply for international protection, an individual assessment of a person's risk of being subjected to refoulement must precede any readmission request.
>
> Access to legal remedy must be ensured for all individuals in need of protection. Accordingly, ECRE recommends that the Polish authorities ensure that those removed from Polish territory receive accurate written and oral information about their rights and the procedures applicable to them.
>
> ECRE urges the Polish authorities to repeal the Regulation on the temporary suspension or restriction of border traffic at certain border crossing points; were it to be maintained as part of national legislation, it should not be used as a basis for removals from Polish territory.

*Reception conditions*

> ECRE urges the Polish authorities to refrain from detaining asylum seekers and vulnerable persons, and to prioritise administrative and financial resources to raise the financial allowance provided to asylum seekers entitled to reception conditions and to provide more support to the Office for Foreigners by increasing its staff numbers.
>
> More broadly, ECRE recommends that additional support is offered to asylum seekers in terms of finding private accommodation and their inclusion process within local communities.

*Detention conditions*

Detention of asylum seekers arriving at the border must remain a measure of last resort and not a first response. Once in detention, all migrants should be granted swift access to independent legal counselling and to information about their right to apply for asylum.

ECRE maintains that vulnerable groups, including unaccompanied children and families with children, should never be detained. Where they are detained, unaccompanied children should promptly receive the assistance of a qualified ad hoc administrator.

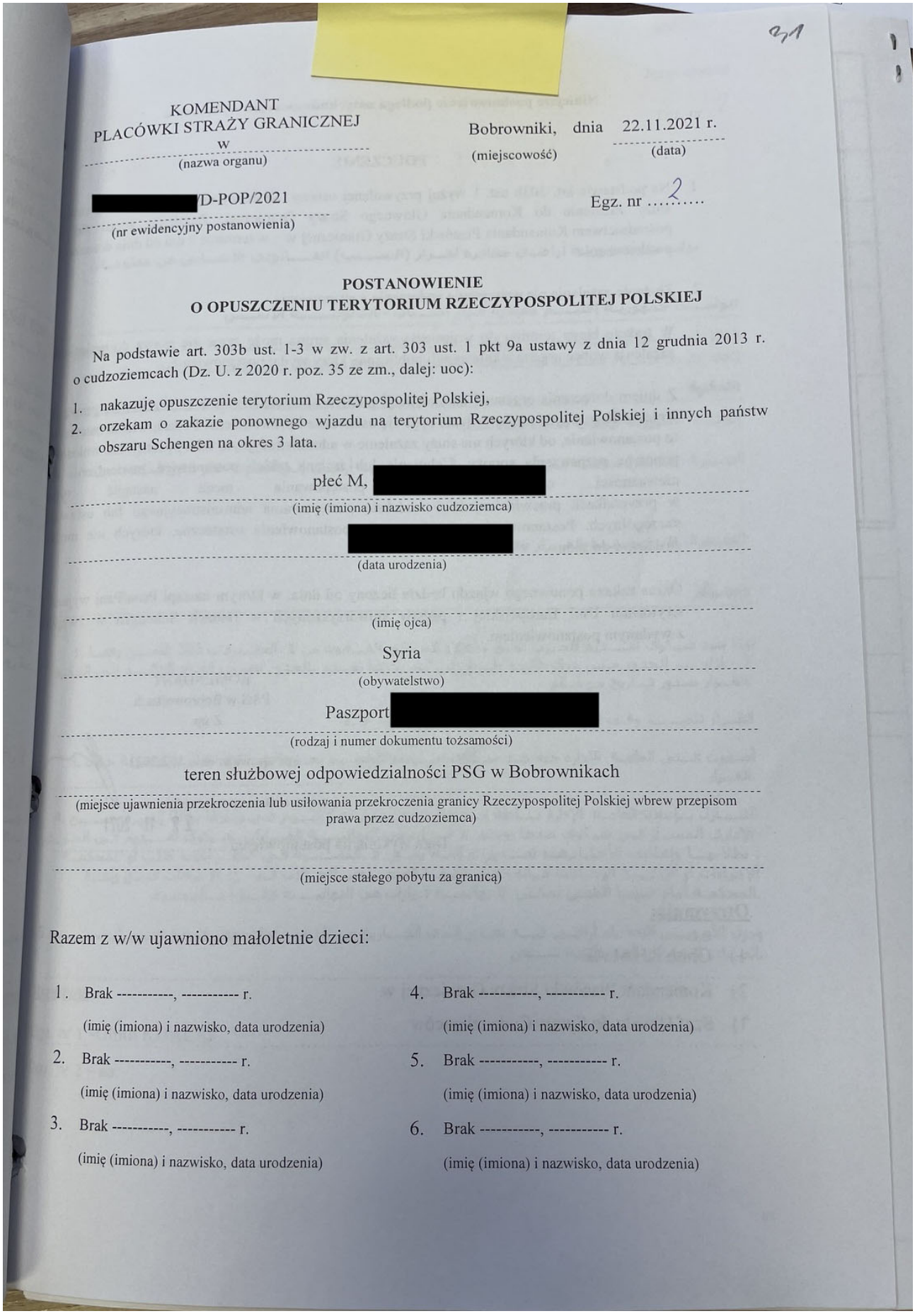
ECRE calls on the Polish courts to assess in all instances the possibility provided for in Polish law of applying alternatives to detention, especially in the case of vulnerable individuals. ECRE also calls on the Polish authorities to strengthen the process for identifying vulnerabilities prior to application of detention measures.

Given the devastating impact of detention on the mental and physical health of migrants and asylum seekers, ECRE recommends that suitable access to medical and mental health services are provided in detention. Staff employed at detention centres should receive proper training to identify and be aware of specific vulnerabilities. Specialised organisations should also be able to provide detainees with psychosocial support.

# ANNEX I – LIST OF INTERLOCUTORS

| Organisation | Date | Location |
|---|---|---|
| National authorities | | |
| Office for Foreigners | 8 Nov 2022 | Dębak Reception Centre |
| | 9 Nov 2022 | Białystok Reception Centre |
| | 10 Nov 2022 | Warsaw |
| Polish Border Guard | 9 Nov 2022 | Białystok |
| | 10 Nov 2022 | Warsaw |
| Ministry of Interior | 10 Nov 2022 | Warsaw |
| Other stakeholders | | |
| United Nations High Commissioner for Refugees (UNHCR) Poland | 7 Nov 2022 | Warsaw |
| Frontex, Fundamental Rights Office | 8 Nov 2022 | Warsaw |
| Supreme Administrative Court | 10 Nov 2022 | Warsaw |
| Polish Commissioner for Human Rights | 10 Nov 2022 | Warsaw |
| Janina Ochojska, Member of the European Parliament | 8 Feb 2023 | Brussels |
| Civil society organisations and practitioners | | |
| Club of Catholic Intelligentsia (KIK) | 7 Nov 2022 | Warsaw |
| | 8 Nov 2022 | |
| Helsinki Foundation for Human Rights (HFHR) | 7 Nov 2022 | Warsaw |
| Legal Intervention Association (SIP) | 7 Nov 2022 | Warsaw |
| | 23 Nov 2022 | Online |
| Ocalenie Foundation | 7 Nov 2022 | Warsaw |
| Egala | 9 Nov 2022 | Białystok |
| Nomada | 5 Dec 2022 | Online |

# ANNEX II – DECISION OF REMOVAL FROM THE TERRITORY



KOMENDANT
PLACÓWKI STRAŻY GRANICZNEJ
w
(nazwa organu)

Bobrowniki, dnia 22.11.2021 r.
(miejscowość) (data)

[redacted]/D-POP/2021
(nr ewidencyjny postanowienia)

Egz. nr 2

**POSTANOWIENIE**
**O OPUSZCZENIU TERYTORIUM RZECZYPOSPOLITEJ POLSKIEJ**

Na podstawie art. 303b ust. 1-3 w zw. z art. 303 ust. 1 pkt 9a ustawy z dnia 12 grudnia 2013 r. o cudzoziemcach (Dz. U. z 2020 r. poz. 35 ze zm., dalej: uoc):

1. nakazuję opuszczenie terytorium Rzeczypospolitej Polskiej,
2. orzekam o zakazie ponownego wjazdu na terytorium Rzeczypospolitej Polskiej i innych państw obszaru Schengen na okres 3 lata.

płeć M, [redacted]
(imię (imiona) i nazwisko cudzoziemca)

[redacted]
(data urodzenia)

(imię ojca)

Syria
(obywatelstwo)

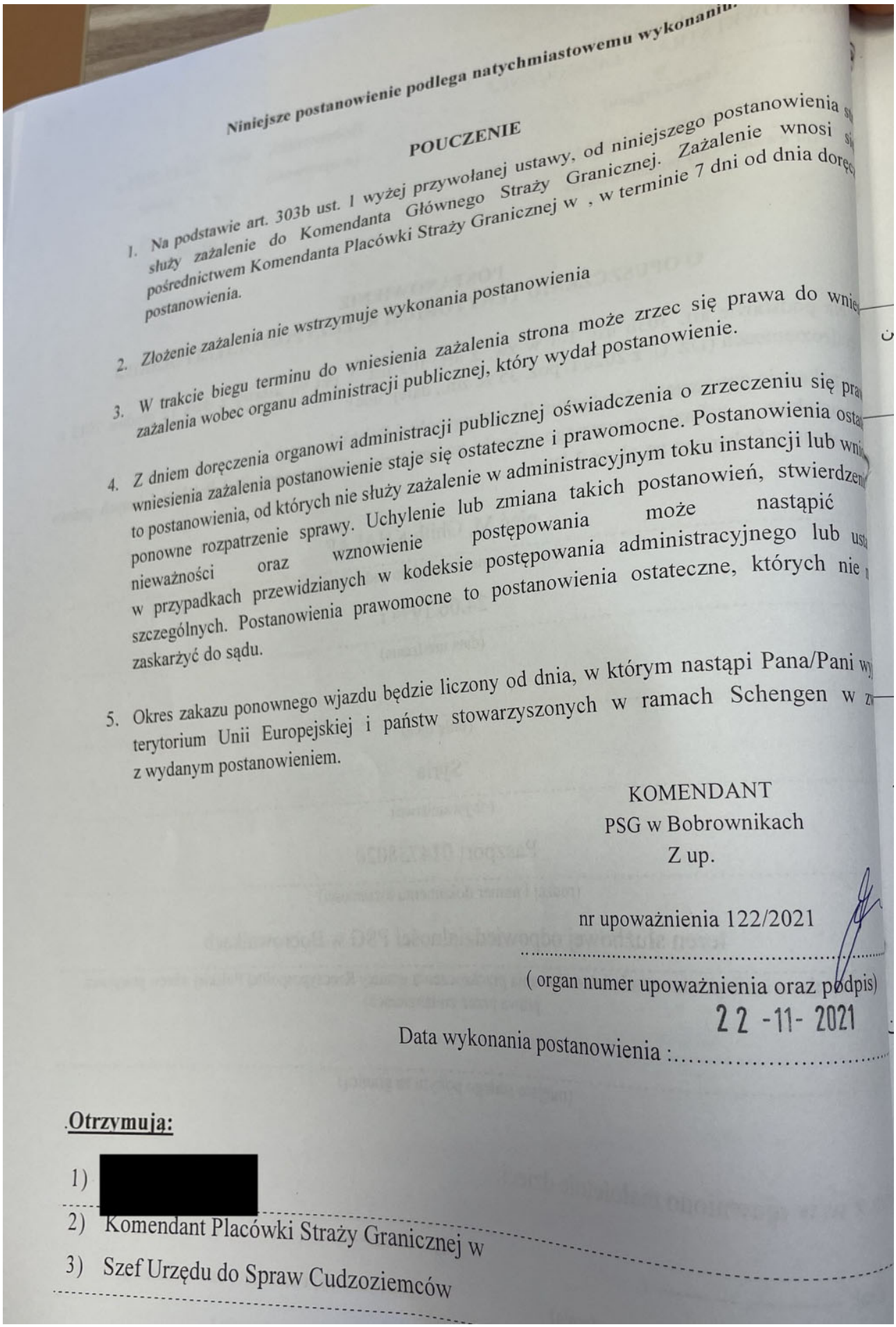
Paszport [redacted]
(rodzaj i numer dokumentu tożsamości)

teren służbowej odpowiedzialności PSG w Bobrownikach
(miejsce ujawnienia przekroczenia lub usiłowania przekroczenia granicy Rzeczypospolitej Polskiej wbrew przepisom prawa przez cudzoziemca)

(miejsce stałego pobytu za granicą)

Razem z w/w ujawniono małoletnie dzieci:

1. Brak ----------, ---------- r.
(imię (imiona) i nazwisko, data urodzenia)
2. Brak ----------, ---------- r.
(imię (imiona) i nazwisko, data urodzenia)
3. Brak ----------, ---------- r.
(imię (imiona) i nazwisko, data urodzenia)
4. Brak ----------, ---------- r.
(imię (imiona) i nazwisko, data urodzenia)
5. Brak ----------, ---------- r.
(imię (imiona) i nazwisko, data urodzenia)
6. Brak ----------, ---------- r.
(imię (imiona) i nazwisko, data urodzenia)



**Niniejsze postanowienie podlega natychmiastowemu wykonaniu.**

**POUCZENIE**

1. Na podstawie art. 303b ust. 1 wyżej przywołanej ustawy, od niniejszego postanowienia st służy zażalenie do Komendanta Głównego Straży Granicznej. Zażalenie wnosi si pośrednictwem Komendanta Placówki Straży Granicznej w , w terminie 7 dni od dnia doręcz postanowienia.
2. Złożenie zażalenia nie wstrzymuje wykonania postanowienia
3. W trakcie biegu terminu do wniesienia zażalenia strona może zrzec się prawa do wnie zażalenia wobec organu administracji publicznej, który wydał postanowienie.
4. Z dniem doręczenia organowi administracji publicznej oświadczenia o zrzeczeniu się pra wniesienia zażalenia postanowienie staje się ostateczne i prawomocne. Postanowienia osta to postanowienia, od których nie służy zażalenie w administracyjnym toku instancji lub wni ponowne rozpatrzenie sprawy. Uchylenie lub zmiana takich postanowień, stwierdzen nieważności oraz wznowienie postępowania może nastąpić w przypadkach przewidzianych w kodeksie postępowania administracyjnego lub ust szczególnych. Postanowienia prawomocne to postanowienia ostateczne, których nie zaskarżyć do sądu.
5. Okres zakazu ponownego wjazdu będzie liczony od dnia, w którym nastąpi Pana/Pani wy terytorium Unii Europejskiej i państw stowarzyszonych w ramach Schengen w z z wydanym postanowieniem.

KOMENDANT
PSG w Bobrownikach
Z up.

nr upoważnienia 122/2021

.....

( organ numer upoważnienia oraz podpis)

Data wykonania postanowienia : 22 -11- 2021

**Otrzymują:**

1) [redacted]
2) Komendant Placówki Straży Granicznej w
3) Szef Urzędu do Spraw Cudzoziemców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