

Country Report: Poland



2017
Update

Acknowledgements & Methodology

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

The information in this report is up-to-date as of 31 December 2017, unless otherwise stated.

The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 23 countries. This includes 20 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, SI, UK) and 3 non-EU countries (Serbia, Switzerland, Turkey) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



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Glossary & List of Abbreviations

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

Statistics

Overview of statistical practice

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

Applications and granting of protection status at first instance: 2017

	Applicants in 2017	Pending at end 2017	Refugee status	Subsidiary protection	Rejection	Refugee rate	Subs. Prot. rate	Rejection rate
Total	5,053	2,884	150	340	2,091	5.8%	13.2%	81%

Breakdown by countries of origin of the total numbers

Russia	3,536	2,164	14	72	1,260	1%	5.3%	93.7%
Ukraine	668	262	56	198	354	9.2%	32.6%	58.2%
Tajikistan	154	96	7	28	153	3.7%	14.9%	81.4%
Armenia	84	38	1	0	61	1.6%	0%	98.4%
Georgia	69	83	0	1	22	0%	4.3%	95.7%
Turkey	56	20	0	0	19	0%	0%	100%
Kyrgyzstan	50	22	1	1	24	3.8%	3.8%	92.4%
Syria	44	13	17	12	1	56.7%	40%	3.3%
Iraq	40	11	13	8	4	52%	32%	16%
Vietnam	30	10	0	0	20	0%	0%	100%

Source: Office for Foreigners

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

Gender/age breakdown of the total number of applicants: 2017

	Number	Percentage
Total number of applicants	5,053	-
Men	2,738	54.2%
Women	2,315	45.8%
Children	2,333	46.2%
Unaccompanied children	113	2.2%

Source: Office for Foreigners

Comparison between first instance and appeal decision rates: 2017

	First instance		Appeal	
	Number	Percentage	Number	Percentage
Total decisions (persons)	2,581	-	2,148	-
Positive decisions	490	19%	30	1.4%
• <i>Refugee status</i>	150	5.8%	1	0.05%
• <i>Subsidiary protection</i>	340	13.2%	29	1.35%
Negative decisions	2091	81%	2,118	98.6%

Source: Office for Foreigners

Overview of the legal framework

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

Title (EN)	Original Title (PL)	Abbreviation	Web Link
Law of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland (Journal of Laws 2012 pos. 680) <i>Amended by:</i> Law of 10 September 2015 amending the Law on Protection and other acts (Journal of Laws 2015 pos. 1607)	Ustawa z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej (Dz.U. 2012 poz. 680) Ustawa z dnia 10 września 2015 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw	Law on Protection	http://bit.ly/1eHn2b2 (PL) http://bit.ly/1SHTI1B (PL)
Law of 12 December 2013 on foreigners (Journal of Laws 2013 pos. 1650)	Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach (Dz.U. 2013 poz. 1650)	Law on Foreigners	http://bit.ly/1HebFUe (PL)
Law of 14 June 1960 Code of administrative procedure (Journal of Laws 2013 pos. 267)	Ustawa z dnia 14 czerwca 1960 r. Kodeks Postępowania Administracyjnego (Dz.U. 2013 poz. 267)	Code of Administrative Procedure	http://bit.ly/1TNeKhC (PL)

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

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

Overview of the main changes since the previous report update

The report was previously updated in **February 2017**.

Asylum procedure

- ❖ **Push backs:** Systematic push backs at the border-crossing point of Terespol have remained the main issue facing asylum seekers in 2017. Four cases have been referred to the European Court of Human Rights. In all cases the Court granted interim measures under Rule 39 of the Rules of the Court, indicating to the Government that the applicants should not be removed to Belarus. According to Warsaw Bar Council, HFHR and Association for Legal Intervention, Poland did not comply with the measures and returned the applicant to Belarus. The Ministry of Foreign Affairs stated that the person was not returned since he had not been admitted in the first place. In its statement, the Ministry noted that the foreigner had not crossed the Polish border and was hence not expelled and had not filed an application for international protection during a border check. The Ombudsman has also intervened in the cases of non-compliance with the measures issued by the ECtHR.

Reception conditions

- ❖ **Education:** At the end of 2017 one of the NGOs providing pre-school care in reception centres stated that as a result of the lack of financing due to the suspension of AMIF it cannot continue to provide services in Linin and Dębak. The organisation has been providing this assistance everyday for 8 hours for two years, and also equipped the rooms for kindergarten in the two centres. The Office for Foreigners explained, however, that kindergarten in Linin and Dębak will not be closed and that pre-school care will be organised by the Office itself.

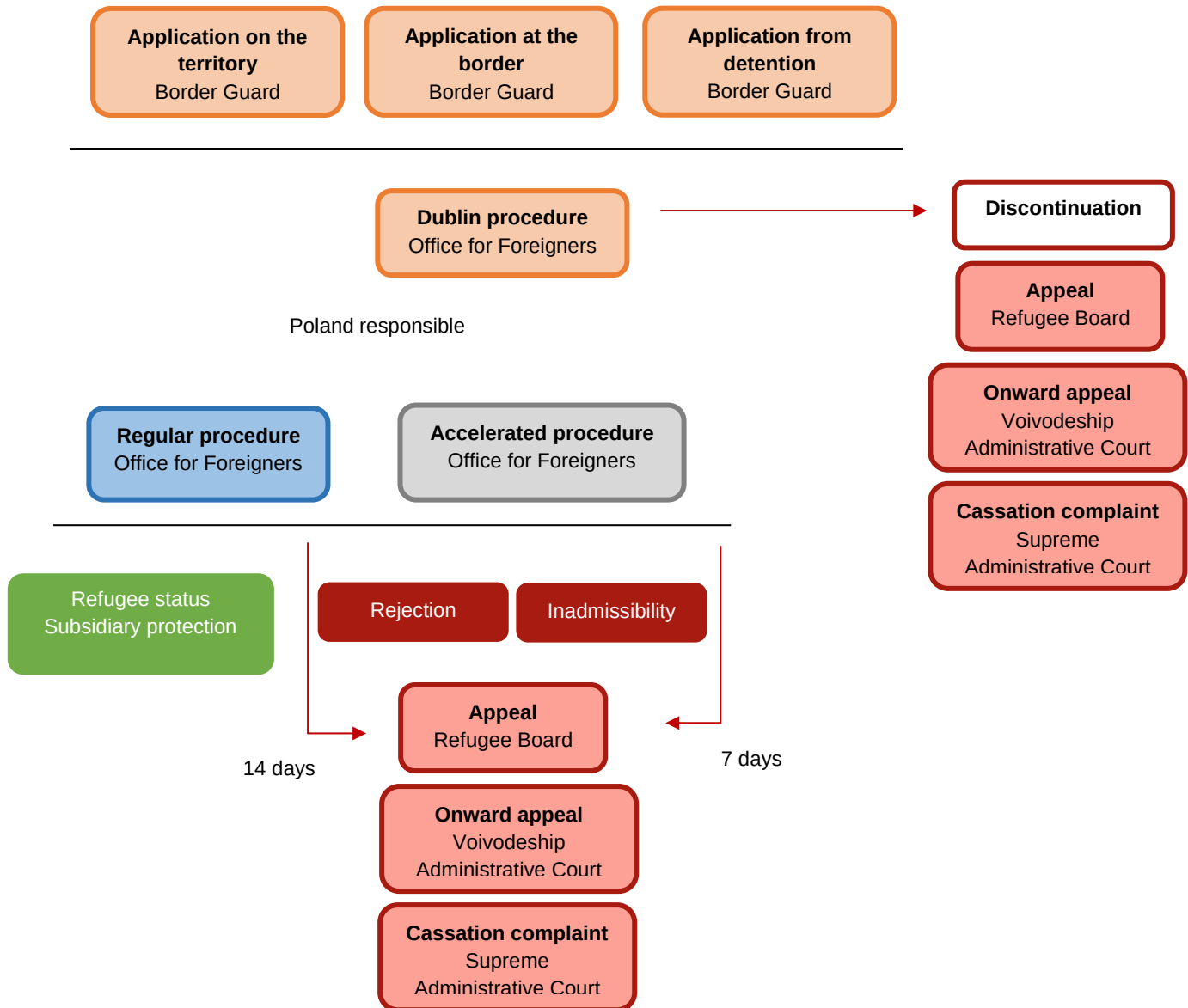
Detention of asylum seekers

- ❖ **Detention of Dublin returnees:** In September 2017, the Ombudsman published a report within the National Mechanism for the Prevention of Torture, in which cases of improper detention of Dublin returnees with PTSD were described. According to the report, the problems occurred due to numerous procedural shortcomings during the transfer of families to Poland by the German police as well as due to the lack of appropriate operational algorithms that should have been implemented in order to promptly identify victims of torture and violence as well as persons whose mental and physical condition rule out their placement in detention.
- ❖ **Detention conditions:** The Ombudsman has recently published reports of monitoring visits to the guarded centres of Przemyśl and Krosno Odrzańskie. The report on Przemyśl expresses concerns about the state of the facility and the standard practice of Border Guard officers equipped with electric rifles. As regards Krosno Odrzańskie, the Ombudsman has criticised searches in undignified conditions, restrictions on foreigners' access to the internet, as well as limitations on access to psychological assistance and ineffective identification of special needs. In the guarded centre for foreigners in Przemyśl, compulsory schooling is implemented as of January 2018.

Asylum Procedure

A. General

1. Flow chart



2. Types of procedures

Indicators: Types of Procedures

Which types of procedures exist in your country?

❖ Regular procedure:	☒ Yes	☐ No
▪ Prioritised examination: ²	☐ Yes	☒ No
▪ Fast-track processing: ³	☐ Yes	☒ No
❖ Dublin procedure:	☒ Yes	☐ No
❖ Admissibility procedure:	☒ Yes	☐ No
❖ Border procedure:	☐ Yes	☒ No
❖ Accelerated procedure: ⁴	☒ Yes	☐ No

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

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

Stage of the procedure	Competent authority (EN)	Competent authority (PL)
Application at the border	Border Guard	Straż Graniczna (SG)
Application on the territory	Border Guard	Straż Graniczna (SG)
Dublin (responsibility assessment)	Head of the Office for Foreigners	Szef Urzędu do Spraw Cudzoziemców
Refugee status determination	Head of the Office for Foreigners	Szef Urzędu do Spraw Cudzoziemców
First appeal	Refugee Board	Rada do Spraw Uchodźców
Onward appeal	❖ Voivodeship Administrative Court in Warsaw ❖ Supreme Administrative Court	❖ Wojewódzki Sąd Administracyjny w Warszawie ❖ Naczelny Sąd Administracyjny
Subsequent application (admissibility)	Head of the Office for Foreigners	Szef Urzędu do Spraw Cudzoziemców

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

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

5. Short overview of the asylum procedure

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

First instance: The main asylum authority is the Head of the Office for Foreigners, for which the Ministry of Interior is responsible. It is an administrative authority specialised in asylum and is responsible for examining, granting, refusing and withdrawing protection, in Poland, as well as for Dublin procedures. A Dublin procedure is applied whenever there is evidence or any sign that another State may be responsible

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

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

⁴ Labelled as "accelerated procedure" in national law. See Article 31(8) APD.

for examining the claim.⁵ However, Poland is principally a “receiving” country, rather than a country which requests and carries out transfers to other countries.

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

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

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

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

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

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

The Refugee Board may then:

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

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

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

⁵ The Dublin procedure should be applied in every case: Article 36(1) Law on Protection.

B. Access to the procedure and registration

1. Access to the territory and push backs

Indicators: Access to the Territory

1. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs? ☒ Yes ☐ No

The previous updates of this report referred to persisting cases of persons denied access to the territory at the border-crossing point in **Terespol** on the Belarusian border, which is the main entry point in Poland for asylum seekers, during 2012-2016, with a significant deterioration of the situation in 2016. In spite of repeated, clearly formulated requests, invoking the experience of persecution in the country of origin, asylum seekers are refused the right to lodge an application and enter Poland,⁶ as confirmed by monitoring activities from the Ombudsman and HFHR among others during that year.⁷ Push backs at the border-crossing point of Terespol were also confirmed by Human Rights Watch researchers who boarded the daily train from Brest to Terespol on 7 December 2016 and interviewed 29 asylum seekers who had unsuccessfully tried to enter Poland from Belarus, 25 of them from Chechnya. All those interviewed said that they tried to explain to Polish officials their intention to seek protection during the interviews at the Terespol border station. Two said they had tried over 40 times and one said he had tried 50 times, but were turned back every time.⁸

Available statistical data also seem to confirm the described trend of pushbacks. The number of refusal of entry decisions issued in January-September 2016 was 72,528, four times higher compared to the same period in 2015.⁹ In 2017 the total number of persons who were refused entry was 72,700 – out of which 31,636 concerned Terespol.¹⁰

On 17 March 2017, a group of 14 attorneys from the Warsaw Regional Bar Association provided assistance to persons seeking international protection in Poland at the Brest-Terespol border-crossing station. The event was a joint initiative of the Warsaw Regional Bar Association, HFHR and the Association for Legal Intervention, supported by other NGOs in Poland.¹¹ The attorneys were authorised by the applicants to represent them in the asylum procedure, yet the Border Guards' approach was that the interview at the border is not a part of the administrative proceedings, so the legal representatives were denied access to their clients. The applicants were returned to Belarus with decisions on refusal of entry which were appealed by their legal representatives.

In 2017, 34 complaints against the Border Guard were registered by the Voivodship Administrative Court, of which 12 complaints were dismissed or rejected, 11 are still pending, and in 11 cases the Court upheld the claim and overruled the Border Guard Headquarters decision in which it refused the applicant entry to Poland.¹² The judgments are not final as they are subject to cassation appeal before the Supreme

⁶ HFHR, Letter of 22 July 2016, available at: <http://bit.ly/2mrOzRp>.

⁷ See e.g. Ombudsman, Inspection of the railway border crossing in Terespol, 21 September 2016, available at: <http://bit.ly/2meul1l>; HFHR, *A road to nowhere: The account of a monitoring visit at the Brest-Terespol border crossing between Poland and Belarus*, October 2016, available at: <http://bit.ly/2l7nt2x>; Legal Intervention Association (Stowarzyszenie Interwencji Prawnej), *At the border. Report on monitoring of access to the procedure for granting international protection at border crossings in Terespol, Medyka, and Warszawa-Okęcie Airport*, 2016, available at: <http://bit.ly/2lPBvVE>.

⁸ Human Rights Watch, 'Poland: Asylum seekers blocked at the border', 1 March 2017, available at: <http://bit.ly/2lnUqGg>.

⁹ Hungarian Helsinki Committee et al., *Pushed back at the door: Denial of access to asylum in Eastern EU Member States*, January 2017, available at: <http://bit.ly/2sIFxaC>.

¹⁰ Information provided by the Border Guard, 11 January 2018.

¹¹ HFHR, 'At the border. Attorneys from Warsaw Bar, HFHR and ALI help asylum seekers in Terespol', 17 March 2017, available at: <http://bit.ly/2ECglyt>.

¹² Information provided by the Voivodeship Administrative Court judge Ewa Marcinkowska, cited in: TVN24, 'Straż Graniczna staje przed sądem. Za odmowy uchodźcom wjazdu do Polski', 5 February 2018, available at: <http://bit.ly/2oAnZrO>.

Administrative Court. The HFHR represented asylum seekers in five of the above-mentioned cases decided by the Voivodeship Administrative Court in 2017.¹³ The applicants were Tajik and Chechen nationals who had unsuccessfully tried to file an application for international protection at the border crossing points in Medyka and in Terespol. One of these cases was dismissed; in four other cases, the Court upheld the applicants' complaints. Importantly, in one of the judgments, the Court held that a memo written by a Border Guard officer indicating 'economic purposes' as the reason behind a foreigner's intent to enter Poland cannot be considered sufficient evidence on the basis of which the entry is denied and that a formal protocol needs to be prepared. Such protocol needs to be signed by the foreigner.¹⁴ Furthermore, in one of the judgments, the Court also stated that a refusal to allow a legal representative to participate in the administrative proceedings at the border crossing point next to a foreigner is a violation of the rules of administrative proceedings.¹⁵

Most importantly, several cases have been brought before the European Court of Human Rights (ECtHR). Currently, there are four cases pending before the ECtHR concerning the pushbacks at Terespol, which have been communicated to the Polish government.¹⁶ Three cases concern Chechen nationals and the fourth (*D.A. v. Poland*) Syrian nationals who travelled to the Terespol border crossing in order to seek asylum in Poland. In all cases the Court granted interim measures under Rule 39 of the Rules of the Court, indicating to the Government that the applicants should not be removed to Belarus. According to Warsaw Bar Council, HFHR and Association for Legal Intervention, Poland did not comply with the measures and returned the applicant to Belarus.¹⁷ The Ministry of Foreign Affairs stated that the person was not returned since he had not been admitted in the first place. In its statement, the Ministry noted that the foreigner had not crossed the Polish border and was hence not expelled and had not filed an application for international protection during a border check.¹⁸ The Ombudsman has also intervened in the cases of non-compliance with the measures issued by the ECtHR.¹⁹

On 25 August 2017, in response to an application submitted by a Belarusian NGO Human Constanta, the United Nations High Commissioner for Human Rights issued a decision ordering Poland to adopt interim measures with regard to a family from Chechnya staying at the Belarusian-Polish border crossing in Brest-Terespol. The family have been living in Brest for 8 months and have already attempted to lodge an application for international protection with the Polish Border Guard in Terespol more than 20 times. They were repeatedly refused this possibility. The decision of the High Commissioner obliges Poland to adopt interim measures, i.e. to admit the family to Poland for the time the Committee considers the complaint. Despite this decision, the Chechen family was not allowed to enter Poland.²⁰

During 2017, NGOs supporting asylum seekers in Poland and abroad kept providing information about well-documented cases of push backs at Polish border-crossing points.²¹ Amnesty International, HFHR and the Association for Legal Intervention have called on the European Commission to tackle this

¹³ Voivodeship Administrative Court of Warsaw, Decisions No. IV SA/Wa 3021/16, 2 June 2017; No IV SA/Wa 1847/17, 17 October 2017; No. IV SA/Wa 1846/17, 27 October 2017; No. IV SA/Wa 1845/17, 9 November 2017; No. IV SA/Wa 1829/17 of 21 November 2017.

¹⁴ HFHR, 'Administrative court again rules in favour of foreign refugee refused entry to Poland', 27 October 2017, available at: <http://bit.ly/2CwEv19>; 'WSA uwzględnił skargę na decyzję o odmowie wjazdu do Polski uchodźczyni z Czeczenii', 2 June 2017, available in Polish at: <http://bit.ly/2BTkc14>.

¹⁵ Voivodeship Administrative Court of Warsaw, Decision No. IV SA/Wa 1829/17, 21 November 2017.

¹⁶ ECtHR, *M.K. v. Poland*, Application No 40503/17; *M.A. v. Poland*, Application No 42902/17; *M.K. v. Poland*, Application No 43643/17; *D.A. v. Poland*, Application No 51246/17.

¹⁷ HFHR, 'Attorneys at border: Poland failed to implement ECtHR judgment', 9 June 2017, available at: <http://bit.ly/2ucnHmV>.

¹⁸ Ministry of Foreign Affairs, 'Wyjaśnienie MSZ w sprawie zarządzenia Europejskiego Trybunału Praw Człowieka z 8 czerwca 2017r.', available in Polish at: <http://bit.ly/2oke75z>.

¹⁹ Ombudsman, 'Rzecznik zwraca się do Straży Granicznej o respektowanie zobowiązań międzynarodowych Polski – środków tymczasowych wydanych przez Europejski Trybunał Praw Człowieka', 11 August 2017, available in Polish at: <http://bit.ly/2ECdHCm>.

²⁰ HFHR, 'Zarządzenie tymczasowe Wysokiego Komisarza ONZ ds. Praw Człowieka w sprawie rodziny uchodźców z Czeczenii', 5 September 2017, available in Polish at: <http://bit.ly/2xL6toF>.

²¹ Human Constanta, 'Invisible refugees on the border of Belarus and Poland', 2016-2017, available at: <http://bit.ly/2FhCado>.

problem.²² On 15 November 2017, the European Parliament adopted a resolution on the situation of the rule of law and democracy in Poland.²³ The Parliament called on the Polish Government to halt summary returns to Belarus so as to comply with the binding interim orders of the ECtHR of 8 June 2017, and to ensure that anyone who expresses an intention to seek asylum or international protection at Poland's borders enjoys full access to the Polish asylum procedure in line with international obligations and EU law.

2. Registration of the asylum application

Indicators: Registration

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

Asylum applications should be submitted to the Border Guard (SG) which will then transfer them to the Head of the Office for Foreigners. If the application is lodged at the border or in detention, the relevant authority receiving it is the SG unit responsible for the border check point or the detention facility. If the application is lodged in the territory, it should be submitted to any SG unit. There is also a possibility to declare a will to apply for asylum by post for i.e. elderly persons, persons with disabilities, pregnant women, persons in hospitals or imprisoned.²⁴

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

When applying for asylum, the asylum seeker has to surrender their travel document (e.g. passport) to the SG. Travel documents are kept by the Head of the Office for Foreigners. Asylum seekers are issued a temporary ID document entitling them to stay on the territory of Poland, the Foreigner's Identity Temporary Certificate (*Tymczasowe Zaświadczenie Tożsamości Cudzoziemca*). The document is initially valid for 90 days – 10 days in case of Dublin returnees – then for 6 months and can be prolonged every 6 months by the Head of the Office for Foreigners until the end of the asylum procedure.²⁵

When asylum seekers are already on the territory, they must express the intention to apply for asylum to the SG unit in **Warsaw**, located in the same building as the Office for Foreigners. The SG is entitled to inform an asylum seeker that it is impossible to apply for asylum on a day when said individual comes to the SG unit and instead to set a date and place when it will be possible.²⁶ In 2017 the Border Guard provided no information about the waiting time to submit an application in their unit in Warsaw.²⁷

²² HFHR, 'Poland: EU Should Tackle Unsafe Returns to Belarus', 5 July 2017, available at: <http://bit.ly/2Gwq67B>.

²³ European Parliament Resolution No 2017/2931 (RSP) on the situation of the rule of law and democracy in Poland, 15 November 2017, available at: <http://bit.ly/2CmLo9v>.

²⁴ Article 28(2) Law on Protection.

²⁵ Article 55(1) and (2) and Article 55a(2) Law on Protection.

²⁶ Article 28(1) Law on Protection.

²⁷ Information provided by the Border Guard, 11 January 2018.

C. Procedures

1. Regular procedure

1.1. General (scope, time limits)

Indicators: Regular Procedure: General

1. Time limit set in law for the determining authority to make a decision on the asylum application at first instance: 6 months
2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? ☒ Yes ☐ No
3. Backlog of pending cases at first instance as of 31 December 2017: 2,884

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

The time limit set in law for the Head of the Office for Foreigners to make a decision on the asylum application is 6 months.²⁸ This can be prolonged to 15 months if the case is complicated, if there are many asylum seekers applying at the same time or if the asylum seeker did not fulfil the obligation of presenting all the evidence and documents or attending the interview.²⁹ The Office for Foreigners confirms that this provision is applied in practice, but has not provided exact numbers for 2017.³⁰

In 2017 the average processing time for a decision on the merits was 176 days. The longest processing time took 1,491 days and the shortest 4 days.³¹

According to the law, if the decision is not issued within 6 months, the general provisions on inaction of the administrative authority apply,³² therefore the Head of the Office for Foreigners should inform the applicant in writing about the reasons of delay (which in practice is done in a very general way) and the applicant can submit a complaint to the second-instance authority. In practice, information is provided in a very general way and complaints to the second-instance authority hardly ever happen. The most significant consequence for the applicant of not issuing a decision on asylum application within 6 months is a possibility to apply for a work permit on this basis (see [Access to the Labour Market](#)).³³ The Head of the Office for Foreigners then issues a certificate, which – together with a temporary ID – gives a right to work in Poland until the end of the procedure.

According to lawyers working on cases at the HFHR, there is a backlog in both first and second-instance proceedings. As of 31 December 2017 there were 2,884 cases pending before the Office for Foreigners.

1.2. Prioritised examination and fast-track processing

The Office for Foreigners has confirmed that vulnerable applicants and detainees are prioritised but due to the complexity of these cases the processing time is long.³⁴ According to the Office for Foreigners no other

²⁸ Article 34(1) Law on Protection.

²⁹ Article 34 Law on Protection.

³⁰ Information provided by the Office for Foreigners, 1 February 2018.

³¹ Information provided by the Office for Foreigners, 1 February 2018.

³² Articles 36-38 Code of Administrative Proceedings.

³³ Article 35 Law on Protection.

³⁴ Information provided by the Office for Foreigners, 1 February 2018.

types of cases are prioritised. The average time to process Syrian cases is longer than the general average (195 days) and so is that of Ukrainian cases (307 days).

1.3. Personal interview

Indicators: Regular Procedure: Personal Interview

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

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

- ❖ A decision on granting refugee status can be issued on the basis of evidence already gathered; or
- ❖ An applicant is not fit to be interviewed (e.g. due to health or psychological problems).³⁵

According to the Office for Foreigners, interviews are conducted in the majority of cases in a regular procedure. The Office for Foreigners stated that in 2017 there were cases where the interview was not conducted because the applicant was not fit for interview, but it does not process statistical data concerning interviews.³⁶

Interpretation

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

The contract established between the Office for Foreigners and interpretation services regulates the quality, liability, and specifies the field (asylum). Interpretation is available in most of the languages spoken by the asylum applicants in Poland. In 2017 reported problems concerned very rare languages, like Igbo, Djula and Tigrinya. However, the Office for Foreigners noted that in these cases the applicants usually also know other more common languages and agree to be interviewed in that second language.³⁷

Recording and report

Audio or video recording is possible under national legislation if an applicant was informed about this fact and technical means allow for it. If videoconferencing is challenging taking into account the need to ensure interpretation, the Office agrees to hear the applicant directly.³⁸ The Office for Foreigners does not record such statistics, but HFHR lawyers confirm that videoconferencing is used in detention centres, even in cases of vulnerable applicants.

The law provides that a copy of the report of the interview should be handed in to the applicant after a personal interview. In some cases the applicants do not take or keep them, but they can ask for a copy at any stage of the proceedings. The report is prepared in Polish and contains all the questions asked and responses received, but it is not a verbatim transcript. The report is handwritten, which sometimes makes it unreadable; however, some officers at the Office for Foreigners do use computers. At the end of the

³⁵ Article 44(1) and (2) Law on Protection.

³⁶ Information provided by the Office for Foreigners, 1 February 2018.

³⁷ Information provided by the Office for Foreigners, 1 February 2018.

³⁸ Information provided by the Office for Foreigners, 1 February 2018.

interview the report is read to the applicant in an understandable language and before signing it, interviewees can make corrections (and are informed about such possibility). This practice remains valid to date.³⁹

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

1.4. Appeal

Indicators: Regular Procedure: Appeal

- | | | |
|---|---|--|
| 1. Does the law provide for an appeal against the first instance decision in the regular procedure? | ☒ Yes | ☐ No |
| ❖ If yes, is it | ☐ Judicial | ☒ Administrative |
| ❖ If yes, is it suspensive | ☒ Yes | ☐ No |
| 2. Average processing time for the appeal body to make a decision: | 3.5 months | |

1.4.1. Appeal before the Refugee Board

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

The Refugee Board is an administrative body, consisting of twelve members, supported in their work by six employees, not involved in the decision-making process.⁴⁰ In the regular procedure, decisions are taken by three members. The procedure includes an assessment of the facts and there is a possibility of hearing applicants. The time limit set in law for the appeal procedure is 1 month.⁴¹ The appeal has suspensive effect.⁴² Neither hearings nor decisions of the Refugee Board are made public.

In 2017, the average processing time for the Refugee Board to issue a decision in appeal proceedings was 104.5 days. The longest processing time took 350 days and the shortest 1 day. In 63 cases the Refugee Board decided to hear the applicant, and in one case a witness.⁴³

The Refugee Board may: annul the first instance decision; overturn it; or confirm the decision of the Head of the Office for Foreigners. In the majority of cases, the decisions of the Head of the Office for Foreigners were confirmed. This was the case for 595 out of 764 decisions in 2017.⁴⁴

After the negative decision or a decision on discontinuing the asylum procedure becomes final, the respective authority informs the Border Guard and the return proceedings can be launched.⁴⁵

1.4.2. Onward appeal before the Administrative Court

After the administrative appeal procedure before the Refugee Board, the latter's decision can be further appealed to the Voivodeship Administrative Court in Warsaw within 30 days, but only points of law can be

³⁹ Information provided by HFHR lawyers representing asylum seekers before the Office for Foreigners.

⁴⁰ Information provided by the Refugee Board, 27 August 2015.

⁴¹ Article 35(3) Code of Administrative Proceedings.

⁴² Article 130(1) and (2) Code of Administrative Proceedings.

⁴³ Information provided by the Refugee Board, 17 January 2018.

⁴⁴ Information provided by the Refugee Board, 17 January 2018.

⁴⁵ Article 48a Law on Foreigners.

litigated at this stage.⁴⁶ There is no fee for the procedure. This onward appeal does not have a suspensive effect on a final administrative decision. However, asylum seekers can ask the court to suspend a decision for the time of the court proceedings, if the decision can cause irreversible harm. The court procedure is adversarial; both the Refugee Board and the asylum seeker are parties before the court. The ruling of the Voivodeship Administrative Court in Warsaw can itself be appealed to the Supreme Administrative Court by lodging a cassation complaint, based exclusively on the legal conditions foreseen in the law, also accompanied by a request for suspension of the administrative decision.⁴⁷

The Law on Foreigners separates asylum proceedings and return proceedings, which means that a return decision is no longer issued within the asylum procedure. However, it can be issued after the administrative asylum procedure finishes and before the Voivodeship Administrative Court in Warsaw examines the appeal against the final administrative decision refusing protection to the applicant. This is considered problematic by many NGOs in Poland, which stress that the Refugee Board is an administrative body, not the court, so the asylum seeker should be granted access to an effective remedy before a court before return can be conducted.⁴⁸ The jurisprudence of the Voivodeship Administrative Court in Warsaw and Supreme Administrative Court on this issue is not consistent. There have been rulings in 2015, in which it was stated that launching the return proceedings should be suspended until the court decides on the asylum case.⁴⁹ However, the Court has also ruled the opposite,⁵⁰ and this line was definitely followed in 2016 and 2017.⁵¹

According to the statistics of the Refugee Board, in 2017 there were 324 complaints submitted to the Voivodeship Administrative Court against the decisions of the Refugee Board.⁵²

⁴⁶ Regulated in the Law of 30 August 2002 on the proceedings before administrative courts, Journal of Laws 2012 pos. 270 (*ustawa z dnia 30 sierpnia 2002 r. Prawo o postępowaniu przed sądami administracyjnymi*, Dz.U. 2012, poz. 270).

⁴⁷ *Ibid.*

⁴⁸ See e.g. HFHR letter of 29 August 2013 sent to the Regional Court The Hague in a Dublin case, describing the problem, available at: <http://bit.ly/1FPBj1v>.

⁴⁹ Supreme Administrative Court, Decision No II OZ 218/15, 1 April 2015, available at: <http://bit.ly/1jK7oxl>.

⁵⁰ The following rulings of the Supreme Administrative Court: No II OZ 1384/14, 9 January 2015; No II OZ 41/15, 28 January 2015; No II OZ 309/15, 21 April 2015; No II OZ 378/15, 7 May 2015; No II OZ 402/15, 8 May 2015, all cited in the ruling of the Voivodeship Administrative Court No IV SA/Wa 1227/15, 29 May 2015, available at: <http://bit.ly/1j98Mdb>.

⁵¹ See e.g. Supreme Administrative Court, No II OZ 1081/15, 19 January 2017, available in Polish at: <http://bit.ly/2f7Xshl>; Voivodeship Administrative Court, IV SA/Wa 2309/17, 10 January 2018, available in Polish at: <http://bit.ly/2Cywokq>.

⁵² Information provided by the Refugee Board, 17 January 2018.

1.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

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

A State legal aid system was introduced in 2015, whereas there is still no state-funded legal aid for citizens.⁵³ The legal aid system covers:

- Legal information, provided by the employees of the Office for Foreigners in cases concerning revocation of protection in the first instance; and
- Legal aid provided by advocates, legal counsellors and NGOs in the second instance. The latter will involve preparing appeal and providing legal representation in cases concerning refusal of protection, discontinuance of the procedure, and refusal of reopening the procedure, Dublin, inadmissibility of the application and revocation of protection.

The system is managed by the Head of the Office for Foreigners who contracts advocates, legal counsellors and NGO lawyers. Legal aid is provided by 230 legal counsellors, 228 advocates and 3 NGOs: the Association for Legal Intervention (LIA), The Rule of Law Institute and Halina Niec Legal Aid Centre.

In 2017, 415 asylum seekers benefited from the system of free legal aid. Taking into account the overall number of appeals (2,785) in 2017,⁵⁴ this is definitely not sufficient. In 49 cases the aid was granted by an advocate or legal counsellor and in 366 cases by an NGO lawyer.⁵⁵

There are also NGOs providing legal assistance through Asylum, Migration and Integration Fund (AMIF)-funded projects, which have also provided this assistance under European Refugee Fund (ERF)-funded projects. However, AMIF funding is very unstable and practically has been suspended. In February 2016 one AMIF call for proposals was cancelled, after the announcement of the results had been postponed three times.⁵⁶ There was a call for proposals to be submitted by September 2016 on projects offering legal counseling for individuals applying for asylum and returns, but still no results have been given. On 19 December 2016 19 NGOs sent letters to the Ministry of the Interior and to the European Commission Representation in Poland about this issue.⁵⁷ The situation did not change in 2017. In September 2017 two NGOs (the HFHR and the Association for Legal Intervention) prepared a report where the history of (not) funding and its consequences for NGOs have been presented.⁵⁸

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

⁵³ Article 69c-69m Law on Protection.

⁵⁴ Information provided by the Office for Foreigners, 1 February 2018.

⁵⁵ Under Article 69f(1)(2) Law of Protection.

⁵⁶ See more at Wyborcza, 'MSWiA ma miliony na integrację cudzoziemców, ale w 2016 r. nie wydało na to ani złotych', 9 January 2017, available in Polish at: <http://bit.ly/2lguY9N>.

⁵⁷ Information provided by the Polish Migration Forum, 7 January 2017.

⁵⁸ Witold Klaus, Ewa Ostaszewska-Zuk and Marta Szczepanik, *The role of European funds in supporting the integration of migrants in Poland*, November 2017, available at: <http://bit.ly/2EVdzxq>.

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

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

2. Dublin

2.1. General

Dublin statistics: 2017

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
Total	165	16	Total	5,723	1,433
Germany	60	8	Germany	3,176	973
Bulgaria	12	0	France	1,246	53
Lithuania	11	2	Austria	343	195

Source: Office for Foreigners

Application of the Dublin criteria

According to the Dublin Unit at the Office for Foreigners, a Dublin request may be initiated at any stage of the asylum procedure if any circumstances justifying the request arise. The vast majority of Dublin cases in 2017 concerned "take back" requests: 3,376 out of 5,723 incoming requests were based on Article 18(1)(b) of the Dublin III Regulation, while 96 out of 165 outgoing requests were issued on the basis of Article 18(1)(b) of the Dublin III Regulation.⁵⁹

In 2015 in cases considering family unity in Dublin procedures no use was made of DNA tests. In all cases the asylum seekers were in possession of the documents certifying family ties and there was no need to confirm family links by forms, there were requests for information or medical examination. Generally requests to other Member States are made if there is enough evidence, taking into consideration the stage of the procedure and the applicable deadlines.⁶⁰ No information has been provided for 2016 and 2017 as the Office for Foreigners does not record such statistics.

⁵⁹ Information provided by the Office for Foreigners, 1 February 2018.

⁶⁰ Information provided by the Office for Foreigners, 8 September 2015.

The dependent persons and discretionary clauses

The Dublin Unit did not apply the dependent persons clause in the first half of 2017. The humanitarian clause was applied just once in 2016 and in 7 cases in the first half of 2017. The sovereignty clause was used on nine occasions.⁶¹ No information on the circumstances was provided. Data for the entire 2017 was not made available.⁶²

2.2. Procedure

Indicators: Dublin: Procedure

1. On average, how long does a transfer take after the responsible Member State has accepted responsibility?

The Head of the Office for Foreigners is responsible for Dublin procedures.⁶³ All asylum seekers over the age of 14 are fingerprinted and checked in Eurodac at the time of lodging their asylum application. In all cases the Head of the Office for Foreigners applies the Dublin procedure.⁶⁴

According to the Office for Foreigners, if the authorities decide to apply the Dublin procedure, asylum seekers are informed about it. They are informed about the following steps of the procedure e.g. decision received from another Member State, or the need to submit additional documents. Asylum seekers and their legal representatives can contact the Dublin Unit in person, in writing or by phone.⁶⁵

Individualised guarantees

The *Tarakhel v. Switzerland* judgment of the European Court of Human Rights (ECtHR) has not influenced the practice of the Head of the Office for Foreigners in Dublin cases vis-à-vis Italy in 2015-2017, as there are not many Dublin cases concerning Italy. The Office for Foreigners noted however that the only foreigners transferred from Poland to Italy are single men, while vulnerable persons are allowed to stay in Poland.⁶⁶

The Office for Foreigners confirms that in 2017 there were cases of transfers to Greece. In cases concerning vulnerable applicants the Dublin requests are not addressed to Greece, Italy, Croatia, Hungary, Italy and Bulgaria. If during the Dublin procedure it turns out that the applicant is vulnerable, the transfer is not conducted.⁶⁷

Transfers

According to the Border Guard, the transfer is organised within days from the moment the decision on transfer becomes final.

Asylum seekers are transferred under escort only when there is a risk of absconding or if the asylum seeker has already absconded beforehand. In 2017, the Border Guard informed that they transferred 80 persons under coercion.⁶⁸

There is also a legal basis for detention in Dublin outgoing procedures, based on the risk of absconding (see section on [Grounds for Detention](#)).⁶⁹ The Border Guard reported that in 2017 80 persons were

⁶¹ Information provided by the Office for Foreigners, 1 February 2017.

⁶² Information provided by the Office for Foreigners, 1 February 2018.

⁶³ Article 36(2) Law on Protection.

⁶⁴ Article 36(1) Law on Protection.

⁶⁵ Information provided by the Office for Foreigners, 27 August 2015.

⁶⁶ Information provided by the Office for Foreigners, 1 February 2018.

⁶⁷ Information provided by the Office for Foreigners, 1 February 2018.

⁶⁸ Information provided by the Border Guard, 11 January 2018.

⁶⁹ Article 398(1)(3a) Law on Foreigners.

transferred under Dublin from detention centres; no information about the legal grounds of the detention was provided.⁷⁰

The Border Guard presents data about successful transfers which are different from the data in the table above, which was drafted on the basis of the information provided by the Office for Foreigners. According to the Border Guard, there were 92 persons transferred out of Poland (45 persons to Germany, 8 to Sweden and 8 to Italy). There were 1,438 persons transferred to Poland (957 from Germany, 200 from Austria and 74 from Sweden).⁷¹

2.3. Personal interview

The Dublin procedure is the same as the regular procedure in Poland and thus there is no separate interview where an applicant's case falls under Dublin. Additional questions for the Dublin procedure now form an integral part of the asylum application form.⁷²

2.4. Appeal

Indicators: Dublin: Appeal
☒ Same as regular procedure

1. Does the law provide for an appeal against the decision in the Dublin procedure?

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

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

The average time for the appeal procedure in Dublin cases in 2017 was 71.5 days. In 2017 the Refugee Board issued 19 decisions in Dublin proceedings, out of which 11 confirmed the decision of the Head of the Office for Foreigners.⁷³

2.5. Legal assistance

Indicators: Dublin: Legal Assistance
☒ Same as regular procedure

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

❖ Does free legal assistance cover:	☐ Yes	☒ With difficulty	☐ No
	☐ Representation in interview		
	☒ Legal advice		

2. Do asylum seekers have access to free legal assistance on appeal against a Dublin decision in practice?

❖ Does free legal assistance cover	☐ Yes	☒ With difficulty	☐ No
	☒ Representation in courts		
	☒ Legal advice		

⁷⁰ Information provided by the Border Guard, 11 January 2018.

⁷¹ Information provided by the Border Guard, 11 January 2018.

⁷² Regulation of the Ministry of the Interior of 4 November 2015 on the asylum application form (Rozporządzenie Ministra Spraw Wewnętrznych z dnia 4 listopada 2015 r. w sprawie wzoru formularza wniosku o udzielenie ochrony międzynarodowej), available in Polish at: <http://bit.ly/1I97b7F>.

⁷³ Information provided by the Refugee Board, 17 January 2018.

Free legal assistance is offered as described in the section on [Regular Procedure: Legal Assistance](#). State legal aid covers preparing an appeal and representation in the second instance.⁷⁴

2.6. Suspension of transfers

Indicators: Dublin: Suspension of Transfers

1. Are Dublin transfers systematically suspended as a matter of policy or jurisprudence to one or more countries? ☐ Yes ☒ No
❖ If yes, to which country or countries?

In cases concerning vulnerable applicants, Dublin requests are not addressed to Greece, Italy, Croatia, Hungary, Italy and Bulgaria. If during the Dublin procedure it turns out that the applicant is vulnerable, the transfer is not conducted.⁷⁵

2.7. The situation of Dublin returnees

There is no information on obstacles in accessing the asylum procedure by the Dublin returnees. There were cases when HFHR, trying to follow the asylum seekers transferred back from another country, learned from the SG that they applied straight away for voluntary return and left the territory. The reason why they chose return over a (re)examination of their asylum claim is not known. The time limit to reopen the procedure is 9 months. Contrary to Article 18(2) of the Dublin III Regulation, in cases where e.g. the applicant did not wait for examination of his or her asylum claim in Poland but went to another Member State and did not come back to Poland within 9 months, the case will not be evaluated under the regular “in-merit” procedure. Their application lodged after this deadline will instead be considered as a subsequent application and subject to an admissibility procedure.⁷⁶

In 2017, 2,480 decisions on discontinuing the procedure were issued because the applicant had explicitly withdrawn the application, left Poland, had not reached or left the reception centre. At the same time there were no cases of reopening the procedure within 9 months, according to the Office for Foreigners.⁷⁷

In September 2017 the Ombudsman published a report within the National Mechanism for the Prevention of Torture, in which cases of improper detention of Dublin returnees with PTSD were described.⁷⁸ According to the report, the problems occurred due to numerous procedural shortcomings during the transfer of the family to Poland by the German police, as well as the lack of appropriate operational algorithms that should have been implemented in order to promptly identify victims of torture and violence as well as persons whose mental and physical condition rule out their placement in detention (see [Identification](#)).

3. Admissibility procedure

3.1. General (scope, criteria, time limits)

An admissibility procedure is provided for in national legislation.⁷⁹ The Head of the Office for Foreigners is the authority responsible for taking a decision on admissibility. If an asylum application is deemed inadmissible, the Head of the Office for Foreigners issues a decision on the inadmissibility of the application.⁸⁰

⁷⁴ Article 69e Law on Protection.

⁷⁵ Information provided by the Office for Foreigners, 1 February 2018.

⁷⁶ Article 40(6) Law on Protection.

⁷⁷ Information provided by the Office for Foreigners, 1 February 2018.

⁷⁸ Ombudsman, *Report on the activities of the National Mechanism for the Prevention of Torture in 2016, 2017*, available at: <http://bit.ly/2sBpmvy>, 76.

⁷⁹ Article 38 Law on Protection.

⁸⁰ Article 38(4) Law on Protection.

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

- a. Another Member State has granted refugee status to the applicant;
- b. A third country can be considered a [First Country of Asylum](#) with regard to the applicant;
- c. The applicant submitted a subsequent application after receiving a final decision, based on the same circumstances;
- d. A spouse of an applicant lodged a new asylum application after the applicant received a final decision and when the spouse's case was a part of an application made on their behalf and there are no facts justifying a separate application of the spouse.⁸¹

The application is considered inadmissible if there is a first country of asylum where the applicant is treated as a refugee and can enjoy protection there or is protected against *refoulement* in any other way.⁸²

The Office for Foreigners delivered the following inadmissibility decisions in 2017:

Inadmissibility decisions: 2017	
Ground for inadmissibility	Number
Subsequent application	244
Application by dependant (spouse)	15
Refugee status in another Member State	1
First country of asylum	1
Total	261

Source: Office for Foreigners, 1 February 2018.

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

3.2. Personal interview

Indicators: Admissibility Procedure: Personal Interview

☒ Same as regular procedure

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

The rules concerning personal interview are the same as in the [Regular Procedure: Personal Interview](#). There is no data on how many interviews were conducted in admissibility procedures in 2017. For the admissibility procedures much depends on the case whether it is a detailed interview, as in the regular procedure, or whether it focuses only on specific issues (e.g. new circumstances). The scope is not limited to identity, nationality, and travel route.⁸³

⁸¹ Article 38 Law on Protection.

⁸² Article 38 Law on Protection.

⁸³ Information provided by the Office for Foreigners, 1 February 2017.

3.3. Appeal

Indicators: Admissibility Procedure: Appeal

☒ Same as regular procedure

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

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

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

3.4. Legal assistance

Indicators: Admissibility Procedure: Legal Assistance

☒ Same as regular procedure

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

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

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

☐ Yes	☒ With difficulty	☐ No
------------------------------	---	-----------------------------

 - ❖ Does free legal assistance cover:

☒ Representation in courts
☒ Legal advice

Free legal assistance is offered in the same context as described in the section on [Regular Procedure: Legal Assistance](#). State legal aid covers preparing an appeal and representation in the second instance.⁸⁴

4. Border procedure (border and transit zones)

There is no border procedure in Poland. However, on 30 January 2017, the Minister of the Interior and Administration presented a draft amendment to the Law on Protection.⁸⁵ These proposals introduce, among other things, a border procedure for granting international protection during which applicants could be detained. The Ombudsman, as well as the main NGOs in Poland, have criticised the draft law for failing to provide sufficient safeguards such as access to effective remedies. The draft is still under discussion at the time of writing.

5. Accelerated procedure

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

The application for international protection is subject to an accelerated procedure if the applicant:⁸⁶

1. Provides other reasons for applying for asylum than well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, or a risk of serious harm; or did not provide any information on circumstances referring to the well-founded fear of persecutions or risk of serious harm);
2. Misleads the authority by withholding or presenting false information or documents which are important in an asylum procedure;

⁸⁴ Article 69e Law on Protection.

⁸⁵ Ministry of Interior, Projekt ustawy o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw, available in Polish at: <http://bit.ly/2jJ3yrv>.

⁸⁶ Article 39 Law on Protection.

3. Makes inconsistent, contradictory, improbable or insufficient explanation of the persecution they are fleeing from, which are clearly inconsistent with the country of origin information (COI);
4. Submits an application to delay or frustrate enforcement of a return decision;
5. Is a threat to national security or public order or was, on this ground, already expelled from the territory.

The statistics obtained from the Office for Foreigners show that in 2017 the Head of the Office for Foreigners examined 186 applications in accelerated procedure. These concerned the following grounds:

Applications channelled in the accelerated procedure: 2016-2017		
Grounds	2016	2017
Reasons unrelated to grounds for international protection	197	164
Misleading authorities by withholding or presenting false information or documents	4	1
Inconsistent, contradictory, improbable or insufficient statements	11	18
Application solely to delay or frustrate return	13	3
Threat to national security or public order	3	0

Source: Office for Foreigners, 1 February 2017; 1 February 2018.

The Head of the Office for Foreigners should issue a decision in the accelerated procedure within 30 calendar days. If a decision cannot be issued within 30 calendar days, the Head of the Office for Foreigners has to inform the applicant about the reasons for the delay and the date when a decision will be issued.⁸⁷ There are no consequences of not respecting this time limit.

5.2. Personal interview

Indicators: Accelerated Procedure: Personal Interview

☒ Same as regular procedure

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

The interview in the accelerated procedure is conducted according to the same rules as in the regular procedure (see [Regular Procedure: Personal Interview](#)).⁸⁸ Where it does take place, the interview does not differ from the one in a regular procedure – it is in the same form and the same rules apply.⁸⁹

5.3. Appeal

Indicators: Accelerated Procedure: Appeal

☐ Same as regular procedure

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

⁸⁷ No data was made available upon request if the time limit is respected in practice in 2016 and 2017.

⁸⁸ Article 44 Law on Protection.

⁸⁹ Information provided by the Office for Foreigners, 1 February 2017.

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

- (1) The time limit to lodge an appeal is 7 calendar days instead of 14;⁹⁰
- (2) Decisions on the appeal in this procedure are issued by only one member of the Refugee Board, instead of three as in the regular procedure.⁹¹

The short timeframe for lodging an appeal, while extended from 5 to 7 calendar days in November 2015, still constitutes a significant obstacle in practice, even more so if it falls on a weekend.

5.4. Legal assistance

Indicators: Accelerated Procedure: Legal Assistance

☒ Same as regular procedure

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

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

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

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

☒ Representation in courts	☒ Legal advice
--	--

Free legal assistance is offered in the same context described in the section on [Regular Procedure: Legal Assistance](#). State legal aid covers preparing an appeal and representation in the second instance.⁹²

D. Guarantees for vulnerable groups

1. Identification

Indicators: Identification

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers?

☒ Yes	☐ For certain categories	☐ No
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 - ❖ If for certain categories, specify which:
2. Does the law provide for an identification mechanism for unaccompanied children?

☒ Yes	☐ No
---	-----------------------------

Applicants who need special treatment are defined in particular as:⁹³

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

⁹⁰ Article 39(2)(3) Law on Protection.

⁹¹ Article 39(2) Law on Protection.

⁹² Article 69e Law on Protection.

⁹³ Article 68(1) Law on Protection.

1.1. Screening of vulnerability

The Head of the Office for Foreigners is obliged to make an assessment whether these persons need special treatment in the proceedings regarding granting international protection or regarding social assistance. In order to make this assessment, the authority can arrange for a medical or psychological examination of the applicant, funded by the state. In case the Head of the Office for Foreigners does not arrange for the medical or psychological examination, it is obliged to inform the person that might require special treatment that they can arrange for such an examination themselves and bear the costs. If a person does not agree to be subjected to medical or psychological examination, they should be considered a person that does not require special treatment. The Head of the Office for Foreigners should make the assessment immediately after the submission of the application for international protection and at any other time until the procedure is finished, in case any new circumstances arise.⁹⁴

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

In 2015-2016 there was a project “I recognise, I help – integration and development of the activities and procedures of the Office for Foreigners and the Border Guard with the purpose of a complex identification of vulnerable persons seeking protection in the territory of Poland”, implemented by the Office for Foreigners, the Border Guard and the [Foundation Różnosfera](#). The detailed description of the integrated system of complex identification of vulnerable groups is to be a final product of the project.⁹⁵ On the website of the Foundation Różnosfera, there are leaflets in Polish, Russian and Ukrainian explaining the purpose, the consequences and the process of the identification mechanism, including the rights of the asylum seekers. However, some NGOs are of the opinion that the tool used for the identification within this assessment was superficial, while at this stage of the procedure an in-depth analysis should be conducted.⁹⁶

Under the current asylum application form,⁹⁷ Apart from the self-identification mechanism including questions concerning medical conditions, disability, pregnancy, a SG officer registering the application assesses whether an applicant (or any person covered by the application) may belong to one of these two groups: victims of trafficking in human beings or persons subject to torture. The SG Headquarters applies an algorithm prepared in 2014 on how to handle vulnerable applicants. It defines aims, ways and rules for the SG actions in case of identifying a vulnerable person. The objective is to ensure optimal conditions guaranteeing the assistance of medical personnel and psychologists whenever needed.⁹⁸ NGOs point out that this preliminary identification is conducted at the time of lodging asylum application, so often at the border, where the conditions are difficult. Some are of the opinion that the questions from the application for international protection cannot be considered an early identification at all.⁹⁹ Clear evidence that vulnerable persons are not identified correctly is the fact that victims of violence are still placed in detention, while the law prohibits their detention. NGOs generally confirm that the system of identification envisaged in the law does not work in practice.

In September 2017 the Ombudsman published a report within the National Mechanism for the Prevention of Torture, in which it is clearly confirmed that there is an ongoing problem with the system of identification of vulnerable groups in Poland. The Ombudsman notices that psychologists employed in detention centres are charged with many tasks relating to the recruitment, psychological support and training of border guard

⁹⁴ Article 68(3)-(6) Law on Protection.

⁹⁵ Office for Foreigners, ‘Trwa realizacja 9 projektów w partnerstwie z NGO’s’, 10 June 2016, available in Polish at: <http://bit.ly/2lJUzIL>.

⁹⁶ Information provided by LIA, November 2016.

⁹⁷ Regulation of 5 November 2015 on the asylum application form (Rozporządzenie Ministra Spraw Wewnętrznych z dnia 5 listopada 2015 r. w sprawie wzoru formularza wniosku o udzielenie ochrony międzynarodowej), available in Polish at: <http://bit.ly/1hljviW>.

⁹⁸ Information provided by the Border Guard, 24 August 2015.

⁹⁹ Information provided by LIA, November 2016.

officers, and care provided to migrants is merely one of them.¹⁰⁰ Moreover, pursuant to the Border Guard internal document cited in the report, psychologists may render psychological aid in the case of traumatic events at the written request of the doctor examining the applicant. Thus, applicant themselves may not initiate a psychological evaluation which could result in an official psychological opinion. According to the report, this restriction impedes identification of potential victims of torture.

Furthermore, during inspections undertaken in 2016, the Ombudsman representatives discovered individual cases of persons whose detention in the centres – according to the report - attest to the ineffective functioning of the system for identifying victims of torture and violence, which should protect these persons from placement in closed centres.¹⁰¹ Details of the cases, identified in three out of four visited detention centres, were further elaborated in the letter to the Chief Commander of the Border Guard dated 30 June 2017.¹⁰² In this letter the Ombudsman notes that persons seeking international protection can be left in the less favourable situation than the returnees, according to the Border Guard internal guidelines concerning vulnerable persons.

The Office for Foreigners does not collect statistics on the number of asylum seekers identified as vulnerable.¹⁰³ According to the Office for Foreigners, identification of vulnerable applicants takes place also during regular psychological counselling, available in every reception centre and at the Office for Foreigners. Psychologists have a minimum 4 duty hours a week per 120 foreigners.¹⁰⁴

1.2. Age assessment of unaccompanied children

Polish law provides for an identification mechanism for unaccompanied children.¹⁰⁵ An asylum seeker who claims to be a child, in case of any doubts as to their age, may have to undergo medical examinations – with their consent or with the consent of their legal representative – in order to determine their actual age. There are no additional criteria set in law.

In case of lack of consent, the applicant is considered an adult. Results of the medical examination should contain the information, if an asylum seeker is an adult. In case of any doubts, the applicant is considered as a minor. The responsibility for undertaking a medical examination is triggered by the authorities and shall be ensured by the SG.¹⁰⁶

There are no requirements as to which methods should be chosen and used and what qualifications doctors should have. The law only states that examination should be done in manner respecting dignity and using the least invasive technique.¹⁰⁷ However, since the end of 2013 there is an algorithm of conducting medical examination of age assessment in return and asylum proceedings applied by the SG. It was drafted following the guidelines of the Study Group on Forensic Age Diagnostics and foresees three methods: (1) a general examination; (2) a wrist X-ray; and (3) a teeth examination (pantomogram).

They are applied following that order – from the least to the most invasive – and in case of establishing a minor's age no additional examinations are conducted.¹⁰⁸ In case the assessment cannot establish an exact age, young people are usually given the benefit of the doubt.¹⁰⁹

¹⁰⁰ Ombudsman, *Report on the activities of the National Mechanism for the Prevention of Torture in 2016, 2017*, available at: <http://bit.ly/2sBpmvy>, 76.

¹⁰¹ *Ibid*, 82.

¹⁰² Ombudsman, Letter to the Chief Commander of the Border Guard, 30 June 2017, available in Polish at: <http://bit.ly/2Cy89Tu>.

¹⁰³ Information provided by the Office for Foreigners, 1 August 2017.

¹⁰⁴ Information provided by the Office for Foreigners, 1 February 2018.

¹⁰⁵ Article 32 Law on Protection.

¹⁰⁶ Article 32 Law on Protection.

¹⁰⁷ Article 32(4) Law on Protection.

¹⁰⁸ Information provided by the Border Guard, 24 August 2015.

¹⁰⁹ Article 32(5) Law on Protection.

During the first half of 2015 three age assessments were conducted in the detention centre in **Kętrzyn**. In all three cases the applicants were minors.¹¹⁰ In 2016 and 2017 the Border Guard provided no information about the number of age assessments conducted. The Border Guard mentioned only that in December 2016 there were new guidelines on medical examination conducted for the purpose of identification of unaccompanied children, but no further information was provided upon request.¹¹¹

2. Special procedural guarantees

Indicators: Special Procedural Guarantees

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

☐ Yes

☒ For certain categories

☐ No

❖ If for certain categories, specify which:

2.1. Adequate support during the interview

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

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

Upon the request of the applicant considered requiring special treatment, in cases justified by their needs, the actions in the proceedings regarding granting international protection are performed by a person of the same gender, and in the presence of a psychologist, medical doctor or an interpreter, of a gender indicated by the foreigner.¹¹²

Also, the Head of the Office ensures that the interview is conducted by a person trained in the techniques of hearing such persons and in using the country of origin information.¹¹³ The Office for Foreigners does not have a specialised unit dealing with vulnerable groups, however caseworkers are trained by psychologists and European Asylum Support Office (EASO) experts on interviewing vulnerable persons when starting work. In addition, in October 2016, 20 employees of the Office took part in training courses organised by Różnosfera under the "I recognise, I help" project.

An interview should not be conducted if the health condition of the applicant or psychological considerations make it impossible to hear them within the time set in the law as a deadline (i.e. 6 months). NGOs confirm that there were cases where the interview was postponed under this provision.

The Office for Foreigners has stated that children are always interviewed in their place of stay. The Office also confirms that there were cases of omission of an interview in 2017 because of the condition of the applicant. . There were also cases of collecting written statements.

In Poland there is a limited number of NGOs specialising in psychological support for vulnerable asylum seekers, some of them concentrate on assistance directed to a particular group (children or victims of trafficking). Additionally, due to the lack of funding, some NGOs were forced to limit their assistance activities in 2017.

¹¹⁰ Information provided by the Border Guard, 18 August 2015.

¹¹¹ Information provided by the Border Guard, 11 January 2018.

¹¹² Article 69 Law on Protection.

¹¹³ Article 44(4)(1) Law on Protection.

2.2. Exemption from special procedures

In 2017 the Office for Foreigners stressed that the law does not exclude the application of the accelerated procedure towards vulnerable applicants (apart from some restrictions concerning unaccompanied children) and did not present any statistical data on the use of the accelerated procedure in their case.¹¹⁴

3. Use of medical reports

Indicators: Use of Medical Reports

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

The law provides that a medical or psychological examination can be conducted in order to assess whether a person needs special treatment with regard to procedural safeguards and reception.¹¹⁵ There is no medical examination for the purpose of confirming past persecution or serious harm. During the parliamentary work on the Regulation covering the issue of medical examination conducted at the time of submission of an application for international protection, HFHR suggested it should cover the examination with the purpose of identifying the signs of past persecutions or serious harm, but the request was dismissed.¹¹⁶

In 2013 the Office for Foreigners stated that the methodology set in the Istanbul protocol is not used.¹¹⁷ In 2016 it answered that the matter of methodology of the medical examination (conducted for the purpose of identification of persons requiring special treatments in the procedure) is part of medical documentation and is not disclosed to the Office.¹¹⁸ Most of the NGOs did not report a case of conducting medical examination to confirm past persecutions in 2016 and 2017.

4. Legal representation of unaccompanied children

Indicators: Unaccompanied Children

1. Does the law provide for the appointment of a representative to all unaccompanied children?
☒ Yes ☐ No

The Law on Protection provides for the appointment of a legal representative to an unaccompanied child - special guardian (*kurator*).¹¹⁹ There are no exceptions; each child has to have a legal representative and all unaccompanied children get one in practice. The Head of the Office for Foreigners or the SG immediately lodges the request to the district custodial court. The court appoints the legal representative. According to the Office for Foreigners, this usually took too long, even 2 months.¹²⁰ Under the law, the deadline for appointing the guardian is 3 days. There is no information on compliance with this rule in practice.

There is no special requirement in the Law on Protection for being eligible as a representative of an unaccompanied child for an asylum procedure: the representative should be an adult and have legal capacity. Under the law, only the person who undertakes procedural acts in the proceedings in granting international protection to an unaccompanied minor should fulfil certain conditions.¹²¹ There is no

¹¹⁴ Information provided by the Office for Foreigners, 1 February 2018.

¹¹⁵ Article 68 Law on Protection.

¹¹⁶ Information provided by a HFHR lawyer, October 2016.

¹¹⁷ Information provided by the Office for Foreigners, 22 February 2013.

¹¹⁸ Information provided by the Office for Foreigners, 1 February 2017.

¹¹⁹ Article 61 Law on Protection.

¹²⁰ Information provided by the Office for Foreigners, 27 August 2015.

¹²¹ Article 66 Law on Protection.

remuneration for being a legal representative. In practice in the last years there were problems arising from the insufficient numbers of trained legal representatives for unaccompanied children. NGOs personnel and students of legal clinics at universities were appointed as guardians. The legal representative should be present during the interview, together with a psychologist, and may ask questions and make comments.¹²²

The Border Guard reports that since December 2017 they use a list of NGO workers who declared their willingness to be a representative of a child.¹²³

Currently unaccompanied children are placed in various intervention facilities in Poland, instead of in a central institution. After the court ruling appointing the representative they can be placed in foster care facilities or foster families. In 2016 unaccompanied children were mostly placed in case or educational facilities in **Kętrzyn** ("due the proximity to the detention centre in Kętrzyn")¹²⁴ as well as in **Przemysl** and **Rzeszow**. There is no information on whether the personnel speaks foreign languages there, this is not one of criteria.¹²⁵ In 2017 the Office for Foreigners confirmed that in most cases the unaccompanied children are placed in **Kętrzyn**.

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

In 2017 there were 113 unaccompanied children applying for international protection in Poland. 19 children were placed in detention centres.¹²⁶

E. Subsequent applications

Indicators: Subsequent Applications		
1. Does the law provide for a specific procedure for subsequent applications?	☐ Yes	☒ No
2. Is a removal order suspended during the examination of a first subsequent application?		
❖ At first instance	☒ Yes	☐ No
❖ At the appeal stage	☒ Yes	☐ No
3. Is a removal order suspended during the examination of a second, third, subsequent application?		
❖ At first instance	☐ Yes	☒ No
❖ At the appeal stage	☐ Yes	☒ No

Subsequent applications are subject to an [Admissibility Procedure](#). If there are no new grounds for the application, a decision on inadmissibility is issued. In 2017 there were 2,201 subsequent applications, submitted mainly by Russian, Ukrainian and Tajik nationals.¹²⁷

In a significant judgment of 2011,¹²⁸ the Supreme Administrative Court highlighted that the administrative authorities, when deciding on admissibility of a subsequent asylum application:

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

¹²² Article 65(3) and (4) Law on Protection.

¹²³ Information provided by the Border Guard, 11 January 2018.

¹²⁴ Information provided by the Office for Foreigners, 1 February 2017.

¹²⁵ Information provided by the Office for Foreigners, 27 August 2015.

¹²⁶ Information provided by the Office for Foreigners, 1 February 2018.

¹²⁷ Information provided by the Office for Foreigners, 1 February 2018.

¹²⁸ Supreme Administrative Court, Decision No, II OSK 557/10, 24 February 2011.

This judgment is respected in practice and is cited in other cases.¹²⁹

If the application is considered admissible, i.e. containing new circumstances relevant for the case, the Head of the Office for Foreigners issues a decision considering the application admissible.¹³⁰ In 2017 there were 265 such decisions issued by the Office for Foreigners.¹³¹

The first subsequent application has suspensive effect on a return decision until it is claimed inadmissible (or until protection is refused).¹³²

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

F. The safe country concepts

Indicators: Safe Country Concepts

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

Since the 2015 reform of the law, the safe country of origin concept is not applicable in Poland.

1. First country of asylum

The concept of first country of asylum is included in the law and reflects the wording of Article 35 of the recast Asylum Procedures Directive. The practical use of this provision is not clear. The Office for Foreigners answered that it has not been used since its introduction into the law, yet at the same time the statistics shared confirm there was one such case in 2017.¹³³

G. Relocation

Indicators: Relocation

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

Until now Poland has not relocated any asylum seeker from Italy or Greece. On 15 June 2017, the European Commission launched infringement procedures against the Czech Republic, Hungary and Poland. The replies provided by the three Member States were not found satisfactory and the Commission decided to move to the next stage of the infringement procedure and refer the three Member States to the Court of Justice of the EU on 7 December 2017.¹³⁴

¹²⁹ Voivodeship Administrative Court Warsaw, Decision V SA/Wa 2332/11, 13 June 2012. See also Refugee Board, *Activity report 2014 (Sprawozdanie z działalności Rady do Spraw Uchodźców za 2014 r.)*, January 2015.

¹³⁰ Article 38(5) Law on Protection.

¹³¹ Information provided by the Office for Foreigners, 1 February 2018.

¹³² Article 330(2) and (3) Law on Foreigners.

¹³³ Information provided by the Office for Foreigners, 1 February 2018.

¹³⁴ European Commission, ‘Relocation: Commission refers the Czech Republic, Hungary and Poland to the Court of Justice’, IP/17/1607, 7 December 2017, available at: <http://bit.ly/2j0Mlw8>.

On 16 December 2015, Poland declared readiness to relocate in a first phase 65 asylum seekers from Greece and 35 from Italy. According to the Polish Ministry of Interior and Administration, relocation procedures, which had started at the end of 2015, were impeded by the incorrect functioning of the hotspots in Greece and Italy and insufficient implementation of the proper security procedures by those countries in order to verify asylum seekers' identity. The Ministry stressed that proper verification of the asylum seekers for safety reasons is especially important concerning the terrorist attacks in Paris and Brussels in 2015 and 2016.¹³⁵ Other reasons for the lack of relocation to Poland publicly presented by Polish officials were: possession of false documents by the candidates to relocation,¹³⁶ lack of direct access to the candidates in Italy; and insufficient level of verification of those asylum seekers who were to be relocated from Greece to Poland.¹³⁷ As a result, the relocation of the 65 asylum seekers from Greece and 35 asylum seekers from Italy was finally cancelled.¹³⁸ Currently Polish authorities state that Poland is against the mechanism of forced relocation of asylum seekers within Europe.¹³⁹ Poland has not relocated anyone and has not pledged since December 2015.

It is worth noticing that in January 2016 the Polish Government presented the draft of the Regulation on the foreigners' relocation. In the Regulation the number of asylum seekers to be relocated in 2016 was set as 400, while it also established a mechanism of financing of the relocation procedures. The draft was criticised by NGOs and public authorities,¹⁴⁰ as insufficient in the scope of the number of relocated foreigners and the integration measures provided for them. The Regulation has not been enacted until now.

As a result, the answer to the abovementioned questions can be only theoretical, based on the current Law on Protection, not on practice.

Relocation was introduced into Polish legislation at the beginning of 2012. Chapter 5a of the Law on Protection lays down special rules concerning relocated and resettled foreigners, distinguishing this procedure from the regular asylum procedure.¹⁴¹ Foreigners eligible relocation can apply for refugee status in Poland before arrival to the Polish territory. They are entitled then to obtain a temporary identity document valid for 90 days. The interview can be held in the country of their current stay. Polish authorities provide transport of relocated foreigners to the Polish border and – if they apply for asylum in Poland – to the first reception centre. After arrival in Poland relocated asylum seekers are obliged to give their passports to the Polish authorities for the time of the asylum proceedings. If they have applied for asylum in Poland before arrival, they are entitled to health care (to the same extent as other asylum seekers in Poland) from the moment of crossing the Polish border, not from the moment of registration in the first reception centre.

The abovementioned rules also regulate the security procedure before foreigners' arrival to Poland. The Head of the Office for Foreigners is obliged to ask main security agencies in Poland whether the foreigner is a threat for security or public order in Poland; the obligation is excluded in case of the minor below the age of 13. Since June 2016, security agencies are obliged to answer Head of the Office for Foreigners' request within 45 days, subject to a prolongation possibility for 14 more days.¹⁴² The aim of that change was to guarantee longer and more precise checking of foreigners who are about to be relocated to

¹³⁵ Ministry of the Interior and Administration, Letter No BMP-0790-4-2/2016/Mj to the Ombudsman, 31 March 2016, available in Polish at: <http://bit.ly/2meAOoc>.

¹³⁶ Statement of the Polish Minister of the Interior and Administration M. Błaszczak in that matter cited in: 'Błaszczak: Nie przyjmimy uchodźców, którzy zagrażają bezpieczeństwu Polski i Polaków', 9 May 2016, available in Polish at: <http://bit.ly/2kTyEyZ>.

¹³⁷ The Office for Foreigners' information for the Polsat News, cited in Polsat News, 'PN: proces relokacji uchodźców z Grecji i Włoch do Polski zatrzymany', 5 May 2016, available in Polish at: <http://bit.ly/2mssH8x>.

¹³⁸ *Ibid.*

¹³⁹ Ministry of the Interior and Administration, 'Grupa Wyszehradzka przeciwna automatycznej relokacji uchodźców', 11 July 2016, available in Polish at: <http://bit.ly/2mepvBo>.

¹⁴⁰ The project and NGOs as well as public authorities' opinions available in Polish at: <http://bit.ly/2IMorni>.

¹⁴¹ Articles 86a-86j Law on Protection.

¹⁴² Law of 20 May 2016 amending the Law on Protection.

Poland.¹⁴³ If any of the security agencies considers the foreigner as a threat, they will not be relocated to Poland.

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

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

Indicators: Information and Access to NGOs and UNHCR

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

❖ Is tailored information provided to unaccompanied children? ☐ Yes ☒ No
2. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☒ With difficulty ☐ No
3. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☒ With difficulty ☐ No
4. Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☒ With difficulty ☐ No

The same level of information on the asylum procedure is provided to applicants during all types of procedures. The Border Guard officer who receives an asylum application has to inform in writing the applicant in a language that they understand on:¹⁴⁴

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

This information, covering the list of NGOs, is provided at the border crossing points and is available in 22 languages.¹⁴⁵

With regard to general information on the asylum procedure, rights and obligations of asylum seekers etc. as well as information on rights after protection is granted it has to be stressed that they are formulated in legal terms and are therefore not easily understandable.

In addition, the Office for Foreigners also offers information in the form of a booklet entitled “First steps in Poland – Guidebook for foreigners applying for international protection.”¹⁴⁶ It was published in 2011 under a project co-financed by the European Refugee Fund (ERF) and then updated in 2015. It is now available

¹⁴³ Ministry of the Interior and Administration, ‘Służby będą miały więcej czasu na sprawdzenie cudzoziemca’, 14 April 2016, available in Polish at: <http://bit.ly/2IOQoIE>.

¹⁴⁴ Article 30(1)(5) Law on Protection.

¹⁴⁵ Information provided by the Border Guard, 11 January 2018.

¹⁴⁶ Office for Foreigners, *First steps in Poland handbook*, available at: <http://bit.ly/2BEraXC>.

in 6 languages (Russian, English, Georgian, Arabic, French and Polish) and contains basic information on Poland, Polish law regarding asylum seekers and social assistance.

Asylum seekers are informed about the Dublin procedure when they apply for international protection in accordance with the Dublin III Regulation and the Commission Implementing Regulation, including the separate leaflet for unaccompanied children.¹⁴⁷

Information about the possibility to contact UNHCR is available in the Office for Foreigners (in English, Russian, French, Arabic and Vietnamese) and in reception and detention centres. The instructions for asylum applicants provided by the Border Guard contain information about the possibility to contact UNHCR and NGOs. According to the Border Guards they are provided at the border and are available in 22 languages.¹⁴⁸

As for information provided by NGOs, it is worth noticing, that more and more NGOs are forced to limit their information activities and assistance provided in reception and accommodation centres due to lack of funding.¹⁴⁹

I. Differential treatment of specific nationalities in the procedure

Indicators: Treatment of Specific Nationalities

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

In Poland there is no official policy implemented with regard to the top 5 countries of origin (Russia, Ukraine, Tajikistan, Armenia, Georgia), because every application is examined individually. However, it is visible that applicants from Armenia and Georgia generally do not receive protection status.

HFHR has documented Border Guard practices in establishing the identity of asylum seekers. There were cases of Iranian, Vietnamese and Belarusian asylum seekers who were asked to meet the representatives from their country of origin consulates in order to confirm their identity. According to Polish authorities, such activities did not involve disclosing the information that the person concerned applied for asylum and there was therefore no infringement of Article 9 of the Law on Protection.¹⁵⁰ Due to the conditions in which such meetings take place, it is hard to identify these cases in practice.

Ukrainians constituted 14% of applicants in 2017. During that year, more applicants were granted refugee status (56 compared to 32 in 2016 at both instances) and subsidiary protection (175 compared to 64 in 2016 in both instances). The reason for this change is not visible in the report published by the Office for Foreigners about Ukrainian asylum seekers and migrants.¹⁵¹

As of 31 December 2017 no returns are carried out to the following countries: Syria, Eritrea, Yemen.¹⁵²

¹⁴⁷ Information provided by the Border Guard, 11 January 2018.

¹⁴⁸ Information provided by the Border Guard, 11 January 2018.

¹⁴⁹ Refugee.pl, 'SOS dla przedszkoli!', 6 December 2017, available in Polish at: <http://bit.ly/2EEVvnM>. The organisation is shutting down integration assistance for children in two centres.

¹⁵⁰ Information concerning a foreigner cannot be made available to authorities or public institutions in their country of origin which would make it possible to determine that: (a) an asylum procedure of the foreigner is pending or has ended; (b) the foreigner has been granted or refused the refugee status or subsidiary protection.

¹⁵¹ Office for Foreigners, *Bieżąca sytuacja dotycząca Ukrainy*, available in Polish at: <http://bit.ly/2IKyIGP>.

¹⁵² Information provided by the Border Guard, 11 January 2018.

Reception Conditions

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators: Criteria and Restrictions to Reception Conditions

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

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

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

	☐ Yes	☒ No	
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The provision of reception conditions does not depend on the financial situation of asylum seekers.¹⁵³

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

Asylum seekers are entitled to material reception conditions during all asylum procedures in Poland. There is no difference between regular, accelerated and admissibility procedures, as well as first appeal.¹⁵⁴

Asylum seekers are entitled to material reception conditions after claiming asylum, from the moment they register in one of the first reception centres. They should register there within two days after applying for asylum, otherwise their procedure will be discontinued.¹⁵⁵ Only medical assistance can be granted from the moment of claiming asylum (i.e. before registration in a first reception centre) in special situations, in case of threat to life and health.¹⁵⁶ Proof of an asylum application is confirmed by the temporary ID issued by the SG after submitting the claim.¹⁵⁷ However, according to the Office for Foreigners, the lack of such a document is not a problem for registering at the reception centre.¹⁵⁸ Asylum seekers are also entitled to temporary ID also when they are returned to Poland on the basis of the Dublin Regulation, if they claimed for asylum before departing from Poland and they state that they want to continue the asylum procedure in Poland.¹⁵⁹

As a general rule, reception conditions (material assistance, accommodation, medical care) are provided up until 2 months after the decision on the asylum application becomes final (either positive or negative).¹⁶⁰ However, when the procedure is terminated with the decision on discontinuing the procedure (e.g. in admissibility procedures), reception conditions are provided until 14 days after the decision becomes final.¹⁶¹ Moreover, reception conditions are not provided, if the term in which an asylum seeker was obliged

¹⁵³ Articles 70-74 Law on Protection.

¹⁵⁴ Article 70 Law on Protection.

¹⁵⁵ Article 42(1)(1a) Law on Protection.

¹⁵⁶ J. Białas, 'Niezgoda zasad pomocy socjalnej zapewnianej osobom ubiegającym się o nadanie statusu uchodźcy z wyrokiem Trybunału Sprawiedliwości UE', in HFHR, *W poszukiwaniu ochrony. Wybrane problemy dotyczące realizacji praw cudzoziemców ubiegających się o nadanie statusu uchodźcy i objętych ochroną międzynarodową w latach 2012-2014. Obserwacje Programu Pomocy Prawnej dla Uchodźców i Migrantów Helsińskiej Fundacji Praw Człowieka*, 2014, available in Polish at: <http://bit.ly/1eiVxDF>, 52-53.

¹⁵⁷ Article 80(1) Law on Protection.

¹⁵⁸ Information obtained from the Office for Foreigners, 25 March 2014 and confirmed on 1 February 2017.

¹⁵⁹ Article 55(2) and (3) Law on Protection.

¹⁶⁰ Article 74(1)(2) Law on Protection.

¹⁶¹ *Ibid.*

to leave Poland voluntarily has passed.¹⁶² Asylum seekers as a rule are obliged to leave Poland in 30 days from the day when the final decision of the Refugee Board was delivered or in 30 days from the moment when decision of Office for Foreigners becomes final (if they do not appeal).¹⁶³ In practice it means that the most often the reception conditions are provided only for 30 days, not 2 months, in case of negative decision. Reception conditions are provided in practice in this time frame.

In principle, during the onward appeal procedure before the Voivodeship Administrative Court in Warsaw, asylum seekers are not entitled to material reception conditions.¹⁶⁴ In practice, when the court suspends enforcement of the contested decision of the Refugee Board for the time of the court proceedings, asylum seekers are re-granted material reception conditions to the same extent as during the administrative asylum procedure, until the ruling of the court.¹⁶⁵ However, since 2016 the Court has mostly refused to suspend enforcement of the negative decision on international protection (see [Regular Procedure: Appeal](#)) for the time of the court proceedings, which leaves asylum seekers without any material reception conditions for this time.¹⁶⁶

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

Some asylum seekers are not entitled to material reception conditions in an asylum procedure e.g. beneficiaries of subsidiary protection applying for asylum again,¹⁶⁷ humanitarian stay or “tolerated stay”, foreigners staying in Poland on the basis of temporary stay permit, permanent stay permit or long-term residence permit, foreigners staying in youth care facilities or detention centres or pre-trial custody or detention for criminal purposes.¹⁶⁸ Beneficiaries of subsidiary protection, foreigners staying in Poland on the basis of permanent stay permit, long-term residence permit or – in some cases – temporary stay permit are entitled to state benefits (general social assistance system) to the same extent as Polish citizens. Foreigners who were granted humanitarian stay or tolerated stay are entitled to state benefits only in the form of shelter, food, necessary clothing and a benefit for specified purpose.¹⁶⁹

1.2. Obstacles to accessing reception

There are some practical obstacles reported in accessing material reception conditions. Asylum seekers can apply to change assistance granted in the centre to assistance granted outside of the centre. If the Office for Foreigners agrees then in practice an asylum seeker is entitled to stay in the centre until the end of the month and from the next month they are entitled to financial allowance. The problem is that in law and in practice the financial allowance is not paid on the first day of the month, but by the fifteenth of each month.¹⁷⁰ It means that foreigners have to move from the centre at the end of the month, but do not get any

¹⁶² Article 74(2)(2) Law on Protection.

¹⁶³ Article 299(6)(2) Law on Foreigners.

¹⁶⁴ After the administrative appeal procedure before the Refugee Board, there is a possibility of an onward appeal before the Voivodeship Administrative Court in Warsaw, but only points of law can be litigated at this stage.

¹⁶⁵ This is the interpretation of the Legal Department of the Office for Foreigners: Information confirmed by the Office for Foreigners, 1 February 2017 and 1 February 2018.

¹⁶⁶ Voivodeship Administrative Court in Warsaw, Decision No IV SA/Wa 698/15, 13 April 2015; Decision No OZ 41/15, 28 January 2015; Decision No IV SA/Wa 3808/15, 23 May 2016; Information provided by the Voivodeship Administrative Court in Warsaw, 11 January 2018. For more information on the courts’ differential practice in this area, see Maja Łysienia, ‘Prawo cudzoziemca ubiegającego się o udzielenie ochrony międzynarodowej do pobytu na terytorium Polski’ in D Pudziańska (ed), *Status cudzoziemca w Polsce wobec współczesnych wyzwań międzynarodowych* (Wolters Kluwer SA, 2016).

¹⁶⁷ In practice some foreigners after the end of the asylum procedure, in which they were granted subsidiary protection, ask for asylum again in order to be granted refugee status.

¹⁶⁸ Article 70(2) Law on Protection.

¹⁶⁹ Article 5(2) Law of 30 August 2002 on social assistance.

¹⁷⁰ Section 3(6) Regulation on amount of assistance for asylum seekers, current schedule of payments, available at: <http://bit.ly/1kKb6s3>.

financial resources to rent an apartment or even buy food for a couple days or even weeks – such cases were reported to the HFHR.¹⁷¹ The Office for Foreigners claims that asylum seekers can stay in the reception centre until the first day of the payment, but then the monthly payment is smaller, so asylum seekers decide themselves to get allowance for a whole month and not only for the part during which they were not living in a centre.¹⁷²

Another problem reported is that if an asylum seeker cannot come to the centre to collect the monthly financial allowance on the appointed day (i.e. because they are ill), they will only be able to get the allowance the following month, with a new payment. If they do not have additional sources of income, they are left without assistance for one month. According to the Office for Foreigners any case concerning a change in collecting allowance is examined individually and a lot depends on when the applicant submitted a request to collect allowance on the other day.¹⁷³

A further obstacle to receiving support is encountered by formerly detained asylum seekers. Those who have been detained are not entitled to support after being released from the detention centre. They are granted material reception conditions only from the moment of registration in a reception centre, which is very often located far away from the detention centre. As a result, asylum seekers have problems covering the cost of transport to the reception centre.¹⁷⁴ SG is obliged to provide the transport to a reception centre for some groups of asylum seekers released from a detention centre: pregnant women, single parents, elderly and disabled people. In justified cases, food for them should be also provided.¹⁷⁵ The Border Guard does not keep data on the application of this provision in practice.¹⁷⁶

Moreover, it was reported that asylum seekers in the process of appealing a decision were sometimes not granted social assistance, for the simple reason that the Office for Foreigners' system had no record that their appeal had been lodged.¹⁷⁷

Asylum seekers who are subject to a Dublin transfer from Poland are entitled to additional assistance, upon request. The assistance in case of the transfer to other EU country covers: travel costs, administrative payments for travel document or visas and permits, cost of food and medical assistance during the travel.¹⁷⁸ Reception conditions are provided for such asylum seekers as long as they should leave Poland to other EU country;¹⁷⁹ it is an exception from the general rules concerning the period in which reception conditions are provided described above. A request for this assistance has to be made in a specific term (30 days from the moment when the final decision on transfer is delivered to the asylum seeker). After this time, the demand of the asylum seeker is left without consideration.¹⁸⁰

¹⁷¹ HFHR, Letter to the Office for Foreigners, 9 September 2013, available at: <http://bit.ly/1I3doqZ>.

¹⁷² Office for Foreigners, Letter, 23 September 2013, available at: <http://bit.ly/1OhAO2W>.

¹⁷³ Information provided by the Office for Foreigners, 1 February 2017.

¹⁷⁴ Jacek Białas, 'Niezgoda na zasady pomocy społecznej udzielanej osobom ubiegającym się o nadanie statusu uchodźcy z wyrokiem Trybunału Sprawiedliwości UE', 53.

¹⁷⁵ Article 89cb Law on Protection.

¹⁷⁶ Information provided by the Border Guard, 11 January 2018.

¹⁷⁷ M. Łysienia, 'Prawidłowe funkcjonowanie systemu POBYT jako gwarancja przestrzegania praw cudzoziemców' in HFHR, *W poszukiwaniu ochrony*, 2014, 49.

¹⁷⁸ Article 75a(2) in conjunction with Article 75(2) Law on Protection.

¹⁷⁹ Article 74(3)(2) Law on Protection.

¹⁸⁰ Article 75a(2) in conjunction with Article 75(3) and (3a) Law on Protection.

2. Forms and levels of material reception conditions

Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers as 31 December 2017 (in original currency and in €):
 - ❖ Accommodated, incl. food 50 PLN / 12 €
 - ❖ Private accommodation 775 PLN / 185 €

The Regulation on the amount of assistance to asylum seekers sets the level of financial allowances for all amounts related to reception conditions. In the law there are 2 forms of reception conditions, depending on whether the applicant is accommodated or not in a reception centre.¹⁸¹ Conditions offered to both categories equally cover:

- Polish language course and basic materials supplies necessary for the course;
- Supplies for school for children enjoying education and care of public institutions, primary schools, gymnasia or grammar schools and covering, as far as possible the expenses of extra-curricular classes and sports and recreational classes;
- Public transport to (a) attend interviews as part of the asylum procedure; (b) medical examinations or vaccinations; or (c) other particularly justified cases;
- Medical care.

For asylum seekers accommodated in reception centres, other material conditions cover:

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

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

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

Under the law, the assistance granted in the centre is a granted as a rule to all asylum seekers. An asylum seeker can obtain assistance granted out of the centre upon request, examined by the Head of the Office for Foreigners. It can be granted for organisational, safety or family reasons or to prepare asylum seekers for an independent life after they have been granted any form of protection.¹⁸²

All of the abovementioned reception conditions are used in practice. As of 31 December 2017, 1,403 asylum seekers benefited from assistance in the centres and 2,017 asylum seekers were granted assistance outside the centres. In 2017, on average 1,742 asylum seekers benefited from assistance in the centres and 2,169 asylum seekers were granted assistance outside the centres.¹⁸³

¹⁸¹ Article 71 Law on Protection.

¹⁸² Article 72(1) Law on Protection.

¹⁸³ Information provided by the Office for Foreigners, 1 February 2018.

The amount of social assistance that asylum seekers receive is generally not sufficient to ensure an adequate standard of living in Poland.¹⁸⁴ With only PLN 750-775 per month, it is very difficult to rent an apartment or even a room in **Warsaw**, where most asylum seekers stay during the procedure.¹⁸⁵ As the amount of financial allowance is not enough to rent separate accommodation, asylum seekers are often forced to live in overcrowded and insecure places. Many of them sleep in overcrowded apartments, where they have to share beds with other people or where living conditions do not provide privacy and personal safety.¹⁸⁶ Social assistance for families of four members amounts to PLN 1,500 per month and in practice is enough only to rent an apartment. Insufficient amounts of social assistance forces asylum seekers to work in Poland illegally in order to maintain and pay the rent.¹⁸⁷

The amount of social assistance is below the so called “social minimum” (indicator which evaluates the cost of living in Poland). The asylum seeker receives from one and half to two times less than what is essential according to the “social minimum”. The amount of social assistance for asylum seekers has not been raised since 2003, even though the costs of living in Poland have risen by 35% to 50% depending on the type of the household.¹⁸⁸

As a result, material reception conditions are considered insufficient to ensure a decent standard of living as highlighted in the CJEU judgment in *Saciri*.¹⁸⁹ The amount of social assistance that asylum seekers receive is not adjusted to their state of health, their age or disability, which is incompatible with *Saciri*.¹⁹⁰

In 2015 the Polish Ombudsman, UNHCR, HFHR and the LIA appealed to the Ministry of Interior to increase the amount of the social assistance granted to asylum seekers. Their motions were not accepted by the authorities, who concluded that the amount of financial support granted outside of the centres is satisfactory, because it is only an additional form of the material reception conditions. The basic form is the assistance granted in the reception centres, which is sufficient.¹⁹¹

According to the law, in case an asylum seeker performs cleaning work for the centre, provides translation or interpretation that facilitates communication between the personnel of the centre and asylum seekers, or provides cultural and educational activities for other asylum seekers who stay in the centre, the amount of the allowance for personal expenses may be raised to PLN 100 (e.g. in the first half of 2015, such an increased allowance was paid in 367 cases).¹⁹² The Office for Foreigners has not provided data for 2016 and 2017.

¹⁸⁴ Ombudsman, Letter to the Ministry of Interior of 7 December 2015, in which Polish Ombudsman is asking to consider the increase the amount of financial assistance for asylum seekers, available in Polish at: <http://bit.ly/2kSuaa4>.

¹⁸⁵ N. Klorek, ‘Ochrona zdrowia nieudokumentowanych migrantów i osób ubiegających się o ochronę międzynarodową w opinii cudzoziemców’ in A. Chrzanowska, W. Klaus, ed., *Poza systemem. Dostęp do ochrony zdrowia nieudokumentowanych migrantów i cudzoziemców ubiegających się o ochronę międzynarodową w Polsce*, LIA, 2011, 56.

¹⁸⁶ K. Wysińska, *Gdzie jest mój dom? Bezdomność i dostęp do mieszkań wśród ubiegających się o status uchodźcy, uchodźców i osób z przyznaną ochroną międzynarodową w Polsce* (*Where is my home? Homelessness and access to housing among asylum seekers, refugees and persons granted international protection in Poland*), UNHCR, 2013, 14, available in Polish at: <http://bit.ly/1CMmGFb>, 14.

¹⁸⁷ Stowarzyszenie Interwencji Prawnej, A. Chrzanowska, I. Czerniejewska, ‘Mieszkamy tutaj, bo nie mamy innego wyjścia... Raport z monitoringu warunków mieszkaniowych uchodźców w Polsce’ (“We live here, because we have no other choice... Report from the monitoring of housing conditions of refugees in Poland”), Analizy, raporty, ekspertyzy Nr 2/2015, 55, available in Polish at: <http://bit.ly/1Lq2Hie>.

¹⁸⁸ M. Jaźwińska, M. Szczepanik, “All quiet on the Eastern front: asylum trends and reception of refugees in Poland during the 2013-2015 Europe’s migration crisis” in Corvinus Society for Foreign Affairs and Culture, (Biztpol Affaires 2015 Summer Vol. 3 No 2), available at: <http://bit.ly/1OiDPgX>, also letter from Helsinki Foundation for Human Rights to the Ministry of Interior of 27 October 2015, available in Polish at: <http://bit.ly/2l82tbT>.

¹⁸⁹ CJEU, Case C-79/13 *Saciri*, Judgment of 27 February 2014; J. Białas, ‘Niezgoda zasad pomocy społecznej zapewnianej osobom ubiegającym się o nadanie statusu uchodźcy z wyrokiem Trybunału Sprawiedliwości UE’, 52; Ombudsman, Letter of 7 December 2015 to the Ministry of Interior, in which he is asking to consider the increase the amount of financial assistance for asylum seekers, available in Polish at: <http://bit.ly/2kSuaa4>.

¹⁹⁰ *Ibid.*

¹⁹¹ Letters from Polish Ombudsman, HFHR, Association for Legal Intervention and UNHCR, as well as Ministry of Interior’s response, available in Polish at: <http://bit.ly/2lyW3Va>.

¹⁹² Information provided by the Office for Foreigners, 27 August 2015.

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

3. Reduction or withdrawal of reception conditions

Indicators: Reduction or Withdrawal of Reception Conditions

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

The law provides for the possibility to withdraw material reception conditions, if an asylum seeker grossly violates the rules in the centre or acts violently towards employees of the centre or other foreigners staying there.¹⁹³ The decision on depriving reception conditions is issued by the Head of the Office for Foreigners. It can be re-granted to the same extent as previously, but if the violation occurs again, it can be re-granted only in the form of a payment of half of the regular financial allowance provided to asylum seekers.¹⁹⁴

If an asylum seeker seriously breaches the rules in the centre, in practice they receive three warnings before any further consequences. If they still breach the rules after those warnings, they can be deprived of material reception conditions. Other sanctions are not applied.¹⁹⁵

Social assistance can be reduced to half of the financial allowance provided to asylum seekers also in case of a refusal to undergo medical examinations or necessary sanitary treatment of the asylum seeker themselves and their clothes.¹⁹⁶

The above mentioned rules of withdrawal and reduction of social assistance are used in practice very rarely. There were 3 cases in 2017, and another 3 in 2016. In 2017, 2 applicants were able to re-access assistance. No information is available about the specific reasons of such a withdrawal or reduction.¹⁹⁷

Moreover, in case an asylum seeker benefiting from social assistance in the centre stays outside this centre for a period exceeding two days, granting such assistance should be withheld by law until the moment of his return.¹⁹⁸

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

The Ministry of Interior has a possibility to reduce asylum seekers' social assistance and/or medical care, if the limit of expenses allocated for this assistance per year (100,000,000 PLN) is likely to be exceeded or if, in a certain period of time, expenses exceed the forecasted amount for this period by at least 10%.¹⁹⁹ Such situation can occur in the case of an increased number of asylum seekers arriving to Poland. The Ministry has not used this opportunity yet.

¹⁹³ Article 76(1) Law on Protection.

¹⁹⁴ Articles 76 and 78 Law on Protection.

¹⁹⁵ Information obtained from Department for Social Assistance, Office for Foreigners, 25 March 2014.

¹⁹⁶ Article 81(3) Law on Protection.

¹⁹⁷ Information provided by the Office for Foreigners, 1 February 2017 and 1 February 2018.

¹⁹⁸ Article 77 Law on Protection.

¹⁹⁹ Article 19 Law of 28 July 2011 on the legalisation of the stay of certain foreigners on Polish territory, available in Polish at: <http://bit.ly/1NyZMY8>.

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

4. Freedom of movement

Indicators: Freedom of Movement

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

Officially there is no restriction to the freedom of movement of asylum seekers: they can travel around Poland wherever they want. However, when an asylum seeker accommodated in a centre stays outside this centre for more than 2 days, the assistance will be withheld by law until the moment of their return.²⁰⁰ Asylum seekers should inform the employees of the centre if they want to leave for a longer period and then the assistance will still be granted.²⁰¹

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

Asylum seekers can also apply to be allocated in a centre of their choice, but such a request has to be justified. For example, in March 2014 a group of Ukrainians complained about the conditions in the reception centre in **Podkowa Lesna Debak** and as a result were moved to another one in **Lukow**.²⁰²

The possibility for nuclear families to stay in the same centre is not a problem in practice.²⁰³

Under the law an asylum seeker staying in one centre can be required to move to another facility if this is justified for organizational reasons.²⁰⁴ Polish authorities in practice interpret such rule as applying only to transfers from first-reception centres to an accommodation centre.²⁰⁵ As a result, asylum seekers are forced to move only from a first reception centre to the other centres. In practice it can take a few to several days (depending on how long the epidemiological filter procedure lasts and whether the interview is conducted in the first reception centre – as a rule it should be conducted there in the first asylum procedure).²⁰⁶ Afterwards if they are allocated to one centre they are very rarely moved to another. If so, it happens only upon request of the asylum seeker. In 2016 and 2017 there were no cases of moving an asylum seeker to another facility without their request. If an asylum seeker submits such a request, it is mostly because of the location of the centre (e.g. it is far from school or shops).²⁰⁷ There is no decision concerning transfers from one centre to the other so it cannot be appealed. Reasons of public interest and public order do not have any impact on the decision on an asylum seeker's place of stay.²⁰⁸

²⁰⁰ Article 77 Law on Protection.

²⁰¹ Information received from UNHCR Poland and the Office for Foreigners, 25 March 2014.

²⁰² Polskie Radio, "Brud i smród" - uchodźcy z Ukrainy skarżą się na warunki w polskim ośrodku', 27 March 2014, available at: <http://bit.ly/NY8bKX>.

²⁰³ Information provided by Office for Foreigners, 25 March 2014; EMN, *The Organisation of Reception Facilities for Asylum Seekers in different Member States. National Contribution of Poland*, 2013, 6.

²⁰⁴ Article 82(1)(6) Law on Protection.

²⁰⁵ EMN, *The Organisation of Reception Facilities for Asylum Seekers in different Member States. National Contribution of Poland*, 2013, 19.

²⁰⁶ Information provided by the Office for Foreigners, 27 August 2015.

²⁰⁷ Information provided by the Office for Foreigners, 1 February 2017 and 1 February 2018.

²⁰⁸ Information provided by Office for Foreigners, 25 March 2014. See also Ombudsman, *Realizacja prawa małoletnich cudzoziemców do edukacji. Raport RPO*, 2013, available in Polish at: <http://bit.ly/1Hz4N4a>, 38.

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation

1. Number of reception centres:²⁰⁹ 11
2. Total number of places in the reception centres: 2,236
3. Total number of places in private accommodation: N/A
4. Type of accommodation most frequently used in a regular procedure:
☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☒ Private housing ☐ Other
5. Type of accommodation most frequently used in an accelerated procedure:
☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☒ Private housing ☐ Other

Poland has eleven reception centres which altogether provide 2,236 places. At the end of 2017, 1,403 asylum seekers were residing in the centres.²¹⁰ Another 2,017 asylum seekers were receiving assistance outside the centres.

Two centres (**Dębak**, **Biała Podlaska**) serve for first reception, where asylum seekers are directed after applying for asylum in order to register and carry out medical examinations.²¹¹ The other nine are accommodation centres.²¹²

There is no problem of overcrowding in these centres. As of 31 December 2017, the occupancy rate was 50% in first reception centres and 71% in the accommodation centres.²¹³

Centres are located in different parts of Poland. Some of them are located in cities (**Warsaw**, **Biała Podlaska**, **Białystok**, **Lublin**), but most of them are located in the countryside. Some are located far away from any towns: **Bezwola**, **Dębak**, **Grupa** and **Linin** are located in the woods.²¹⁴ These centres are therefore not easily accessible; in **Dębak** residents have to walk 3km through the woods to access public transport. The centre in **Warsaw** (for single women with children) is situated far away from the city centre, near factories and a construction company. Nearby there are no shops or other service points, to get to the centre asylum-seeking women have to walk through a densely tree-lined road which is not sufficiently lit. This raises concerns with regard to safety of single women living there.²¹⁵

Spatial exclusion as a result of the present location of the centres is considered as the main problem by some NGOs. Isolation of the centres leads to limitation of contact with Polish citizens and Polish institutions, including NGOs, which affects the effectiveness of the integration process.²¹⁶

Other types of accommodation such as hotels can be used only in emergency situations, for short periods of time (e.g. when staying in the centre would put an asylum seeker at risk, e.g. in case of a serious conflict with other asylum seekers staying in the centre). This possibility has not been used in practice yet.

²⁰⁹ Both permanent and for first arrivals.

²¹⁰ Information provided by the Office for Foreigners, 1 February 2018.

²¹¹ Information provided by the Office for Foreigners, 27 August 2015.

²¹² Office for Foreigners, *Informator Departamentu Pomocy Socjalnej 2017*, available in Polish at: <http://bit.ly/2CzDOE3>, 3.

²¹³ Information provided by the Office for Foreigners, 1 February 2018.

²¹⁴ List and map of reception centres available at: <http://bit.ly/1JzdU5c>.

²¹⁵ Centrum Pomocy Prawnej im. Haliny Nieć, K. Przybysławska (Ed.), *Raport: Przemoc seksualna i przemoc ze względu na płeć w ośrodkach dla osób ubiegających się o nadanie statusu uchodźcy 2012-2014*, December 2014, available in Polish at: <http://bit.ly/1L1SxFG>, 8-10.

²¹⁶ Institute of Public Affairs, *Analiza przygotowania lokalnych instytucji do przyjęcia uchodźców z programu relokacji i przesiedleń. Raport końcowy z badań fokusowych*, 2016, available in Polish at: <http://bit.ly/2EFKaUz>, 12-14.

2. Conditions in reception facilities

Indicators: Conditions in Reception Facilities

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

The Head of the Office for Foreigners is responsible for the management of all the centres. This authority can delegate its responsibility for managing the centres to social organisations, associations, etc.²¹⁷ Currently 7 reception centres are managed by private contractors (private owners and companies).²¹⁸ In 2016 the Office for Foreigners faced some problems concerning delegation of the responsibility for managing the centres to other entities. Only nine entities (seven previous centres and two new ones) presented offers to manage ten reception centres. New offers though met with wide protests from local community and authorities, which was connected with the rising fear of asylum seekers in connection with the increase in arrivals in Europe in 2015. As a result, the call for proposals was cancelled in case of those two new locations in order to ensure asylum seekers' safety.²¹⁹

The Office for Foreigners monitors the situation in centres managed by private contractors e.g. by unexpected visits.²²⁰ Asylum seekers can complain to the Office for Foreigners on the situation in the centres and they use this opportunity in practice.²²¹ In 2017 there were only 2 complaints, none of which was considered legitimate.²²²

2.1. Overall living conditions

Living conditions differ across the reception centres. In the centres managed by private contractors ensuring certain minimum living conditions standards is obligatory on the basis of agreements between these contractors and the Office for Foreigners. Thus centres have to have furnished rooms for asylum applicants, a separate common room for men and for women, kindergarten, space to practice religion, a recreation area, school rooms, specified number of refrigerators and washing machines.²²³ Other conditions are dependent on the willingness and financial situation of the contractor.²²⁴ The Supreme Audit Office (during an audit which took place in years 2012-2014) assessed living conditions in 10 controlled centres as good.²²⁵ No more recent monitoring has been conducted.

The Office for Foreigners reports that in the reception centre in **Dębak** there is a renovated building of high standard in use since 2016, fully adjusted to the needs of persons with disabilities. In **Biała Podlaska** the rooms, corridors and preschool area have been renovated as well.²²⁶

²¹⁷ Article 79(2) Law on Protection.

²¹⁸ Office for Foreigners, *Informator Departamentu Pomocy Socjalnej 2017*, available in Polish at: <http://bit.ly/2CzDOE3>, 3.

²¹⁹ EMN, *Problemy z rostrzygnięciem przetargu na ośrodki recepcyjne dla cudzoziemców*, 9 March 2016, available in Polish at: <http://bit.ly/2IRrQRU>.

²²⁰ European Migration Network, *The Organisation of Reception Facilities for Asylum Seekers in different Member States. National Contribution of Poland*, 2013, 24-25; Information provided by the Office for Foreigners, 25 March 2014.

²²¹ Information provided by the Office for Foreigners, 25 March 2014; Para 17 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

²²² Information provided by the Office for Foreigners, 1 February 2018.

²²³ Office for Foreigners, *Informator Departamentu Pomocy Socjalnej 2017*, available in Polish at: <http://bit.ly/2CzDOE3>, 3.

²²⁴ Ombudsman, *Realizacja praw małoletnich cudzoziemców do edukacji. Raport RPO*, 2013, available in Polish at: <http://bit.ly/1Hz4N4a>, 22.

²²⁵ Supreme Audit Office, *Pomoc społeczna dla uchodźców. Informacja o wynikach kontroli*, November 2015, available in Polish at: <http://bit.ly/2IP90Z4>, 20-21.

²²⁶ Information provided by the Office for Foreigners, 1 February 2017.

No protests or hunger strikes in centres have been reported in the past four years.²²⁷

As regards the staff rate, in 2017, one employee was in charge of 42 asylum seekers (staying in and out of the centres).²²⁸ As of December 2017, there are 78 employees working in all the centres.²²⁹ Staff in the centre are working from Monday to Friday from 7:00 to 18:00. At night and on weekends only guards are present in the centre, which is not sufficient. Security staff is available in all centres everyday 24 hours a day.²³⁰

2.2. Activities in the centres

Asylum seekers can go outside from the centre whenever they want, during the day, but they should be back before 23:00 in the evening.²³¹

Polish language courses are organised in all reception centres, also for children. Different workshops are organised in the centres by NGOs, although it is dependent on their financing. In 2016 there were also classes of the Polish language organised for asylum seekers living out of the centres. Centres usually have libraries (only one centre does not have one). In 9 centres there is Wi-Fi available and in 4 centres there are computer rooms with free access to internet.²³²

In all centres there is a special room designed for religious practices.²³³ If asylum seekers want to participate in religious services outside of the centre, they have such a right, although in practice remoteness from the closest place of worship can prevent them from participating in such services.

C. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market

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

The law allows for access to the labour market for asylum seekers after six months from the date of submission of an asylum application if a first instance decision has not been given within this time and if the delay is not attributed to any fault of the asylum seeker.²³⁴ The Head of the Office for Foreigners upon

²²⁷ Information provided by the Office for Foreigners, 1 February 2018.

²²⁸ *Ibid.*

²²⁹ *Ibid.*

²³⁰ Office for Foreigners, *Informator Departamentu Pomocy Socjalnej 2017*, available in Polish at: <http://bit.ly/2CzDOE3>, 8.

²³¹ Para 10.3 Regulation on rules of stay in the centre for asylum seekers.

²³² Information provided by the Office for Foreigners, 27 August 2015.

²³³ *Ibid.* See also Supreme Audit Office, *Pomoc społeczna dla uchodźców. Informacja o wynikach kontroli*, November 2015, available in Polish at: <http://bit.ly/2IP90Z4>, 9.

²³⁴ Article 35 Law on Protection.

the asylum seeker's request, issues a certificate, which accompanied by a temporary ID document entitles the asylum seeker to work in Poland.²³⁵ The certificate is valid during the appeal procedure (first appeal only), when it was issued during the first instance procedure.

Access to employment is not limited to certain sectors, but can be problematic in practice. Many employers do not know, that the above mentioned certificate with a temporary ID document gives an asylum seeker a right to work or do not want to employ a person for such a short time (i.e. 6 months, as the employers are unaware that the procedure will actually take longer than the validity of a single ID). Secondly asylum seekers often live in centres which are located far away from big cities, which makes it difficult in practice to find a job. Moreover, most asylum seekers do not know Polish well enough to get a job in Poland.²³⁶

Experts point out that the fact that asylum seekers cannot work for the first 6 months of the refugee procedure is one of the factors which leads to a lack of independence and reliance on social assistance.²³⁷

2. Access to education

Indicators: Access to Education

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

All children staying in Poland have a constitutional right to education. Education is mandatory until the age of 18. It is provided to asylum-seeking children in regular schools and it is not limited by law. Asylum seekers benefit from education in public schools under the same conditions as Polish citizens until the age of 18 or the completion of secondary school.²³⁸

There are different obstacles to accessing education in practice. The biggest problem is a language and cultural barrier. Children do not know Polish but they are obliged to participate in classes in Polish. However, in all centres except the reception centre in **Biała Podlaska**, there are courses of Polish language for children being organised,²³⁹ and social assistance includes providing children with basic supplies necessary for learning Polish.²⁴⁰ In 2017 the Office for Foreigners together with Linguae Mundi Foundation created a comprehensive programme and materials for teaching Polish language in the centres.²⁴¹

Moreover, children are entitled to additional, free Polish language classes, which should be organised by the authority managing the school which asylum seekers are attending.²⁴² Children can also participate in additional lessons on other subjects if their education level is different from this of the class (compensatory classes). Both forms of assistance can be granted for a maximum of twelve months.²⁴³ Compensatory lessons and additional Polish language classes can last for a maximum of five hours per week for one child. In practice, schools organise two to ten hours of additional Polish language lessons per week (most of the times it is 2 hours per week which is not sufficient). In some schools they are not organised at all. Schools criticise the limitation of compensatory and additional Polish language lessons to five hours per week, as their practice shows the additional classes should take at least six hours per week. NGOs criticise the

²³⁵ *Ibid.*

²³⁶ M Abdoulvakhabova, 'Problemy cudzoziemców w Polsce w świetle funkcjonowania Fundacji Ocalenie' in M Duszczyk and P Dąbrowski (ed.), *Przestrzeganie praw cudzoziemców w Polsce. Monografia* (Rzecznik Praw Obywatelskich, 2012), available at: <http://bit.ly/1RTIHbU>, 46.

²³⁷ UNHCR, *Gdzie jest mój dom? Bezdomność i dostęp do mieszkań wśród ubiegających się o status uchodźcy, uchodźców i osób z przyznaną ochroną międzynarodową w Polsce*, 2013, 14.

²³⁸ Article 94a(1a) Law of 7 September 1991 on the education system.

²³⁹ Office for Foreigners, *Informator Departamentu Pomocy Socjalnej 2017*, available in Polish at: <http://bit.ly/2CzDOE3>, 5.

²⁴⁰ Article 71(1)(1f) Law on Protection.

²⁴¹ Information provided by the Office for Foreigners, 1 February 2018.

²⁴² Article 94a(4) Law of 7 September 1991 on the education system.

²⁴³ Article 94a(4a) and (4c) Law of 7 September 1991 on the education system.

automatic limitation of the duration of provision of additional assistance to twelve months, as it should be adjusted individually.

Children have also a right to assistance of a person who knows the language of their country of origin, which can be employed as a teacher's assistant by the director of the school. This help is limited to a maximum of twelve months. In some schools NGOs provide support of teacher's assistant in the framework of their projects.²⁴⁴ Such support is dependent on the NGOs' funding, however.

Experts also point out that there are no legal provisions concerning assessment and promotion to higher classes of foreign children who do not know the Polish language sufficiently. Those children are also obliged to write exams at the end of the school, even if they have joined school a couple of days before. Nevertheless, they can use dictionaries and simplified forms during an exam.²⁴⁵

Moreover, schools admitting foreign children often have to cope with a lack of sufficient financial means to organise proper education for this special group of pupils. Moreover, teachers working with foreign children are not receiving sufficient support, like courses and materials.²⁴⁶

The current education system is not taking into account the special needs of foreign children. As a result, adaptation of the education programme to the needs and abilities of the individual child is dependent on the goodwill and capacity of teachers and directors. Moreover, as a factor impeding effective teaching, schools also report the problem of the big fluctuation of the foreign children as a result of families' migration to Western Europe. Another problem is that too many foreign children are admitted to one class, which impedes education of both Polish and foreign children.²⁴⁷

If the child cannot enter the regular education system e.g. due to illness, their special needs are addressed by the Office for Foreigners, for instance by placing a child in special school, or by NGOs. There was a case when one NGO gave lessons for asylum seekers who were disabled in the centre.²⁴⁸

2.1. Preparatory classes

Since 2016, schools have a possibility to organise preparatory classes for foreign children who do not have sufficient knowledge of the Polish language. Those classes last for 20-26 hours a week. If a school decides to organise such classes, foreign children are not obliged to participate in regular classes. Learning Polish as a foreign language is limited only to 3 hours per week.²⁴⁹

Preparatory classes have been met with mixed reactions. In the opinion of the Ministry of Education, the implemented solution enables individual treatment of foreign children and adaptation of the methods and forms of education to their needs. According to the critics of this solution, children are placed exclusively in foreign classes, thus impeding their integration into Polish society and fuelling separation. Moreover, preparatory classes are organised for children 7-10 years old, 11-13 years old, 14-16 years old and 17-18 years old, which means that a teacher is obliged to implement the curriculum even for three classes at once.²⁵⁰

²⁴⁴ Ombudsman, *Obecność uchodźców w małych gminach. Doświadczenia Góry Kalwarii i Podkowie Leśnej w integracji uchodźców i edukacji ich dzieci*, 2016, available in Polish at: <http://bit.ly/2IKSM6n>, 30-31.

²⁴⁵ *Ibid.*

²⁴⁶ *Ibid.*, 23-24.

²⁴⁷ Institute of Public Affairs, *Analiza przygotowania lokalnych instytucji do przyjęcia uchodźców z programu relokacji i przesiedleń. Raport końcowy z badań fokusowych*, 2016, available in Polish at: <http://bit.ly/2EFKaUz>, 57-62.

²⁴⁸ Information provided by the Office for Foreigners, 25 March 2014.

²⁴⁹ Para 17 Ordinance of 9 September 2016 on the education of the persons not having Polish citizenship and persons who have Polish citizenship and were educated abroad.

²⁵⁰ Ombudsman, *Posiedzenie Komisji Ekspertów ds. Migrantów*, 12 December 2016, available in Polish at: <http://bit.ly/2odhX16>.

2.2. Kindergarten

Currently all children in Poland have a problem with pre-school learning as there are not enough places for them in public kindergartens.²⁵¹ As a result, in all of the reception centres, some form of kindergarten is organised, supported by NGOs in some. This day care is provided minimum 5 times a week for 5 hours a day.²⁵² At the end of 2017 one of the NGOs stated that as a result of the lack of financing due to the suspension of AMIF it cannot continue to provide pre-school care in **Linin** and **Dębak**. The organisation has been providing this assistance everyday for 8 hours for two years, and also equipped the rooms for kindergarten in the two centres.²⁵³ The Office for Foreigners explained, however, that kindergarten in Linin and Dębak will not be closed and that pre-school care will be organised by the Office itself.²⁵⁴

2.3. Educational activities for adults

There is no access to vocational training for asylum seekers provided under the law.

The only educational activities, that adults have access to are courses of Polish language organised in all centres except the reception centre in **Biała Podlaska**, where asylum seekers mostly stay for a short amount of time. The course's level is considered insufficient by some NGOs. From 2014 there are also "Open days" in all centres, during which asylum seekers can present their culture and customs to polish society.²⁵⁵ There are some initiatives by NGOs, organising other courses in the centres, including vocational training, but these have been impacted by lack of funding. In 2017 research was conducted on the impact of the suspension of AMIF in Poland on Polish NGOs and foreigners. The research showed that 9 out of 13 NGOs had to limit their legal and integration assistance for foreigners, 7 NGOs had to decrease the amount of trainings for foreigners, including Polish language lessons and vocational training.²⁵⁶ In 2016 and 2017 NGOs carried out projects in partnership with the Office for Foreigners which aimed at general integration, learning Polish, vocational training, cultural activities, psychological and legal assistance.²⁵⁷

D. Health care

Indicators: Health Care

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

Access to health care for asylum seekers is guaranteed in the law under the same conditions as for Polish nationals who have health insurance.²⁵⁸ Health care for asylum seekers is publicly funded. Basic health care is organised in medical offices within each of the reception centres.

²⁵¹ Information provided by the Office for Foreigners, 25 March 2014.

²⁵² Information provided by the Office for Foreigners, 1 February 2018.

²⁵³ Refugee.pl, 'SOS dla przedszkoli!', 6 December 2017, available in Polish at: <http://bit.ly/2EEVvnM>.

²⁵⁴ Information provided by the Office for Foreigners, 1 February 2018.

²⁵⁵ Information provided by the Office for Foreigners, 27 August 2015.

²⁵⁶ W Klaus, E Ostaszewska-Żuk and M Szczepanik, *Fundusze Europejskie i ich rola we wspieraniu integracji cudzoziemców w Polsce*, September 2017, 9.

²⁵⁷ Information provided by the Office for Foreigners, 1 February 2018.

²⁵⁸ Article 73(1) Law on Protection.

Moreover, asylum seekers can benefit from medical assistance provided from 1 July 2015 by private contractor Petra Medica,²⁵⁹ with whom the Office for Foreigners has signed an agreement to coordinate medical care for asylum seekers and monitors the application of this agreement. There are several critiques concerning the quality of medical assistance in reception centres.²⁶⁰

In April 2017 the “Epidemiological Filter” facility started operating. This medical facility, located near the Belarusian border, where most asylum seekers cross the Polish border, is aimed at providing medical assistance exclusively to foreigners who have just applied for protection in Poland and to reduce epidemiological risks for the whole of Poland by prompt diagnosis of infectious diseases.²⁶¹

In 2017 the Office for Foreigners confirmed that the medical doctor in the centres has 10 duty hours per 120 asylum seekers, while the nurse has 20 hours for the same number of possible patients. Both have 3 hours a week more for every additional 50 asylum seekers.²⁶²

Health care for asylum seekers includes treatment for persons suffering from mental health problems. Currently, psychologists work in all the centres for at least 4 hours a week for every 120 asylum seekers. This is extended for 1 hour for every additional 50 asylum seekers.²⁶³ Their help is limited to basic consultations, however.²⁶⁴ Asylum seekers can also be directed to a psychiatrist or a psychiatric hospital. According to some experts and many NGOs, specialised treatment for victims of torture or traumatised asylum seekers is not available in practice.²⁶⁵ NGOs still point at the lack of proper treatment of persons with PTSD. The available psychological assistance is considered an intervention, not a regular therapy.²⁶⁶ Moreover, there are only three specialised NGOs that provide psychological consultations and treatment to asylum seekers.²⁶⁷

The biggest obstacle in accessing health care that asylum seekers face is the lack of knowledge of foreign languages amongst doctors and nurses. Polish authorities do not provide interpretation free of charge and most of the asylum seekers are not able to pay for such assistance on their own. However the medical care contractor is obliged to ensure a interpretation during the medical and psychological consultation, if it is needed.²⁶⁸ During the monitoring in **Bezwola** and **Białystok** held in 2015, Russian speaking asylum seekers confirmed that doctors and psychologists working in these centres know the Russian language. NGOs informed in 2016 that interpretation is still problematic in some cases,²⁶⁹ namely for asylum seekers speaking French and Arabic who could not communicate with doctors in the first reception centre in **Dębak** and in a medical point in the Office for Foreigners in **Warsaw**. However, interpretation services were not provided.²⁷⁰

Another challenge is the fact that some clinics and hospitals providing medical assistance to asylum seekers are located far away from the centres, so an asylum seeker cannot be assisted by the closest medical facility, except for emergency situations. Another problem identified by the experts is the lack of

²⁵⁹ Information from the Office for Foreigners website: <http://bit.ly/1XqYMIQ>; Office for Foreigners, *Informator Departamentu Pomocy Socjalnej* 2017, 6-7.

²⁶⁰ UNHCR's observation in a framework of the Age Gender Diversity Participatory Assessment 2016 presented during a meeting on 16 November 2016 in Warsaw.

²⁶¹ Office for Foreigners, 'Filtr epidemiologiczny rozpoczął działalność', 8 June 2017, available in Polish at: <http://bit.ly/2ECXOrf>; *Informator Departamentu Pomocy Socjalnej* 2017, 18.

²⁶² Information provided by the Office for Foreigners, 1 February 2018.

²⁶³ *Ibid.*

²⁶⁴ The Office for Foreigners claims that those psychologists' assistance concentrates on psychological support and counseling and also on diagnosis of mental disorders, including PTSD.

²⁶⁵ See e.g. M Szczepanik, *Right to healthcare and access to medical services for asylum seekers and beneficiaries of international protection in Poland*, May 2017, available at: <http://bit.ly/2CxXokd>.

²⁶⁶ Information provided by the Association for Legal Intervention, October 2016.

²⁶⁷ M Szczepanik, *Right to healthcare and access to medical services for asylum seekers and beneficiaries of international protection in Poland*, May 2017, available at: <http://bit.ly/2CxXokd>.

²⁶⁸ Information provided by the Office for Foreigners, 1 February 2017.

²⁶⁹ Centrum Pomocy Prawnej im. H. Nieć, *Situation of Dublin Returnees in Poland*. HNLAC Information Note – July 2016, available at <http://bit.ly/2IkV08v>, 8.

²⁷⁰ HFHR, Letter to the Head of the Office for Foreigners, 1765/2016/BD, 13 September 2016.

intercultural competence amongst doctors. The Office for Foreigners noticed that for those asylum seekers living far away from the centres health care is provided in voivodeship cities in Poland and that coordination of visits is conducted by the helpline of the contractor, where the asylum seeker can get to know the time of the visit and ways to get the prescription.²⁷¹

If an asylum seeker is deprived of material reception conditions or they are limited, they are still entitled to health care.²⁷²

E. Special reception needs of vulnerable groups

Indicators: Special Reception Needs

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

Persons who need special treatment are defined particularly as:²⁷³

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

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

- ❖ Accommodate him or her in a reception centre adapted to the needs of the disabled people or ensuring a single room or designed only for women or women with children;
- ❖ Place him or her in special medical premises (like a hospice);
- ❖ Place him or her in a foster care corresponding to the psychophysical situation of the asylum seeker;
- ❖ Adapt his or her diet to his or her state of health.²⁷⁴

If an asylum seeker is a person who needs special treatment, his needs concerning accommodation and alimentation are taken into account when providing material reception conditions.²⁷⁵ An asylum seeker who needs special treatment should be accommodated in the reception centre by taking into account his special needs.²⁷⁶

The Border Guard ensures transport to the reception centre and – in justified cases – food during the transport after claiming for asylum only to: disabled or elderly people, single parents and pregnant women.²⁷⁷ Prior to this even these groups of vulnerable asylum seekers had to organize this travel themselves. However there is no information on the practical application of this provision.

²⁷¹ Information provided by the Office for Foreigners, 1 February 2017.

²⁷² Articles 76(1) and 70(1) Law on Protection.

²⁷³ Article 68(1) Law on Protection.

²⁷⁴ Article 68(2) Law on Protection.

²⁷⁵ Article 69a Law on Protection.

²⁷⁶ Para 5.3 Annex to the Regulation on rules of stay in the centre for asylum seekers.

²⁷⁷ Article 30(1)(8) Law on Protection.

Some of the reception centres are adapted to the needs of disabled asylum seekers. All of the centres managed by the Office for Foreigners have special entrance for disabled foreigners and bathrooms adapted to the needs of the asylum seekers on wheelchairs. Other centres have some conveniences for such asylum seekers. There is also a provision of rehabilitation services to this group of persons. In 2017 Office for Foreigners bought 2 cars adapted to the transportation of the disabled persons.²⁷⁸

On 2 November 2015, the Office for Foreigners prepared Procedure No 1/2015 which concerns the granting of social assistance to vulnerable groups. The document contains the steps of identification for the purpose of providing adequate support by the employees of the Social Assistance Department, dividing the vulnerable groups into categories mentioned in the law (e.g. elderly persons, disabled, minors, torture victims, etc.) There are no separate accommodation centres for traumatised asylum seekers, or other vulnerable persons but some of them (including torture victims) can be placed in a single room if there is such a need.²⁷⁹

1. Reception of women and children

Only one centre is designed to host single women or single women with children. It is located in **Warsaw** and it is managed by a private contractor.²⁸⁰ Moreover, social assistance may be granted outside of the centre when it is necessary in order to ensure the safety of the asylum seeker, with special consideration to the situation of single women.²⁸¹

To prevent gender-based violence the Office for Foreigners has a special agreement with the Police, UNHCR, “La Strada” Foundation and Halina Niec Legal Aid Centre since 2008, aiming to better identify, prevent and respond to gender-based violence in reception centres.²⁸² In all reception centres special teams have been created, consisting of one representative from the Office for Foreigners, the Police and an NGO. Their task is to effectively prevent acts of violence in reception centres and respond to any which do occur quickly. There were 23 cases in 2016 and 28 in 2017.²⁸³

In 2017, the Office for Foreigners in partnership with NGOs implemented a comprehensive system of child protection against violence in the centres. In the framework of the project “We protect children in the centres for foreigners”, trainings of centre staff were organised and standards of child protection were developed.²⁸⁴

2. Reception of unaccompanied children

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

The law also refers to qualified personnel that should undertake activities in the asylum procedure concerning unaccompanied children (a defined profile of higher education, 2 years of relevant experience).²⁸⁵

²⁷⁸ Information provided by the Office for Foreigners, 1 February 2018.

²⁷⁹ Procedure 1/2015 of the Office for Foreigners.

²⁸⁰ Office for Foreigners, *Informator Departamentu Pomocy Socjalnej 2017*, 10.

²⁸¹ Article 72(1)(1) Law on Protection.

²⁸² *Porozumienie w sprawie standardowych procedur postępowania w zakresie rozpoznawania, przeciwdziałania oraz reagowania na przypadki przemocy seksualnej lub przemocy związanej z płcią wobec cudzoziemców przebywających w ośrodkach dla osób ubiegających się o nadanie statusu uchodźcy*, 25 March 2008.

²⁸³ Information provided by the Office for Foreigners, 1 February 2017 and 1 February 2018.

²⁸⁴ Office for Foreigners, “*Chronimy dzieci w ośrodkach dla cudzoziemców*”, 11 August 2017, available in Polish at: <http://bit.ly/2GuQHBK>.

²⁸⁵ Article 66 Law on Protection.

When providing material reception conditions to child, the need to safeguard their interests should be taken into account, especially taking into consideration family unity, best interests of the child and their social development, security and protection (particularly if they are a victim of human trafficking) and the minor's opinion according to his age and maturity.²⁸⁶

Whereas previously they were mainly placed in a youth care facility in **Warsaw**, currently unaccompanied asylum-seeking children are placed in facilities all around Poland, mainly in **Ketrzyn, Przemysl and Rzeszow**.²⁸⁷

F. Information for asylum seekers and access to reception centres

1. Provision of information on reception

The provisions in law on information for asylum seekers concerning social assistance are formulated in a general way. The Border guard, upon admitting the asylum application, has to inform the applicant in a language understandable to him or her and in writing about i.e. the asylum procedure itself, the asylum seeker's rights, obligations, and the legal consequences of not respecting these obligations, as well as the extent of the material reception conditions. It also provides the asylum seeker with the address of the centre to which they have to report.²⁸⁸

Upon admission to the centre, asylum seekers receive (in writing or in the form of an electronic document, in a language understandable to them) the rules of stay in the centre (set in law), information about their rights and obligations (which includes all the basic information, including on access to the labour market or on their legal status), information on regulations governing the provision of assistance for asylum seekers and about procedures used in case of the person has been subjected to violence, especially against minors.²⁸⁹ Moreover, the rules of stay in the centre shall be displayed in a visible place in the premises of the centre, in Polish and in languages understandable to the asylum seekers residing in the centre.²⁹⁰ In the reception centres in **Biała Podlaska** and **Dębak** new-coming asylum seekers also participate in a course on basic information about Poland and the asylum procedure, with presentations and information package provided on pendrive.²⁹¹

It is not envisaged in the legislation which languages the rules of stay in the centre, information about rights and obligations and on regulations governing the provision of assistance for asylum seekers should be translated into. It states that information has to be accessible "in an understandable language". The rules of stay in the centre and above-mentioned information issued on the basis of the current law were translated in practice into English, Russian, Arabic, French, Georgian, Chechen and Ukrainian.²⁹²

2. Access to reception centres by third parties

Indicators: Access to Reception Centres

1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?
- ☒ Yes ☐ With limitations ☐ No

²⁸⁶ Article 69b Law on Protection.

²⁸⁷ Information provided by the Office for Foreigners, 1 February 2017.

²⁸⁸ Article 30(1)(5) Law on Protection.

²⁸⁹ Para 3 of the Annex to the Regulation on rules of stay in the centre for asylum seekers. The Office for Foreigners published a guide for asylum seekers "First steps in Poland" (updated in 2015 in 5 languages), which is handed to them upon admission to the centre. Available in English, Arabic, Chechen, French, Georgian, Polish, Ukrainian and Russian, available at: <http://bit.ly/1IsLwQG>.

²⁹⁰ Para 18 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

²⁹¹ Information provided by the Office for Foreigners, 27 August 2015 and 1 February 2017.

²⁹² Information provided by the Office for Foreigners, 1 February 2017.

Asylum seekers staying in the centres have the right to be visited by family members, legal advisors, UNHCR, NGOs, etc. in the rooms intended for that purpose.²⁹³

Asylum seekers may receive visits in the centre from 10:00 to 16:00 in a place indicated by the employee of the centre. In particularly justified cases the visiting hours in the centre may be prolonged upon permission of the director of the centre, till no later than 22:00.²⁹⁴

Each entry of a non-resident into the premises of the centre requires the permission of:²⁹⁵

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

The Head of the Office for Foreigners or an employee of the centre can refuse to give permission to enter the centre or withdraw it, if this is justified with regards to the interest of the third country national or necessary to ensure the safety or for epidemiological and sanitary reasons.²⁹⁶

The above mentioned rules do not apply to the representative of the UNHCR, who may enter the centre anytime provided that the director of the centre was notified in advance.²⁹⁷ In the case of NGOs, whose tasks include the provision of assistance to asylum seekers, and entities which provide legal assistance to asylum seekers, the Head of the Office for Foreigners may issue a permit to enter the centre for the period of their activities performed for the asylum seekers residing in the centre.²⁹⁸

In all centres audited by the Supreme Audit Office in 2012-2014, asylum seekers had access to the information about entities providing free legal assistance.²⁹⁹ During their stay in the centre, asylum seekers communicate with legal advisers, UNHCR or NGOs mainly by phone, fax, e-mail, etc. Eight out of the eleven centres are located in small villages, far away from big cities, where most of the legal advisers, UNHCR and NGOs in Poland have their premises, and accessing them can be an obstacle. As a result, asylum seekers are often contacted only remotely, especially when NGOs do not have the funds for travelling to these centres. In 2015 the situation worsened due the lack of funding of the NGOs' activities from EU funds, as a result of which NGOs had to diminish or terminate most of their activities in the centres.³⁰⁰ In 2016 and 2017 NGOs are again present in the centres, there are projects for granting legal assistance directly in some of them. However, funding from AMIF is currently suspended (see section on [Regular Procedure: Legal Assistance](#)), which has negative impact on the NGOs' assistance in the centres.³⁰¹

²⁹³ Paras 7-9 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

²⁹⁴ Para 9 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

²⁹⁵ Para 7.2 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

²⁹⁶ Para 7.5 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

²⁹⁷ Para 7.6 and 7.7 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

²⁹⁸ Para 7.4 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

²⁹⁹ Supreme Audit Office, *Pomoc społeczna dla uchodźców. Informacja o wynikach kontroli*, November 2015, available in Polish at: <http://bit.ly/2IP90Z4>, 21.

³⁰⁰ In 2015 NGOs who financed their legal assistance from EU had to reduce or cease their assistance granted in reception centres. NGOs informed about that Polish authorities, available at: <http://bit.ly/1Cd5nSW>. Some NGOs, like Legal Intervention Association, had to reduce their activities from 1.01.2015, available at: <http://bit.ly/1j98zXB>, some from 1 July 2015 (like HFHR). Even though results of call for proposals for AMIF were announced only on 16 September 2015 – two and half months after the end of all NGOs projects for asylum seekers financed from ERF.

³⁰¹ Witold Klaus, Ewa Ostaszewska-Zuk and Marta Szczepanik, *The role of European funds in supporting the integration of migrants in Poland*, November 2017, available at: <http://bit.ly/2EVdzxq>, 9.

G. Differential treatment of specific nationalities in reception

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

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

- | | |
|--|---------------|
| 1. Total number of asylum seekers detained in 2017: | Not available |
| 2. Number of asylum seekers in detention at the end of 2017: | 127 |
| 3. Number of detention centres: | 6 |
| 4. Total capacity of detention centres: | 608 |

As of 31 December 2017, 127 asylum seekers were in detention out of 303 persons in detention at that point time. Given that 5,053 persons applied for asylum in Poland in 2017, it cannot be said that the majority of asylum seekers in Poland are detained. There were no cases of overcrowding in detention centres during that year.³⁰² Foreigners are obliged to pay for their stay in a detention centre calculated on the basis of algorithm, set in the Polish law.

No data was made available by the Border Guard on the legal grounds for detention or on the number of asylum seekers detained in 2017.

There are six detention centres in Poland, which are generally profiled: **Lesznowola**, **Białystok** and **Krosno Odrzańskie** are for men. Women and families with children are placed in **Kętrzyn**, **Biała Podlaska** and **Przemyśl**. Unaccompanied children are placed in the detention centre in **Kętrzyn**.

According to the Office for Foreigners, the asylum cases of asylum applicants placed in detention are examined more quickly.³⁰³ The interview is conducted through videoconference. If a vulnerable person is in detention, the interview is conducted in person and in the presence of a psychologist.

B. Legal framework of detention

1. Grounds for detention

Indicators: Grounds for Detention

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

Asylum seekers are placed in a detention centre if alternatives to detention cannot be used and for the following reasons:³⁰⁴

1. In order to establish or verify their identity;
2. To gather information, with the asylum seeker's cooperation, connected with the asylum application, which cannot be obtained without detaining the applicant and where there is a significant risk of absconding;

³⁰² Information provided by the Border Guard, 11 January 2018.

³⁰³ Information provided by the Office for Foreigners, 27 August 2015.

³⁰⁴ Articles 87(1) and 88a(1) Law on Protection.

3. In order to make or execute the return decision, if an asylum seeker had a possibility to claim for asylum previously and there is a justified assumption that he or she claimed asylum to delay or prevent the return;
4. When it is necessary for security reasons;
5. In accordance with Article 28 of the Dublin III Regulation, when there is significant risk of absconding and immediate transfer to another EU country is not possible.

A “risk of absconding” of the asylum seekers exists particularly if they:³⁰⁵

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

Detention is possible in law and in practice in all asylum procedures, especially in the case of illegal crossing of the border and transfer under the Dublin Regulation. According to the Border Guard, 80 out of the 92 Dublin transfers implemented in 2017 involved detention, although its figures do not correspond to the Office for Foreigners statistics on Dublin transfers.³⁰⁶ Courts justify detention as necessary to gather additional information, high risk of absconding and the lack of permanent address.

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

2. Alternatives to detention

Indicators: Alternatives to Detention

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

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

1. An obligation to report;
2. Bail options;
3. The obligation to stay in a designated place.

SG can use more than one alternative in the case of any foreigner.³⁰⁷ Alternatives can be applied by the SG which apprehended the asylum seeker concerned or by the court (subsequent to a SG’s decision not to apply alternatives and who have submitted a motion for detention to the court).³⁰⁸ An asylum seeker can be detained only if the alternatives to detention cannot be applied.³⁰⁹ In practice asylum seekers are placed in detention, and alternatives to detentions are not considered, properly justified and explained.³¹⁰

³⁰⁵ Articles 87(2) and 88a(1) Law on Protection.

³⁰⁶ Information provided by the Border Guard, 11 January 2018.

³⁰⁷ Article 88(1) of the Law on Protection.

³⁰⁸ Articles 88(2) and 88b(2)-(3) Law on Protection.

³⁰⁹ Article 88a(1) Law on Protection.

³¹⁰ Ombudsman, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Krośnie Odrzańskim*, 30 January 2018, available in Polish at: <http://bit.ly/2F2ptCr>.

In 2016, alternatives to detention were used as follows for foreigners, including asylum seekers and returnees:

Alternatives to detention in Poland: 2016	
Type of alternative	2016
Reporting obligations	1,193
Residence in a designated place	1,286
Bail	3
Total	1,411

Source: Border Guard, 19 January 2017.

Data for 2017 was not made available.

3. Detention of vulnerable applicants

Indicators: Detention of Vulnerable Applicants

- Are unaccompanied asylum-seeking children detained in practice?
☐ Frequently ☐ Rarely ☒ Never
 ❖ If frequently or rarely, are they only detained in border/transit zones? ☐ Yes ☐ No
- Are asylum seeking children in families detained in practice?
☒ Frequently ☐ Rarely ☐ Never

3.1. Detention of persons with health conditions

According to the law, asylum seekers whose psychophysical state leads to believe that they are victims of violence or have a disability or are unaccompanied minors are not placed in detention centres. This is also applicable to asylum seekers whose detention causes a serious threat to their life or health,³¹¹ as under the law, an asylum seeker should be released if further detention constitutes a threat to their life or health.³¹² This means that, for example, children, if they stay in Poland with parents or other legal guardians, can still be detained, as can pregnant women if they are healthy.

In practice it also happens that vulnerable asylum seekers are detained, even when they were diagnosed as having mental health problems as a result of past events.³¹³ Indeed, a poor mental condition is hardly ever accepted by courts as sufficient grounds for not placing in or releasing an asylum seeker from detention. Courts do not accept psychological opinions submitted by independent psychologists (e.g. from NGOs).³¹⁴ In practice, only courts of higher instance call on experts to give evidence. This makes proceedings last up to a couple of weeks.

In 2017, the Border Guard stated that it does not gather information on the number of persons released on the basis of health considerations. As the experience of lawyers of NGOs such as the Association for Legal Intervention shows, the physical rather than the psychological condition is taken into account by the courts. An analysis of the justifications of the courts' rulings concerning detention leads to the conclusion that in a large number of cases mental health is not considered by judges or there is no reference to the health of the foreigners at all.³¹⁵

³¹¹ Article 88a(3) Law on Protection.

³¹² Article 406(1)(2) Law on Foreigners.

³¹³ T Dęboczyk and J Oleszkowicz, 'Praktyka sądowa stosowania detencji cudzoziemców w Polsce', 38.

³¹⁴ Supreme Court, Decision No III KK 33/14, 4 February 2015, available at: <http://bit.ly/1OiPpZE>.

³¹⁵ T Dęboczyk and J Oleszkowicz, 'Praktyka sądowa stosowania detencji cudzoziemców w Polsce', 35.

Practice shows that neither the Border Guard nor the courts take the initiative to assess if an asylum seeker is a victim of violence. In March 2017, the Supreme Court ruled in a case of compensation for moral damage suffered by a mother with two minor children unlawfully placed in detention centre in **Przemyśl**. The Court reversed the judgment of the Court the Appeal in Warsaw and remanded the case. The family were victims of violence in the country of origin and they were not identified as victims of torture and other forms of serious violence despite the fact that Border Guard was informed about their history. The Supreme Court stressed that the court is obliged to summon an expert witness when assessing the influence of detention on the mental state of a foreigner.³¹⁶

In July 2017, the Regional Court of Przemyśl released a family from the detention centre in Przemyśl after a 10-month stay. The family was placed in detention centre in October 2016, after multiple attempts to apply for asylum at the border crossing in Medyka on the Ukrainian border. During their stay, the mother was diagnosed with adaptation and depressive disorders related to violence and torture at the police station in her country of origin and detention in Poland which had a negative impact on her and her children. In June 2017 she tried to commit suicide. Although her and her children's poor mental state was confirmed in successive psychological and psychiatric assessment reports, Border Guards refused to release her and her family. HFHR filed a complaint to the ECtHR on her behalf.³¹⁷

In another case a family from Tajikistan was placed in the detention centre in **Przemyśl** for 200 days despite the fact that the father had informed the Border Guard that he was a victim of torture in the country of origin, while he applied for asylum in Poland. His bad mental condition, diagnosed PTSD, was later confirmed by expert opinion written by the psychologist employed by the Border Guard. Furthermore, the worsening mental condition of the wife was reported to the psychologist and the son was also diagnosed with PTSD. The family was released in May 2017, after the psychologist informed the administration of the detention centre that prolonged stay in a guarded centre would be a threat to their life.³¹⁸

Another case concerns a single mother with four children aged 17, 14, 11 and 10. They were placed in the detention centre in **Ketrzyn** in July 2017. Despite the fact that children were victims of domestic violence and their abilities to cope with stress felt in the detention centre were impeded, and two private expert opinions on their poor mental state, the family was not released from the guarded centre.³¹⁹

In September 2017, the Ombudsman published a report within the National Mechanism for the Prevention of Torture, in which cases of improper detention of **Dublin Returnees** with PTSD were described. According to the report, the problems occurred due to numerous procedural shortcomings during the transfer of the family to Poland by the German police as well as due to the lack of appropriate operational algorithms that should have been implemented in order to promptly identify victims of torture and violence as well as persons whose mental and physical condition rule out their placement in detention.

3.2. Detention of children

According to the law, unaccompanied asylum-seeking children should not be detained,³²⁰ but in practice it happens when there are doubts as to their age or if they were placed in detention as irregular migrants (which is possible under the law) and only then applied for international protection. Unaccompanied children are placed only in a detention centre in **Ketrzyn**, where adequate rooms are separated.

³¹⁶ HFHR, 'Supreme Court rules on unlawful placement in guarded immigration centre', 13 April 2017, available at: <http://bit.ly/2ESHTIF>.

³¹⁷ HFHR, 'Torture victim released after 10 months in immigration custody', 12 July 2017, available at: <http://bit.ly/2ocUY6q>.

³¹⁸ Information provided by the Association for Legal Intervention, January 2018.

³¹⁹ *Ibid.*

³²⁰ Article 88a(3) Law on Protection.

Asylum-seeking children who are with members of their family can be placed in detention centres together with accompanying adults.³²¹ In 2017 children were placed in detention centres in **Kętrzyn**, **Biała Podlaska** and **Przemyśl**. Still the best interests of the child are not considered in decisions concerning detention.³²²

If the Head of the Office for Foreigners issues a decision to release a foreigner from the detention centre and this asylum seeker is disabled, elderly, pregnant or single parent, SG is obliged to organise the transport to the reception centre, and – in justified cases – food during the transport.³²³ There is no information in how many cases such a transport was organised.

According to the opinion of the Ombudsman, detention of children has influence on their mental state and on the future functioning in the society. In their opinion, the law and practice should be developed in the direction of letting children live in local communities during immigration-related proceedings.³²⁴

4. Duration of detention

Indicators: Duration of Detention

- | | |
|--|---------------|
| 1. What is the maximum detention period set in the law (incl. extensions): | 6 months |
| 2. In practice, how long in average are asylum seekers detained? | Not available |

The decision to detain an asylum seeker is issued for a period up to 60 days by a court, upon the motion of the SG.³²⁵ If a foreigner claims asylum during the stay in the detention centre, the period of detention is prolonged only if the **Grounds for Detention** of an asylum seeker mentioned before are met. If so, then the applicant's stay in the detention centre is prolonged for up to 90 days from the day of filing the asylum application.³²⁶ The period of a stay in a detention centre can also be prolonged if before the end of the previous period of detention, the final decision concerning international protection was not issued and the reasons to detain the applicant still exist. In this case, detention can be prolonged by a court for a specified period of time. There are no timeframes set in law other than the maximum total period of asylum seekers' detention, which is 6 months for asylum seekers and 12 to 18 months for persons facing removal.³²⁷ Prolongation is not possible if the procedure concerning reasons of detention is still ongoing e.g. the identity of the asylum seeker still is not verified, and this delay cannot be attributed to any fault on the part of the applicant.³²⁸

Figures on the average duration of detention of asylum seekers are not available.

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

³²¹ Although it happens in practice that some members of the family are placed in the reception centre and some in the detention - T. Sieniow, 'Wnioski z monitoringuwraz z rekomendacjami', 59.

³²² *Ibid*, 34.

³²³ Article 88cb Law on Protection.

³²⁴ Ombudsman, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Przemyślu*, 7 February 2018, available in Polish at: <http://bit.ly/2EXIR4y>.

³²⁵ Article 89(1) Law on Protection.

³²⁶ Article 89(2)-(3) Law on Protection.

³²⁷ Article 89(4)-(5) Law on Protection; Article 404(5) Law on Foreigners.

³²⁸ Article 89(4a) Law on Protection.

C. Detention conditions

1. Place of detention

Indicators: Place of Detention

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

There are two types of detention centres in Poland, both used to detain asylum seekers and foreigners subject to return procedures.

1.1. Guarded centres

These are 6 such centres with a total capacity of 608 places for foreigners, located in:

Capacity and occupancy of guarded centres: 2017		
Centre	Maximum capacity	Occupancy end 2017
Biała Podlaska	130	51
Białystok	122	102
Lesznowola	42	42
Kętrzyn	122	76
Krosno Odrzańskie	56	0
Przemyśl	103	24
Total	608	303

Source: Border Guard, 11 January 2018.

Currently in three detention centres (**Białystok**, **Krosno Odrzańskie**, **Lesznowola**) only men are held and in another three (**Kętrzyn**, **Biała Podlaska**, **Przemyśl**) only families with children who are at a school age are held. In one of the centres (**Kętrzyn**), there is a separate part for unaccompanied irregular migrant children.³²⁹ Families are placed together in one room as far as possible both under the law³³⁰ and in practice.³³¹ There are 2 places for individuals with a certificate of disability in Kętrzyn.

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

The term, literally translated as “arrests for foreigners”, replaced that of “pre-removal centres” as of 1 May 2014. These impose more rigorous conditions of detention than guarded centres.³³² Until December 2012 there were 5 such centres. Currently, there is one centre with a capacity of 33 places in **Przemyśl**.³³³

An asylum seeker can be placed in a more rigorous detention centres for foreigners only if there is a risk that they will not obey the rules in force in a guarded centre or the applicant has already disobeyed these rules.³³⁴ These detention centres are more prison-like than guarded centres. An asylum seeker placed in

³²⁹ Information provided by the Border Guard, 18 August 2015; Article 414(4) Law on Foreigners.

³³⁰ Article 414(3) and (5) Law on Foreigners.

³³¹ HFHR and Association for Legal Intervention, *Wciąż za kratami*, 2014, available at: <http://bit.ly/1JBxxXm>, 17.

³³² Order No 23 of the Ministry of Interior of 1 July 2014 on the designation of areas in which the arrest for foreigners is executed.

³³³ Information provided by the Border Guard, 18 August 2015.

³³⁴ Article 88a(2) Law on Protection.

such a centre cannot freely move around (he or she is closed in the ward), cannot go outside for a walk whenever he or she wants except for two hours per day etc.³³⁵

All detention centres are for migration-related purposes and the SG is in charge of their management. Asylum seekers are never placed in regular prisons with ordinary prisoners, but stay together with migrants in an irregular situation. There is no special facility where only asylum seekers are detained. The SG officers who run the centres are trained and there are no major issues reported concerning the staff behaviour. It was reported that in 2013 and in 2014 in some centres the SG addressed foreigners by numbers assigned to them in their administrative files or used bad language.³³⁶ NGOs visiting detention centres notice a positive change in that matter, although in 2016 foreigners with whom lawyers were talking on duty days in detention centre knew their administrative numbers. In 2017 there were no reports in this issue. On the other hand, Border Guard officers who are on duty in the detention centre of **Krosno Odrzańskie** do not have any identifiers with their name or official identification number.³³⁷

The design and layout of some of the centres create the impression of a very prison-like environment: thick walls, bars in the windows and on the corridors. In addition all centres are surrounded by high walls topped with barbed wires. In 2015 the Polish authorities decided to remove bars in the windows in the detention centres and install special secure windows in **Lesznowola**, and in **Kętrzyn**. The Border Guard does not plan to remove bars in other detention centres.³³⁸

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities

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

The Law on Foreigners contains a section on detention conditions, rights and obligations of foreigners.³³⁹ Some practices relating to the functioning of the centres have now been framed into the legal provisions. Below we present how the conditions are in practice.

2.1. Overall conditions

Six centres (**Białystok**, **Kętrzyn**, **Biała Podlaska**, **Przemyśl**, **Lesznowola**, **Krosno Odrzańskie**) are relatively new and in good condition (they were built after 2008), **Krosno Odrzańskie** and **Lesznowola** have been renovated in recent years.

In **Krosno Odrzańskie** where only men are placed, foreigners stay in eight, six or four-bed rooms.³⁴⁰

The main equipment in a room consists of beds, small wardrobes and a small table. If people placed in the centres cannot have all their belongings in their room, they have to place them in external storage space in the centre. Some of their belongings are also placed there for safety reasons and can be accessed only upon request. A sufficient space between beds is provided. As for privacy matters, the rooms cannot be locked at night and in some centres the SG checks per night if the detainees are present. There were also concerns about privacy in sanitary facilities in the men's part of the building in some centres.

³³⁵ Centrum Pomocy Prawnej im. Haliny Nieć, K. Przybysławska (Ed.), *Monitoring of Forced Returns from Poland July 2014-June 2015*, 35-36.

³³⁶ HFHR and Association for Legal Intervention, *Wciąż za kratami*, 2014, available at: <http://bit.ly/1JBxxXm>, 24.

³³⁷ Ombudsman, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Krośnie Odrzańskim*, 30 January 2018, available in Polish at: <http://bit.ly/2F2ptCr>.

³³⁸ Information provided by the Border Guard, 11 January 2018.

³³⁹ Articles 410-427 Law on Foreigners.

³⁴⁰ Ombudsman, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Krośnie Odrzańskim*, 30 January 2018, available in Polish at: <http://bit.ly/2F2ptCr>.

Before the foreigners' admission to the guarded centre and in situations justified on grounds of safety and order, foreigners are subject to detail check. Foreigners have to take off all clothing and underwear. According to a 2016 Ombudsman report, foreigners complained about the conditions in which the check was carried out,³⁴¹ although the Border Guard implemented new standardised guidelines on a two-stage checking of the foreigner, i.e. from the waist up and after dressing up from the waist down.³⁴² On the other hand, the personal checks in **Krosno Odrzańskie** are conducted in a warehouse which violates people's dignity. There are no windows but only metal shelves along the walls. Personal checks take place in a fairly narrow space between the bookshelves.³⁴³

In February 2018, the Ombudsman published a report of a visit to the detention centre in **Przemyśl** in October 2017, describing cases of improper conditions of arrests for foreigners. Problems in sanitary facilities are visible and the privacy and intimacy of detained persons are not ensured.³⁴⁴

Foreigners are subject to constant monitoring, which is disproportionate to their situation and stricter than the regime applied in the penitentiary system to particularly dangerous prisoners. In addition, foreigners do not have an access to the toilet because no sanitary facilities are organised in the cells. Foreigners have to ask the guard every time to allow them to use the toilet. The Ombudsman noticed some urinated plastic bottles and considered such conditions to be inhumane.³⁴⁵

In some detention centres, the food is prepared on site, by external providers. In others, it is prepared in the centres. There are several specific diets e.g., vegetarian, vegan, adapted to Muslims, adapted to pregnant or breastfeeding women, diabetic. Other diets can be respected on prescription of the physician.³⁴⁶

In the opinion of the Ombudsman, one of the part of the detention centre – of limited use, dedicated to men – in **Przemyśl** needs to be renovated and adapted to the needs of foreigners of both genders. At the moment, the entrance to the laundry room is situated through the bathroom, which cannot be functional if the number of persons in the centre is high. Additionally, the Border Guard officers on duty in a guarded centre and in the arrest process are always equipped with an electric rifle, visible to the detainees. In the opinion of the Ombudsman, this kind of equipment should be stored out of the sight of foreigners, with restricted access, only by authorised officers, and only in case of need. Electric rifles should not be part of the standard equipment of Border Guard officers who have direct contact with a foreigner.³⁴⁷

2.2. Activities and education

In all guarded centres there is a sport and recreation space.³⁴⁸ Free time outside is no longer strictly limited. The open-air space is of adequate size and sufficient recreational facilities are provided (e.g. playing field for volleyball or basketball, in **Białystok** there is an open-air gym and in Ketrzyn a well-equipped playground for children). In practice the detainees have the possibility to take part in outdoor exercises on a regular basis. There are no additional restrictions. In 2014 video game consoles were bought and provided to the detainees (**Kętrzyn**, **Biała Podlaska**, and **Białystok**). Detainees can watch television without any limitations, even until late at night.³⁴⁹

³⁴¹ Ombudsman, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Kętrzynie*, available in Polish at: <http://bit.ly/2kPbgCA>.

³⁴² *Ibid.*

³⁴³ Ombudsman, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Krośnie Odrzańskim*, 30 January 2018, available in Polish at: <http://bit.ly/2F2ptCr>.

³⁴⁴ Ombudsman, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Przemyślu*, 7 February 2018, available in Polish at: <http://bit.ly/2EXIR4y>.

³⁴⁵ *Ibid.*

³⁴⁶ *Ibid.*

³⁴⁷ Ombudsman, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Przemyślu*, 7 February 2018, available in Polish at: <http://bit.ly/2EXIR4y>.

³⁴⁸ Paras 2 and 9 Regulation on detention centres.

³⁴⁹ Information provided by the Border Guard, 18 August 2015.

In all centres there is access to the internet and in all of them there are computers which can be used by detainees. On the other hand, the foreigners placed in detention centre in **Krosno Odrzańskie** complained that there is restricted access to internet. They cannot send directly emails or fax to the NGO which provide legal assistance, this is done by the administration of the guarded centre. It is worth noting that foreigners are under constant supervision of the Border Guard officer who additionally records the personal data and the exact time of their use of internet.³⁵⁰ Furthermore, the Border Guard Chief Commander ordered on 27 January 2017 an implementation of blocking sites with terrorist-related and extremist content, social media and instant messaging platforms. Clearance of the internet usage was also introduced.³⁵¹

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

Detention centres provide rooms for religious practices.

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

In all centres each asylum applicant and irregular migrant has an officer appointed to their case with a scheduled meeting to discuss their case. The rules of stay in the detention centres are available in 16 languages: Arabic, English, Ukrainian, Russian, French, Armenian, Chinese, Georgian, Hindi, Spanish, Mongolian, Turkish, Farsi, Urdu, Bengali and Vietnamese.³⁵² Not all the language versions are displayed, as the vast majority of asylum seekers are Russian-speaking. Depending on the centre they are available on each floor of the detention centre or in the common-rooms, etc.

Children staying in the guarded centres are – like all other children staying on the territory of Poland – subject to obligatory education until they are 18. However, this obligation, set in the Polish Constitution, is not fulfilled in the case of children staying in guarded centres.³⁵³ None of the children staying there regularly attends school. Schools near the detention centres in **Kętrzyn** and **Biała Podlaska** delegate teachers to work in detention facilities. Special classrooms are prepared in these centres. This is the result of agreements between the Border Guard, educational institutions and local authorities.

However, education is limited to a couple of hours per week e.g. 27 hours in **Kętrzyn** since September 2017, 16 hours per week in primary school and 10 for high school in **Biała Podlaska**. Due to the limited number of hours, education mainly concentrates on three units: natural science, social science, Polish and arts activities. In both centres where school children are placed (**Biała Podlaska** and **Kętrzyn**) the organisation of activities is the responsibility of the teachers and directors of the classes, and are carried out in groups according to their age, level of education and fluency in Polish. Teachers in the detention centre in **Kętrzyn** speak Russian or English, but in **Biała Podlaska** lessons are held in Polish, although teachers speak Russian. At the same time, an additional 12 hours per week of activities and Polish language as a foreign language are carried out, which are co-financed from national AMIF funding.

³⁵⁰ Ombudsman, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Krośnie Odrzańskim*, 30 January 2018, available in Polish at: <http://bit.ly/2F2ptCr>.

³⁵¹ Information provided by the Border Guard, 11 January 2018.

³⁵² Information provided by the Border Guard, 18 August 2015.

³⁵³ HFHR and Association for Legal Intervention, *Wciąż za kratami*, 2014, available at: <http://bit.ly/1JBxxXm>, 46.

In the guarded centre for foreigners in **Przemysław**, compulsory schooling is implemented as of January 2018.³⁵⁴

Generally the right to education for children in detention centres for asylum applicants is not properly implemented. There are no legal regulations that specify the obligations of the SG, educational authorities and schools themselves in teaching children in detention centres. The law does not indicate, in particular, on what basis such teaching is to be executed or who should finance the lessons. The Ombudsman stated that the right to education of children placed in detention centres is not observed and they should have the possibility to attend public schools. The Ombudsman stressed that the SG should also ensure that classes are conducted by qualified teachers and that the curriculum be implemented. The programme must include lessons of Polish as a foreign language as well as lessons concerning other topics.³⁵⁵ In October 2016, representative of National Prevention Mechanism, who visited the guarded centre in **Kętrzyn** underlined that providing the right to education in Kętrzyn is an example of a good practice since the law on foreigners and law on protection does not ensure it.³⁵⁶

In February 2015 the Ombudsman wrote to Ministry of Education on the improvement of the education system for foreigners in Poland, including for children placed in detention centres.³⁵⁷ As a result, a meeting with the Ministry of Education, the Border Guard, the Ombudsman and directors of the schools was organised in April 2015, during which the Ministry declared that they will lay down a law concerning the education of children in detention centres.³⁵⁸ Up until now, there is no progress on this matter, despite the efforts made by Border Guards.³⁵⁹

2.3. Special needs and health care in detention

According to the law, all detainees have access to regular health care.³⁶⁰ In all centres, medical staff are present and working, there is at least one physician and one nurse, but there are often more. In case of an emergency or the need for a specialist (e.g. gynaecologist), detainees are transferred to hospitals or clinics. For 2017, there is no information on which specialists are hired in detention centres.

An early identification of victims of torture and violence is not made during the preliminary examination of a foreigner on admission in practice. Additionally foreigners are not asked about any medical documentation which they could have from another EU country (see also [Identification](#)).³⁶¹ In the opinion of the Ombudsman, the algorithm used by Border Guard to identify victims of violence is inconsistent with Polish law, the Istanbul Protocol and other international standards. This algorithm does not allow for the immediate release of foreigners who are alleged victims of violence from the guarded centre. The report also highlights that the available treatment and therapy in the detention centre for identified victims of torture only exacerbates their mental trauma.

During the visit of the Ombudsman to **Przemysław**, the experts identified persons who were victims of torture:

- The first case concerned a married couple of Chechen origin. The man claimed that he had been tortured and alleged inhuman treatment in the country of origin; his leg was shot through. He has a certificate of disability and a history of psychiatric treatment from Germany. Furthermore, he had numerous descriptions of symptoms indicating deterioration of his health under the influence of

³⁵⁴ Information provided by the Border Guard, 11 January 2018.

³⁵⁵ Ombudsman, *Raport RPO*, 2013, 55.

³⁵⁶ Ombudsman, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Kętrzynie*, available in Polish at: <http://bit.ly/2kPbgCA>.

³⁵⁷ Ombudsman, Letter to the Ministry of Education, 9 February 2015, available in Polish at: <http://bit.ly/1FSiCtT>.

³⁵⁸ Ombudsman, *Activities of Polish Ombudsman to protect migrants rights in 2010-2015 – challenges and achievements*, 2015, available in Polish at: <http://bit.ly/1L1KEQq>, 7.

³⁵⁹ Information provided by the Border Guard, 5 January 2017.

³⁶⁰ Articles 415(1)(5) and 417 Law on Foreigners.

³⁶¹ Ombudsman, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Kętrzynie*, available in Polish at: <http://bit.ly/2kPbgCA>.

detention. His wife was distressed and kept saying that she could not stand being in a detention centre.

- The second case also related to a person of Chechen origin who constantly stated that he had been tortured in the country of origin, where the fingers of his left hand were broken during torture, he had many scars in his body and could not straighten his left finger. His mental state corroborated the reported violence.
- The third case referred to a woman with an 18-month-old child. She reported torture in the country of origin, her mental condition was deteriorating in the detention centre and PTSD and depression were developing.
- The last case concerned a Syrian national (according to his statement) who was placed in the arrest as a response to a suicide attempt. He suffered a suicidal crisis due to prolonged detention. His mental state justified immediate intervention and he was placed at once in a psychiatric hospital due to threat to his life.

There is also access to psychological care. Looking after foreigners is one of many responsibilities of psychologists in **Krosno Odrzańskie**, and they provide psychological assistance only if there is a traumatic incident, and only on written request of a doctor who examined a patient. This means that foreigners cannot have access to psychologists upon their own request and curtails the effective identification potential victims of torture. Additionally, psychologists are present only one day per week for 4 hours, they are not trained in the Istanbul Protocol and the identification of victims of torture.³⁶²

In all detention centres, information on the availability of medical and psychological care is displayed on boards in the corridors, but in practice people are not always aware of it.³⁶³

In **Przemyśl**, an external psychologist for foreigners is available 4 hours a week. The capacity of that guarded centre is for 103 foreigners, which means that the access to the psychologist is limited. The Ombudsman estimated that foreigners would have to wait for an examination from 4 to 10 months and in their opinion the early identification of victims of violence is not ensured.³⁶⁴

Additionally, while escorting foreigners to the hospital or to other medical facilities, border guard officers use handcuffs as a rule. In **Krosno Odrzańskie**, the person is escorted to the doctor in handcuffs, even though the distance between the centre and the physician's office does not exceed several hundred meters. According to foreigners, it also happens that they are handcuffed in the doctor's office throughout their stay.³⁶⁵

3. Access to detention facilities

Indicators: Access to Detention Facilities

1. Is access to detention centres allowed to

- | | | | |
|-------------------|---|----------------------------------|-----------------------------|
| ❖ Lawyers: | ☒ Yes | ☐ Limited | ☐ No |
| ❖ NGOs: | ☒ Yes | ☐ Limited | ☐ No |
| ❖ UNHCR: | ☒ Yes | ☐ Limited | ☐ No |
| ❖ Family members: | ☒ Yes | ☐ Limited | ☐ No |

The law allows lawyers, NGOs and UNHCR to have access to detention centres.³⁶⁶ Detained asylum seekers are entitled to maintain contact with UNHCR and organisations dealing with asylum issues or

³⁶² Ombudsman, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Krośnie Odrzańskim*, 30 January 2018, available in Polish at: <http://bit.ly/2F2ptCr>.

³⁶³ Ombudsman, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Kętrzynie*, available in Polish at: <http://bit.ly/2kPbgCA>.

³⁶⁴ Ombudsman, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Przemyślu*, 7 February 2018, available in Polish at: <http://bit.ly/2EXIR4y>.

³⁶⁵ Ombudsman, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Krośnie Odrzańskim*, 30 January 2018, available in Polish at: <http://bit.ly/2F2ptCr>.

³⁶⁶ Article 415(1)(2), (3) and (19) Law on Foreigners and Article 89a(1)(2) Law on Protection.

granting legal assistance (directly and by means of correspondence and telephone calls). Direct contact with UNHCR and organisations can be limited or restricted completely by the head of the detention centre if it is necessary to ensure safety and public order or to observe the rules of stay in the detention centre. The decision of the head of the centre is final.³⁶⁷ The Head of the Office for Foreigners and UNHCR should be informed about it.³⁶⁸ This provision is not used in practice. NGOs provide legal assistance, but unfortunately not on a regular basis. In 2016 and in 2017 all NGOs had to diminish their assistance, including legal assistance, in the detention centres, due lack of financial means as a result of delay in the implementation of AMIF, the announcement of call for proposals and results co-financed by AMIF.³⁶⁹

As a general rule, NGOs have to ask for the consent of a manager of the detention centre to meet with a specific asylum seeker. Lawyers, family members and friends, or NGOs can meet with a detainee during visiting hours. There are no limitations concerning the frequency of such visits. UNHCR Poland notes that they are not limited in accessing detention centres. The media and politicians have access to detention centres under general rules; they have to ask for the consent of the SG unit managing the detention centre.

In practice, NGOs who want to meet with more than one or with unspecified asylum seekers, monitor conditions in a detention centre etc. must ask the SG Commander in Chief in writing for permission to visit a detention centre. Since 2017 permission is authorised by the Border Guard Headquarters. Nevertheless visits are generally not limited to visiting hours. NGOs generally do not face problems in accessing the centres.

Visits from relatives, friends or religious representatives are authorised. Any visit should not last more than 90 minutes, but it can be prolonged in justified cases by the manager of the centre. Two adults have a right to take part in the meeting. The number of children is not limited.³⁷⁰ Non-scheduled visitors as a rule do not have a possibility to meet with the asylum applicant (but the manager of the detention centre can make exceptions from the above mentioned rules, especially when it is needed to maintain family ties and care over a children).³⁷¹

Detainees are able to maintain regular contact with people outside the centre. There is no limitation in using cell phones (without audio- and video recording system). The SG's have several hundreds of substitute cell phones without a camera which they provide to foreigners in case they only have smartphones. The cell phones are handed over for the whole day for free. Detainees themselves pay for the calls. There are some problems to order a phone card and foreigners use phone card which were bought in other EU countries. The Border Guard officers go and do shopping for detainees usually twice a week. If the asylum applicant does not have money to buy a telephone card, there is a possibility of using the SG's equipment in justifiable cases.

The Law on Foreigners foresees a legal possibility to impose sanction on a detainee who does not obey the rules in the detention centre. There are two possibilities: banning participation in sport and leisure activities (except for using the library); or banning the purchase of food and cigarettes from outside the centre.³⁷²

When deciding upon the application of either of these two sanctions, the SG Regional Commander takes into account the general behaviour of the detainee, the level of disobedience, cultural background, etc.

³⁶⁷ According to the Law on Protection, it will be a possibility only to limit such contact.

³⁶⁸ Article 89a(1) and (2) Law on Protection.

³⁶⁹ W Klaus, E Ostaszewska-Żuk and M Szczepanik, *The role of European Funds in supporting the integration of migrants in Poland*, September 2017, available at: <http://bit.ly/2EVdzxq>.

³⁷⁰ Para 21 of the Rules of foreigners' stay in guarded centre and arrest for foreigners (Annex to the Regulation on detention centres).

³⁷¹ Para 23 of the Rules of foreigners' stay in guarded centre and arrest for foreigners (Annex to the Regulation on detention centres).

³⁷² Article 421(2) Law on Foreigners.

Before adopting the law, such punishments were applied in practice without any legal basis. In 2015 and in 2016, such punishment was used 26 times.³⁷³ No data are available for 2017.

D. Procedural safeguards

1. Judicial review of the detention order

Indicators: Judicial Review of Detention

1. Is there an automatic review of the lawfulness of detention? ☒ Yes ☐ No
2. If yes, at what interval is the detention order reviewed?

Detention is ordered by the District Court upon request of the SG. Prolongation of the detention is also ordered by the District Court upon request of the SG. Asylum seekers stay in the detention centre can be prolonged if before the end of the previous period of the detention, the final decision concerning the application for international protection is not issued and the reasons to detain the applicant still exist.³⁷⁴

Asylum seekers are informed of the reasons of their detention, legal remedies and their rights. Information on the reasons for detention is given first in the court, orally, translated into a language understandable for the asylum applicant. The court has a clear obligation to hear the person concerned before rendering a decision.³⁷⁵ In all guarded centres, when the person is admitted to the centre, there is a meeting during which a detainee receives information about the centre, although, in practice asylum seekers do not understand the reasons of their detention and have basic information on their rights. For example it has happened that asylum seekers supported the SG requests to detain them which is surprising, especially in the light of the fact that later in some of these cases foreigners initiated the appeal proceedings. In one of such cases, during the detention hearing a foreigner reportedly supported the SG request to detain him despite the fact that his child had epilepsy.

The law provides for judicial review of the lawfulness of detention.³⁷⁶ Asylum seekers can appeal against a District Court ruling to the Regional Court within 7 calendar days from the day the ruling is pronounced. In prolongation cases it is 7 days from the notification of the ruling to an asylum seeker.³⁷⁷ In this appeal the detainee can dispute the grounds for their detention. Asylum seekers receive rulings in the language they understand; a literal translation of a ruling rendered in Polish. The Law on Foreigners envisages 7 days for the examination of the appeal.³⁷⁸

Some courts – although they have such a legal obligation – do not provide information about the right to a legal representative.

The court procedure concerning detention orders is not considered effective. Courts often decide on detention of asylum seekers without an in-depth analysis of their personal situation, and reasons for detention mentioned in the judgment are indicated very generally - without direct reference to a personal situation.

Previously the Border Guard had been requested by the District Court of **Biała Podlaska** to submit motions for prolongation of detention in due time. In 2017 the Border Guard complied with this requirement.

³⁷³ Information provided by the the Border Guard, 19 January 2017.

³⁷⁴ Article 89(4) Law on Protection.

³⁷⁵ Article 88b(1) Law on Protection.

³⁷⁶ Article 88b(3) Law on Protection; Article 403(8) Law on Foreigners.

³⁷⁷ Courts interpret differently the law in this matter – some claim that 7 days should be counted from the day of the pronouncement of the court ruling about placing the foreigner in the detention centre, some that it should be counted from the day the translated ruling is delivered to a foreigner in writing – T. Sieniow, *op. cit.*, 54.

³⁷⁸ Article 88b(3) Law on Protection; Article 403(8) Law on Foreigners.

Every person is entitled to compensation and redress for wrongful detention from the State Treasury.³⁷⁹ In 2017 HFHR lawyer represented one family, whose case is right now pending before the District Court of **Warsaw**.

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

2. Legal assistance for review of detention

Indicators: Legal Assistance for Review of Detention

- | | | |
|--|---|--|
| 1. Does the law provide for access to free legal assistance for the review of detention? | ☒ Yes | ☐ No |
| 2. Do asylum seekers have effective access to free legal assistance in practice? | ☐ Yes | ☒ No |

The law provides for access to free legal assistance for the review of detention before the courts, but it is hardly ever exercised in practice.³⁸⁰ Asylum seekers can ask the court to grant them free legal assistance, if they duly prove that they are not able to bear the costs of legal assistance, without harm to the necessary maintenance of themselves and their families.³⁸¹ The court has a clear obligation to inform asylum seekers in a language understandable to them about the right to ask for legal assistance.³⁸² However, this happens rarely in practice and most asylum seekers are not aware of this possibility and in practice they are not represented by a legal advisor in the District Court. As a result they are dependent on legal assistance granted by NGO lawyers, most of whom are not entitled to represent them before courts. Due to limited funds from AMIF all NGOs have limited their activities and do not visit detention centres on a regular basis to provide such assistance whenever needed.

It can be said that legal assistance in detention centres is generally not effective because of the lack of a centralised or well-managed system for its provision. NGOs pay visits to the detention centres mostly depending on the project they currently implement, which does not happen very often nowadays.

The law foresees a state legal aid system which includes lawyers' visits to the detention centres if necessary and it concerns only preparing the appeal of a negative asylum decision. In practice only some foreigners decide to look for a legal representative, i.e. an advocate or a legal advisor.

E. Differential treatment of specific nationalities in detention

There is no difference in treatment of specific nationalities in detention in Poland.

³⁷⁹ Article 407 Law on Foreigners.

³⁸⁰ Articles 78 and 87a Law of 6 June 1997 on the Code of Criminal Procedure, available at: <http://bit.ly/1UcUEO3>.

³⁸¹ Article 78 and 87a Code of Criminal Procedure.

³⁸² Article 88b(4) Law on Protection.

A. Status and residence

1. Residence permit

Indicators: Residence Permit

1. What is the duration of residence permits granted to beneficiaries of protection?

❖ Refugee status	3 years
❖ Subsidiary protection	2 years
❖ Humanitarian protection	2 years

Refugee status is granted for an unlimited period of time. Recognised refugees obtain a 3-year residence card (*karta pobytu*).³⁸³ The first card is issued *ex officio*,³⁸⁴ and is renewed after this period for another 3 years upon request.³⁸⁵

Subsidiary protection is also granted for unlimited period of time. Subsidiary protection beneficiaries obtain a 2-year residence card (*karta pobytu*).³⁸⁶ The first card is also issued *ex officio*,³⁸⁷ and is renewed after this period for another 2 years upon request.³⁸⁸

Humanitarian protection (*zgoda na pobyt ze względów humanitarnych*) is granted for an unlimited period of time. The beneficiary of humanitarian protection obtains a 2-year residence card (*karta pobytu*).³⁸⁹ The card will be renewed after this period for another 2 years.³⁹⁰ The first and subsequent card are issued on the foreigner's demand.³⁹¹

An application for the renewal of the residence card should be submitted 30 days before the expiration date of the current residence card.³⁹² Foreigners are often not aware of this rule.

The issuance of the residence card is paid and costs 50 PLN / 12 € for the card.³⁹³ Only the first residence card is issued free of charge.³⁹⁴ The fee can be diminished by 50% if a beneficiary is in difficult material situation (only if he or she obtains social assistance benefits) or is a minor up to 16 years old.³⁹⁵ There is no possibility of full exoneration from payment. The obligation to pay even only 25 PLN / €6 sometimes prevents foreigners from obtaining a new residence card. Moreover, in case of culpable loss or damage of the card, a new one will be issued subject to a higher fee of no more than 150 PLN / €18.³⁹⁶

The Office for Foreigners, which is responsible for the issuance and renewal of the residence cards for refugees and subsidiary protection beneficiaries,³⁹⁷ is situated in **Warsaw**. In the case of humanitarian protection beneficiaries, an authority responsible for residence card renewal is a Border Guard unit having jurisdiction over the foreigner's current place of stay.³⁹⁸

³⁸³ Article 89i(1) Law on Protection.

³⁸⁴ Article 229(2) Law on Foreigners.

³⁸⁵ Article 89i(2a) Law on Protection.

³⁸⁶ Article 89i(2) Law on Protection.

³⁸⁷ Article 229(2) Law on Foreigners.

³⁸⁸ Article 89i(2a) Law on Protection.

³⁸⁹ Article 243(1)(4) Law on Foreigners.

³⁹⁰ Article 243(2)(3) Law on Foreigners.

³⁹¹ Article 229(1) and Article 229(4)(3) Law on Foreigners.

³⁹² Article 230(2) Law on Foreigners.

³⁹³ Article 235(1) Law on Foreigners.

³⁹⁴ Article 236(1)(a)-(c) Law on Foreigners.

³⁹⁵ Article 237(1) and (2) Law on Foreigners.

³⁹⁶ Article 238 Law on Foreigners.

³⁹⁷ Article 89n(2) Law on Protection.

³⁹⁸ Article 245(4)-(5) Law on Foreigners.

The residence card has to be received in person. A card for a child under the age of 13 should be received in person by his or her legal representative.³⁹⁹ There is no other possibility to receive a card by a representative or by post. Moreover, foreigners are obliged to give their fingerprints any time they renew a residence card.⁴⁰⁰ If they refuse to give their fingerprints, the residence card will not be issued.⁴⁰¹ The obligation to give fingerprints and mandatory personal presence to pick up the card mean that every time the foreigner has to obtain a new card, he or she has to travel to **Warsaw** in the case of the refugees and subsidiary protection beneficiaries, or another town in the case of humanitarian protection beneficiaries, twice, even if he or she lives far away. This can be time-consuming and costly. The Office for Foreigners informed, however, that in 2016 in two cases of serious illness they lifted the obligation to collect fingerprints from an applicant.⁴⁰² No information was provided for 2017. The lack of legal possibility to exempt the foreigner fully from the abovementioned payment, the obligation of personal presence twice – upon application and collecting the document, and the possibility to be issued a residence card only in one place may postpone the receipt of new residence cards by foreigners.

Failure to renew a residence card can be punished by fine,⁴⁰³ but this rarely happens in practice. There have been no such case in 2015-2017.⁴⁰⁴

Moreover, Polish law requires presenting – as a condition to issue or renew residence card – recent photographs. Photos presenting face with covered hair are not allowed (hair has to be visible on the picture), which is often problematic for Muslim women.⁴⁰⁵

All residence cards should have the annotation “access to the labour market”, if the foreigner is entitled to work in Poland.⁴⁰⁶ Cards issued for refugees and subsidiary protection beneficiaries do not have such an annotation, which can impede their access to labour market and to some social benefits, such as the ones in the framework of the “Family 500+” programme.⁴⁰⁷

2. Civil registration

Every child born in Poland, regardless of the nationality of their parents, must be registered in the Civil Registry Office (*Urząd Stanu Cywilnego*). The birth of a child must be reported to the Civil Registry Office territorially competent for the place of birth of the child.⁴⁰⁸ The documents necessary for the preparation of a birth certificate include:

- Written statement of birth issued by a doctor, midwife or health care facility;
- Copy of the marriage certificate if the child's parents are married;
- Birth certificate of the mother, marriage certificate with an entry noting divorce, an abridged copy of the death certificate of the spouse; if the child's mother is single, divorced or widowed, respectively.

The Civil Registry Office which prepared a birth certificate applies for a PESEL number for a child, which is then entered into the registry as well. PESEL number is crucial in many areas of life including in the provision of health care, hence its registration is initiated by reporting a child's birth.

³⁹⁹ Article 248(1)-(2) Law on Foreigners.

⁴⁰⁰ Article 246(2) Law on Foreigners.

⁴⁰¹ Article 247 Law on Foreigners.

⁴⁰² Information provided by the Office for Foreigners, 1 February 2017.

⁴⁰³ Article 465(4) Law on Foreigners.

⁴⁰⁴ Information provided by the Office for Foreigners, 1 February 2018.

⁴⁰⁵ Ordinance of the Minister of Interior of 29 April 2014 on the documents issued for foreigners, available in Polish at: <http://bit.ly/2l7o9n0>.

⁴⁰⁶ Article 244(1)(11) Law on Foreigners.

⁴⁰⁷ HFHR, Letter to the Head of the Office for Foreigners, 1 April 2016, available in Polish at: <http://bit.ly/2lR4SXA>; European Website on Integration, ‘Poland: social benefit ‘500 PLN per child’ not for refugees?’ 29 February 2016, available at: <http://bit.ly/2lLCBFK>. However, there was an important judgment from the Voivodeship Administrative Court Warsaw, which interpreted the provisions in favour of beneficiaries of international protection: Decision No I SA/Wa 1997/16, 7 October 2016, available at: <http://bit.ly/2l8Mj26>.

⁴⁰⁸ Law of 28 November 2014 on civil registration certificates.

Marriage is concluded in the Civil Registry Office of the choice of the persons concerned. The documents required to enter into a marriage in Poland are:

- Valid identity document;
- Birth certificate and a marriage certificate together with the annotation of divorce, if the person concerned was married before;
- Certificate issued by the country of origin that the person concerned has the capacity to enter into a marriage under the law of their country.

If the latter document cannot be obtained, the person concerned can apply to the court to be exempt from this obligation.

Generally foreign documents have to be legalised or authenticated by apostille. As a general rule, all documents presented in the Civil Registry Office should be translated by a sworn interpreter and a foreigner who does not speak Polish needs to complete all the formalities (including the marriage ceremony itself) accompanied by a sworn interpreter of a language they speak fluently. Certificates are drawn up immediately.

Problems occur when documents from the country of origin have to be submitted. However, the court procedure to exempt beneficiaries of international protection from this obligation is applied rather efficiently.

3. Long-term residence

Indicators: Long-Term Residence

- | | |
|---|---------------|
| 1. Number of long-term residence permits issued to beneficiaries in 2017: | Not available |
|---|---------------|

The EU long-term residence permit (*zezwolenie na pobyt rezydenta długoterminowego UE*) is issued on a foreigner's demand if he or she:⁴⁰⁹

1. Resides in Poland legally and continuously for at least five years immediately prior to the submission of the application for EU long-term residence permit,
2. Has stable and regular resources which are sufficient to maintain him or herself and the dependent family members;
3. Has appropriate sickness insurance.

Resources are considered sufficient, if for 3 years immediately prior to the submission of the application a foreigner had income higher than the income threshold for social assistance in Poland.⁴¹⁰

The entire period of a refugee's stay in Poland during the asylum procedure is taken into account in the calculation of the 5-year period, if the asylum procedure lasted more than 18 months. In other cases, half of this period is taken into account.⁴¹¹ If the previous asylum procedure ended with refusal of the international protection, the period of this procedure is not taken into account at all.⁴¹² A procedure for an EU long-term residence permit is not initiated if a foreigner is a humanitarian protection beneficiary or is currently in an asylum procedure.⁴¹³

The fee for an EU long-term residence permit is 640 PLN / 150 €.

The authority responsible for issuance of the EU long-term residence permit is Voivode having jurisdiction over the current place of stay of the applicant.⁴¹⁴ The Office for Foreigners is a second instance

⁴⁰⁹ Article 211(1) Law on Foreigners.

⁴¹⁰ Article 211(2) Law on Foreigners.

⁴¹¹ Article 212(1) (2) and (3c) Law on Foreigners.

⁴¹² Article 212(2)(8) Law on Foreigners.

⁴¹³ Article 213(1)(e)-(f) Law on Foreigners.

⁴¹⁴ Article 218(1) Law on Foreigners.

administrative body competent to handle appeals against first instance decisions. The procedure should last one month or two, if it is a complicated case. In practice though it lasts often much longer. In 2016, 23 beneficiaries were granted long-term resident status. No data were made available for 2017.

4. Naturalisation

Indicators: Naturalisation

- | | |
|---|---------------|
| 1. What is the waiting period for obtaining citizenship? | |
| ❖ Refugee status | 7 years |
| ❖ Subsidiary protection | 10 years |
| 2. Number of citizenship grants to beneficiaries in 2017: | Not available |

Polish citizenship can be obtained through two procedures. Firstly, citizenship can be granted by the Polish President.⁴¹⁵ Any foreigner can apply to President to be granted Polish citizenship; there are no specific conditions and criteria for obtaining citizenship in this procedure. Foreigner only has to submit a form with information about him or herself and justification, why he/she applies for Polish citizenship, to a Consul or a Voivode, who hands on the application to the President.⁴¹⁶ Knowledge of Polish language is not required. The citizenship is granted free of charge. The President's refusal is a final decision and cannot be appealed.

Secondly, a foreigner can be declared as a Polish citizen if he or she fulfils criteria specified in law.⁴¹⁷ Both refugees and subsidiary protection beneficiaries have to obtain first permanent residence permit (*zezwole nie na pobyt stały*) or EU long-term residence permit in Poland. Permanent residence permit is granted to refugees and subsidiary protection beneficiaries on their demand, if they continuously stay in Poland for at least 5 years immediately before the submission of the application. The asylum procedure is taken into account in this calculation.⁴¹⁸

A **refugee** who has been granted permanent residence permit and stays continuously on this basis in Poland for 2 more years can be declared as a Polish citizen⁴¹⁹ 18 refugees were declared as Polish citizens in 2017 on this basis.⁴²⁰ There is no similar rule concerning **subsidiary protection** beneficiaries. To be declared as Polish citizens, they have to fulfil the same criteria as any other foreigner who obtained permanent residence permit or EU long-term residence permit in Poland (i.e. 2-3 years stay in Poland on this basis or 10 years of legal stay in Poland independently of the basis of the stay, stable and regular resources, legal entitlement to stay in a residential property or marriage with Polish citizen).⁴²¹

Both, refugees and subsidiary protection beneficiaries, to be declared as a Polish citizen, have to prove that they know the Polish language.⁴²² Foreigners should present a document confirming that they have graduated from a Polish school or that they have passed the State exam for Polish language as a foreign language. Those examinations are organised rarely (e.g. only twice in 2016 and 2017, scheduled three times in 2018), they are costly and only contain three levels (B1, B2 and C1).⁴²³

The beneficiary submits the application for declaration as a Polish citizen to Voivode who has jurisdiction over their current place of stay.⁴²⁴ The fee for obtaining citizenship is 219 PLN. The Voivode decision can

⁴¹⁵ Article 18 Law of 2 April 2009 on Polish citizenship.

⁴¹⁶ Article 19-21 Law on Polish citizenship.

⁴¹⁷ Article 30 Law on Polish citizenship.

⁴¹⁸ Article 195(1)(6) and Article 195(3) Law on Foreigners.

⁴¹⁹ Article 30(1)(3) Law on Polish citizenship.

⁴²⁰ Information provided by the Ministry of Interior and Administration, 3 January 2018.

⁴²¹ Article 30(1)(1), (2) and (6) Law on Polish citizenship.

⁴²² Article 30(2) Law on Polish citizenship.

⁴²³ In November 2018, scheduled exams contain 5 levels for the first time (A2, B1, B2, C1, C2): Information from the official exams' website, available at: <http://bit.ly/2l2xVvk>.

⁴²⁴ Article 36(1) Law on Polish Citizenship.

be appealed to the Minister of Interior.⁴²⁵ The procedure should last one month or two, if it is a complicated case. In practice though it lasts often longer.⁴²⁶

5. Cessation and review of protection status

Indicators: Cessation

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the cessation procedure? ☒ Yes ☐ No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure? ☒ Yes ☐ No
3. Do beneficiaries have access to free legal assistance at first instance in practice? ☒ Yes ☐ With difficulty ☐ No

Poland has a single procedure (“deprivation”) for the cessation and/or withdrawal of international protection.

Refugee status is ceased if a foreigner:⁴²⁷

- a. Has voluntarily settled in the country, which he or she had left for fear of persecution;
- b. Has voluntarily accepted protection of a country he or she is a citizen of;
- c. Has voluntarily accepted the citizenship of the country of origin, which he or she had lost before;
- d. Has acquired new citizenship and he or she is under the protection of the state whose citizen he or she has become;
- e. Can no longer refuse to accept the protection of the country of origin, because the reasons why he or she was granted a refugee status no longer exist, and he or she did not present convincing arguments as to why he or she cannot accept this protection. The same applies to countries of habitual residence for stateless persons.

Subsidiary protection is ceased, if the circumstances which were the reason for granting subsidiary protection no longer exist or have changed in such a way that a foreigner no longer requires protection.⁴²⁸

The cessation procedure is initiated by the Head of the Office for Foreigners *ex officio* or on other authorities’ demand.⁴²⁹ The procedure should last no longer than 6 months.⁴³⁰ During the procedure a refugee or a subsidiary protection beneficiary should be interviewed particularly, in order to present reasons as to why he or she should not be deprived of the protection. A foreigner can also present arguments in writing.⁴³¹

A decision on deprivation of international protection is issued by the Head of the Office for Foreigners and can be appealed to the Refugee Board with suspensive effect. A foreigner should leave Poland within 30 days from the day of the delivery of the Refugee Board’s decision on cessation of international protection. In the same period he or she can make the complaint to the Voivodeship Administrative Court in Warsaw. This onward appeal does not have automatic suspensive effect, but a foreigner can ask the court to suspend final decision on deprivation of the international protection. However, it takes sometimes even a couple months to suspend the decision by court on the foreigner’s demand. During that period a foreigner stays illegally in Poland and faces the start and execution of return proceedings to his or her country of origin.

⁴²⁵ Article 10(4) Law on Polish Citizenship.

⁴²⁶ Information provided by the President’s Office, 19 January 2017.

⁴²⁷ Article 21(1) Law on Protection.

⁴²⁸ Article 22(1) Law on Protection.

⁴²⁹ Article 54b Law on Protection.

⁴³⁰ Article 54a Law on Protection.

⁴³¹ Article 54d(1) Law on Protection.

Only some refugees and subsidiary protection beneficiaries are entitled to free legal assistance in cessation proceedings, namely those whose income is not higher than 100% criteria qualifying them to social assistance.⁴³² Free legal assistance is only provided in the appeal procedure; it does not include the first-instance procedure.⁴³³ In a court procedure the foreigner can apply for free legal assistance following the general rules.

A foreigner who was deprived of international protection is obliged to return the residence card immediately to the Head of the Office for Foreigners, no later than 14 days from the moment when a decision concerning cessation of the international protection becomes final.⁴³⁴

There is no systematic review of the protection status in Poland. In 2016, 8 persons had their refugee status ceased or revoked and 21 had their subsidiary protection ceased or revoked.⁴³⁵ In 2017, the only cases concerned 80 citizens of Russia deprived of subsidiary protection.⁴³⁶

These figures reveal that mostly Russian Federation citizens are deprived of international protection in Poland. Cessation is not systematically applied to them, however. 86 Russian citizens obtained international protection in Poland in 2017 and 67 in 2016.⁴³⁷ HFHR concludes that Russian citizens have mostly been deprived of protection as a result of travel to their country of origin after they obtained international protection.⁴³⁸

6. Withdrawal of protection status

Indicators: Withdrawal

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the withdrawal procedure? ☐ Yes ☒ No
2. Does the law provide for an appeal against the withdrawal decision? ☐ Yes ☒ No
3. Do beneficiaries have access to free legal assistance at first instance in practice? ☐ Yes ☐ With difficulty ☒ No

Refugee status is withdrawn ("revoked") where the person:⁴³⁹

- a. Has withheld information or documents, or presented false information or documents of significance for the asylum proceedings;
- b. Has committed a crime against peace, a war crime or a crime against humanity, as understood by international law;
- c. Is guilty of the acts contrary to aims and principles of the United Nations, as specified in Preamble and Articles 1 and 2 of the UN Charter.

Subsidiary protection is withdrawn where:⁴⁴⁰

- a. It has been revealed that a foreigner has withheld information or documents or presented false information or documents of significance for the asylum proceedings;
- b. There are serious grounds to believe that a foreigner has committed a crime against peace, a war crime or a crime against humanity, as understood by international law;

⁴³² Article 69d(2) Law on Protection.

⁴³³ Article 69b Law on Protection.

⁴³⁴ Article 89l(1) and (3) Law on Protection.

⁴³⁵ Information provided by the Office for Foreigners, 1 February 2017.

⁴³⁶ Information provided by the Office for Foreigners, 1 February 2018.

⁴³⁷ Information provided by the Office for Foreigners, 1 February 2018.

⁴³⁸ This reasoning was confirmed by the Supreme Administrative Court in Decision No II OSK 1493/14, 23 February 2016: Lex.pl, 'NSA: uchodźcy z Czeczenii muszą wrócić do kraju', 26 February 2016, available in Polish at: <http://bit.ly/2kSVF3s>.

⁴³⁹ Article 21(1) Law on Protection.

⁴⁴⁰ Article 22(1) Law on Protection.

- c. There are serious grounds to believe that a foreigner is guilty of the acts contrary to aims and principles of the United Nations, as specified in Preamble and article 1 and 2 of the UN Charter;
- d. There are serious grounds to believe that a foreigner has committed a crime in Poland or an act outside Poland which is a crime according to Polish law;
- e. There are serious reasons to believe that a foreigner poses a threat to state security or to the safety of the society.

Subsidiary protection may also be revoked if, after a foreigner has been granted subsidiary protection, it has been revealed that the beneficiary had committed a crime under Polish law punishable by prison sentence and had left his or her home country for the sole purpose of avoiding punishment.⁴⁴¹

The “deprivation” procedure and statistics for withdrawal are described in the section on [Cessation](#).

B. Family reunification

1. Criteria and conditions

Indicators: Family Reunification	
1. Is there a waiting period before a beneficiary can apply for family reunification?	☐ Yes ☒ No
❖ If yes, what is the waiting period?	
2. Does the law set a maximum time limit for submitting a family reunification application? Simplified procedure	☒ Yes ☐ No
❖ If yes, what is the time limit?	6 months
3. Does the law set a minimum income requirement?	☒ Yes ☐ No

The procedure of family reunification is governed by Article 159 of the Law on Foreigners. There is no waiting period for family reunification in Poland, nor is there a time limit. However, foreigners who have obtained refugee status or subsidiary protection are eligible for a simplified family reunification procedure. If they submit a relevant application with a Voivode of proper venue within 6 months from the date of obtaining protection within the territory of Poland, they are not obliged to comply with the conditions of having health insurance, a stable source of income, or accommodation in Poland. It must, nonetheless, be remembered that when the residence permit is granted, the foreigner's member of family residing outside Poland is obliged to obtain a visa from a Polish consulate. The requirements under which a visa is obtained, in turn, include having adequate financial means and health insurance.⁴⁴²

There are no differences between refugees in subsidiary protection as to the family reunification conditions.

Data on family reunification for 2017 are not available. The main problem is the lengthy procedure and formalities before arriving to Poland (e.g. paying several visits to the consulate). The definition of the family is also problematic, as civil partners are not recognised as family members.⁴⁴³

2. Status and rights of family members

Family members are granted a temporary residence permit, not a residence card issued for beneficiaries of international protection. The temporary residence permit in order to facilitate family reunification of beneficiaries of international protection is granted for 3 years. The foreigner is then issued a residence card upon arrival to Poland with an expiry date conforming to the expiry date of the permit that was granted. The

⁴⁴¹ Article 22(4) Law on Protection.

⁴⁴² HFHR, *Family Reunification of Foreigners in Poland, Law and Practice*, June 2016, available at: <http://bit.ly/2ILG1IB>, 19-20.

⁴⁴³ *Ibid.* 13-15 and 24-25.

card contains the foreigner's personal data, residence address, annotation confirming the right to be employed in Poland, and the expiry date.

Foreigners who have been granted a residence permit under family reunification procedure may take employment in Poland without the need to apply separately for a work permit, and children under 18 years of age are entitled to free education in Polish schools. Family members of foreigners granted refugee status or of subsidiary protection are also entitled to social benefits. They also are entitled to be covered by the Individual Integration Programme provided that a relevant application is submitted with one of the Poviats Family Support Centres (*powiatowe centra pomocy rodzinie*). Such an application must be submitted within 60 days from the date when the temporary residence permit is granted.

C. Movement and mobility

1. Freedom of movement

Refugees and subsidiary protection beneficiaries have full freedom of movement in Poland. They can freely choose a place where they want to live, authorities does not require from them to live in some particular areas of the country.

There are no specific facilities for refugees and subsidiary protection beneficiaries in Poland. They are entitled to stay in reception centres up until 2 months after the decision on the asylum application becomes final. Afterwards they have to organise all living conditions themselves. Provision of material conditions is not subject to actual residence in a specific place.

Refugees and subsidiary protection beneficiaries are not assigned to a specific residence for reasons of public interest or public order.

2. Travel documents

Refugees obtain travel documents mentioned in the Refugee Convention, which are valid for 2 years from the day of issuance.⁴⁴⁴ Subsequent travel documents are issued on the refugee's demand.⁴⁴⁵ The document is issued free of charge, whether a first travel document or a subsequent one. The authority responsible for issuance of refugee travel documents is the Head of the Office for Foreigners.⁴⁴⁶ The procedure concerning refugee travel documents should last one month or two, if it is a complicated case.

A refugee travel document has to be received in person. A travel document for a child under the age of 13 should be received in person by his or her legal representative.⁴⁴⁷ In case of *force majeure* preventing a foreigner to receive a document in person, the refugee travel document can be received by a proxy.⁴⁴⁸ Foreigners are obliged to give their fingerprints any time they apply for refugee travel document.⁴⁴⁹ The obligation to give fingerprints and mandatory personal presence to receive the travel document means that most of the time refugees willing to obtain a new travel document have to travel to **Warsaw** twice, even if they live far away. It is time-consuming and costly.

Beneficiaries of **subsidiary protection** are entitled to a Polish travel document for foreigners. The application for the document should be submitted to a Voivode having jurisdiction over the current place of stay of a foreigner and requires a fee of 100 PLN / 23 €. ⁴⁵⁰

⁴⁴⁴ Article 89i(1) and (3) Law on Protection.

⁴⁴⁵ Article 89m Law on Protection.

⁴⁴⁶ Article 89n(1) Law on Protection.

⁴⁴⁷ Article 89ib(1) and (2) Law on Protection.

⁴⁴⁸ Article 89ib(4) Law on Protection.

⁴⁴⁹ Articles 89i(4) and 89m Law on Protection.

⁴⁵⁰ Article 257(1) Law on Foreigners.

A Polish travel document will be issued only if a beneficiary of subsidiary protection: has lost his or her passport or the passport has been damaged or its validity has expired, *and* he or she is unable to obtain a new passport from the authorities of the country of origin.⁴⁵¹ Inability to obtain a new passport from the authorities of the country of origin is often understood by the Polish authorities as a requirement for beneficiaries to present written evidence that they have contacted the embassy of their country of origin and that this authority has refused to issue a passport for them. Often foreign authorities are unwilling to issue a document confirming those facts. Moreover, some beneficiaries of subsidiary protection are afraid to contact authorities of their country of origin, because the previous actions of those authorities were the reason they sought protection in Poland.

The procedure concerning the Polish travel document for a foreigner should last one month or two, if it is a complicated case. In practice, however, it often lasts longer.

Refusal to issue the Polish travel document for a foreigner can be appealed to the Head of the Office for Foreigners.

The Polish travel document for a foreigner entitles to multiple border crossings and is valid for 1 year.⁴⁵² After that period, a beneficiary of subsidiary protection needs to apply for another such document. Even in case of an application for a subsequent Polish travel document, after the previous one expires, beneficiaries of subsidiary protection are expected to take measures in order to obtain the passport from their country of origin.⁴⁵³

The Border Guard has not observed any obstacles in the recognition of travel documents of beneficiaries of international protection issued by another country in 2017.⁴⁵⁴

In 2017, 658 refugees obtained Convention travel documents and 102 subsidiary protection beneficiaries obtained Polish travel documents for foreigners.⁴⁵⁵

D. Housing

Indicators: Housing

- | | |
|--|---------------|
| 1. For how long are beneficiaries entitled to stay in reception centres? | 2 months |
| 2. Number of beneficiaries staying in reception centres as of 31 December 2017 | Not available |

Beneficiaries of international protection are allowed to stay in the centres for 2 months after being served with the positive decision.

The state does not provide housing, although some municipalities provide singular flats annually; 5 in **Warsaw**, maximum 2 in **Gdansk**. Within the 12-month long Individual Integration Programme (IPI) there is a financial benefit to pay for a flat, but according to social assistants in the Centre for Social Assistance in Wolman, the owners are not willing to rent flats to refugees and often demand higher fees.⁴⁵⁶ Many NGOs are of the opinion that beneficiaries of international protection face homelessness and destitution in Poland.⁴⁵⁷

⁴⁵¹ Article 252(3) Law on Foreigners.

⁴⁵² Article 253 Law on Foreigners.

⁴⁵³ Article 254 Law on Foreigners.

⁴⁵⁴ Information provided by the Border Guard, 11 January 2018.

⁴⁵⁵ Information provided by the Office for Foreigners, 1 February 2018.

⁴⁵⁶ Rzeczpospolita, 'Bez mieszkań dla uchodźców', 13 October 2015, available in Polish at: <http://bit.ly/2IQYYJS>.

⁴⁵⁷ Wyborcza, 'Uchodźcy w Polsce mieszkają w squatach i ruderach. Fundacja szuka dla nich tanich mieszkań', 10 November 2016, available in Polish at: <http://bit.ly/2kqrrpE>. There was an extended research on this for UNHCR in 2013, available at: <http://bit.ly/2kKwLAI>.

E. Employment and education

1. Access to the labour market

Refugees and beneficiaries of subsidiary protection have access to labour market on the same conditions as Polish citizens. There is no difference between refugees and subsidiary protection beneficiaries. Access to employment is not limited to certain sectors.

In practice they have access to employment although they face obstacles, e.g. language skills, qualifications. It is easier to find a job in bigger cities, e.g. in **Warsaw** where vocational trainings are provided in foreign languages. Support of the state is only provided during the 12-month Individual Integration Programme (IPI).

Professional qualifications are recognised, although that procedure is very difficult and time-consuming. Very often recognised refugees and beneficiaries of subsidiary protection do not have any documents confirming their education and skills. Sometimes foreigners have to pass an additional Polish language exam.

2. Access to education

The situation does not differ from the situation of asylum seekers. The situation of beneficiaries can be actually worse because the schools near the accommodation and reception centres are more familiar with the issue and possible problems.

F. Social welfare

Beneficiaries of international protection have access to social welfare on equal terms as nationals. There is no difference drawn between refugees and subsidiary protection beneficiaries.

1. Forms of social assistance

Social assistance can be provided *inter alia* for the following reasons: orphanhood; poverty; homelessness; unemployment; disability; long-term or severe disease, violence in the family; the need to protect the child and family; addiction (alcoholism and drug addiction); difficulties in integration of foreigners who were granted refugee status, subsidiary protection, sudden and unpredictable situations (natural / ecological disaster, crisis situation, random event), difficulties in integration due to leaving the care and educational institution or prison.

The application for social assistance has to be filed before the the Social Welfare Centre (*Ośrodek Pomocy Społecznej*, OPS) which is located in the district where beneficiaries of international protection reside.

Beneficiaries of international protection are also entitled to family benefits and supplements (*świadczenia rodzinne i dodatki*) under two conditions also applicable to Polish nationals: (a) residence in Poland; and (b) the average monthly family income per person in a family, which cannot exceed 674 PLN or 764 PLN if the child in the family is certified as disabled. They have a right to apply for:

- Family allowance
- Childbirth aid and supplement
- Attendance allowance
- Parental benefit

- Supplement for the beginning of the school year, education away from home, education and rehabilitation of a disabled child, rising a child in a numerous family, rising child alone, and caring a child during parental leave.

Furthermore beneficiaries of international protection have a right to apply for special financial support under the government “500+ Programme”, which is paid on monthly basis. This benefit is for families with children, and should be spent on the need of a second and subsequent child regardless of income. In the case of families with a net income below 800 PLN per person, the family has a right to apply for that benefit for the first or only child. For families with a disabled child, the net income criterion is 1,200 PLN. The benefits are granted by Municipal Office of Social Welfare, acting on behalf of the President of the city.

In 2017, Polish authorities denied granting that benefit in several cases, concluding that beneficiaries of international protection did not meet the formal legal requirements, as the residence card which they presented did not include the annotation “access to the labour market” (see [Residence Permit](#)). However, the Regional Administrative Court of Warsaw ordered the authorities to grant the benefits.

2. Individual Integration Programme

Beneficiaries of international protection are also entitled to the Individual Integration Programme (IPI) provided by the Powiat Family Support Centres (*Powiatowe Centra Pomocy Rodzinie*, PCPR). The Programme takes 12 months during which integration assistance is provided. This assistance includes:

- Cash benefits for the maintenance and coverage of expenses related to learning Polish language;
- Payment of the health insurance premium specified in the provisions on general insurance in the National Health Fund;
- Special social counseling.

The social worker carries out the so-called environmental interview with a beneficiary of international protection and his or her family, and then together with they draw up an IPI. The programme determines the amount, scope and forms of integration assistance, as well as mutual obligations of the beneficiary and PCPR.

PCPR assists the beneficiary to obtain housing in a place of residence his or her choice, where he or she is obliged to reside during the 12-month period of the IPI. A change of residence is allowed in particularly justified cases. In case the beneficiary changes residence in the region without informing PCPR, the programme will be terminated.

In practice, beneficiaries face a range of obstacles in obtaining social assistance, ranging from lack of awareness of their rights and language barrier, to the discretion of authorities in the limits of financial assistance granted, to the requirement of translated forms and official documents which cannot be obtained from their country of origin e.g. alimony judgment to receive the “500+” child benefit. The need for the entire family to reside in Poland may also pose difficulties.⁴⁵⁸

In 2016, the Polish government spent 2,131,587.75 PLN / 513,600 € on different kinds of social welfare for refugees and beneficiaries of subsidiary protection. Social assistance was provided in the form of: permanent or periodic benefits, special-purpose allowance for the purchase of medicines, clothing, food and payment of fees; qualifying benefit and meal; meals for children at school; shelter; cash benefits on learning the Polish language as part of the implementation of the individual programme of integration; and coverage of health expenses.

⁴⁵⁸ Ombudsman, ‘Prawo do świadczeń rodzinnych cudzoziemki objętej ochroną uzupełniającą w sytuacji, gdy nie wszyscy członkowie rodziny zamieszkują w Polsce, PCPR’, 10 January 2018, available in Polish at: <http://bit.ly/2C8lYey>.

Social Welfare Centres assisted 103 families of recognised refugees (which covered 254 people, including 79 women and 99 children) and 211 families under subsidiary protection (which covered 683 persons, including 201 women and 361 children) throughout 2016.⁴⁵⁹ The average financial assistance per person with refugee status was 2,500 PLN, and 2,191.91 PLN for subsidiary protection.

G. Health care

The right to healthcare is a constitutional right, applicable to third-country nationals as well. Recognised refugees and beneficiaries of subsidiary protection are considered “insurance holders” under the Law on Healthcare Services financed from public funds and are thus entitled to exactly the same services as Poles under the condition of having a valid health insurance.⁴⁶⁰ It means that in practice free health care is conditional on the payment of health care insurance with the National Health Fund (NFZ). Refugees and subsidiary protection holders, within their 12-month Individual Integration Programme (IPI), are obliged to register within regional job centre and are granted health insurance. After the IPI has been completed, the obligation to pay insurance lies with: the employer (if a refugee has a work contract), a regional job centre of social assistance centre (if they are registered as unemployed) or the refugees themselves if they wish to cover the costs of insurance.⁴⁶¹

Importantly, in Poland, all children under 18 years old are entitled to free health care, even if they are not insured and the cost of their treatment is covered by the State Treasury. Children under 19 years old who attend school, regardless of their migration status, are covered by preventive healthcare which includes medical and dental examinations, rehabilitation programmes, health awareness education and health emergency education provided by school or district nurses.⁴⁶²

The health insurance with the NFZ covers all guaranteed health care services specified in the lists of the Ministry of Health. They include both basic and specialist medical services, vaccinations, diagnostic testing (laboratory or other), rehabilitation, hospital care and medical rescue services, emergency ambulance services and medical transport. The NFZ, however, does not cover some dentistry procedures, costs of purchasing medicines, auxiliary products or orthopaedic equipment.⁴⁶³ The Polish Centre for Rehabilitation of Torture Victims, run by the Foundation International Humanitarian Initiative, provides assistance to torture victims and other traumatised persons within projects.

⁴⁵⁹ Ministry of Family, Labour and Social Policy, *Report on integration assistance for foreigners in 2016 in IPI*, 2016, available in Polish at: <http://bit.ly/2EEI5fj>.

⁴⁶⁰ Article 3(1)(2) Law of 27 August 2004 on healthcare services financed from public funds.

⁴⁶¹ M Szczepanik, *Right to healthcare and access to medical services for asylum seekers and beneficiaries of international protection in Poland*, May 2017, available at: <http://bit.ly/2CxXokd>.

⁴⁶² Article 27(1) and (3) Law on healthcare services financed from public funds.

⁴⁶³ M Szczepanik, *Right to healthcare and access to medical services for asylum seekers and beneficiaries of international protection in Poland*, May 2017, available at: <http://bit.ly/2CxXokd>.

ANNEX I – Transposition of the CEAS in national legislation

Directives and other CEAS measures transposed into national legislation

Directive	Deadline for transposition	Date of transposition	Official title of corresponding act	Web Link
Directive 2011/95/EU Recast Qualification Directive	21 December 2013	30 August 2014	Ustawa z dnia 26 czerwca 2014 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw	http://bit.ly/1dBH7hj (PL)
Directive 2013/32/EU Recast Asylum Procedures Directive	20 July 2015 Article 31(3)-(5) to be transposed by 20 July 2018	13 November 2015	Ustawa z dnia 10 września 2015 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw	http://bit.ly/1SHTI1B (PL)
Directive 2013/33/EU Recast Reception Conditions Directive	20 July 2015	13 November 2015	Ustawa z dnia 10 września 2015 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw	http://bit.ly/1SHTI1B (PL)
Regulation (EU) No 604/2013 Dublin III Regulation	Directly applicable 20 July 2013	13 November 2015	Ustawa z dnia 10 września 2015 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw	http://bit.ly/1SHTI1B (PL)