



Decentring the Study of Migrant
Returns and Return Policies

Legal and Policy Infrastructures of Returns in Poland

Country Dossier (WP2)

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Table of Contents

| | |
|--|----|
| Table of Contents..... | 3 |
| List of Abbreviations..... | 4 |
| Summary..... | 5 |
| The GAPs Project..... | 8 |
| 1. Statistical Overview Regarding Returns and Readmissions at the National Level . | 10 |
| 2. The Political Context | 15 |
| 3. Relationship Between National Law/EU Law/Public International Law..... | 17 |
| 4. Institutional Framework and Operational Infrastructure | 22 |
| 5. The National Legal Framework/Return Infrastructure..... | 24 |
| 5.1. Definitions and Concepts | 24 |
| 5.2. Return at the Border | 27 |
| 5.3. Obligation to Issue a Return Decision | 36 |
| 5.4. Special Cases and their Relation with the Obligation to Issue a Return Decision | 36 |
| 5.5. Voluntary Return | 39 |
| 5.6. Forced Return/Removal/Exit | 40 |
| 5.7. Return of Unaccompanied Minors..... | 41 |
| 5.8. Entry Bans..... | 42 |
| 5.9. Procedural Safeguards | 43 |
| 5.10. Detention..... | 47 |
| 5.11. Emergency Situations | 52 |
| 5.12. International Cooperation..... | 52 |
| 6. Funding Return (Budget) and Related Programmes | 54 |
| 7. Gaps..... | 55 |
| 8. Policy Suggestions | 59 |
| 9. Conclusions | 61 |
| 10. Appendices | 62 |
| 11. References and Sources..... | 68 |
| Annex I: Statistics..... | 74 |
| Annex II: List of Authorities Involved in the Migration Return Governance..... | 75 |
| Annex III: Overview of the Legal Framework on Return Policy | 80 |

List of Abbreviations

| | |
|---------|---|
| AMIF | Asylum, Migration and Integration Fund |
| AVR | assisted voluntary return |
| CJEU | Court of Justice of the European Union |
| CROs | collecting return operations |
| Dz.U. | Journal of Laws of the Republic of Poland (in Polish: <i>Dziennik Ustaw Rzeczypospolitej Polskiej</i>) |
| EC | European Commission |
| ECHR | European Convention on Human Rights |
| ECtHR | European Court of Human Rights |
| EU | European Union |
| Frontex | European Border and Coast Guard Agency |
| IOM | International Organisation for Migration |
| ISF | Internal Security Fund |
| JROs | joint return operations |
| MENA | Middle East and North Africa |
| NGOs | non-governmental organisations |
| SIENA | Secure Information Exchange Network Application |
| SIRENE | Supplementary Information Request at the National Entries |
| SIS | Schengen Information System |
| TEU | Treaty on European Union |
| UAMs | unaccompanied minors |
| UN | United Nations |
| UNHCR | Office of the United Nations High Commissioner for Refugees |

Summary

In this report on Poland's return policy, developed under Horizon Europe GAPs project, we analysed the legal, institutional, and infrastructure framework of the country's return procedures for foreigners covering the years 2015-2023 (in some cases also early 2024). We also included selected statistics regarding the scope of this report. The report discusses the relationship of EU law to Polish law, Poland's compliance with EU law and the implementation of judgments of European tribunals. Included also is a reference to cooperation between national institutions and organisations, as well as international cooperation. Based on the professional experience of the project team members, we were able to include their practical knowledge and expertise related to the provision of legal support and services to foreigners in Poland.

We identified important gaps regarding Poland's return policy, including among others:

- improper implementation of the EU Return Directive through, among others, not providing procedural safeguards and access to free legal assistance;
- establishing the Border Guard as the only body conducting return obligation proceedings, both in the first and second instances, shortening the period for filing an appeal, and abolishing the suspensive effect of filing a complaint to court;
- lack of qualified guardians in return proceedings concerning unaccompanied minors;
- carrying out pushbacks, which have intensified since 2021 in connection with the humanitarian crisis on the Polish-Belarusian border; despite numerous ECtHR judgments, pushbacks are carried out;
- automated use of detention, including the detention of children and the possibility of long-term detention;
- failure to ensure sufficient transparency in monitoring the implementation of return decisions.

The rights of foreigners have been drastically limited in Poland since 2021, along with the humanitarian crisis on the Polish-Belarusian border. Further, Poland has very effective enforcement of return decisions (77% for the period of 2022 and Q1-3 of 2023), according to data provided by Eurostat. In this context, we identified multiple gaps that may lead to the exceptional performance of the Polish return policy.

We observed that the 2008 EU Return Directive was improperly being implemented, and that Poland is not honouring some of the Court of Justice of the European Union judgements. We also reported on pushbacks as illegal practices at the Polish land borders.

As Poland effectively enforces return decisions, migrants' rights should be protected. Moreover, the humanitarian crisis has had a significant impact on the relations between the Border Guard and civil society organisations working for foreigners, as well as on the inhabitants of border regions and Polish society. Gaps in the legal framework are also linked with improper implementation of the EU Return Directive. Foreigners have limited access to legal remedies, including appeals. Foreigners against whom return proceedings have been initiated are not entitled to free legal assistance. They may seek help from NGOs providing free assistance to foreigners, which depends on funding, but it is not certain whether their

case can be dealt with in a comprehensive manner (i.e., full representation before the authorities) due to the large number of people in need of help.

The reform of the Act on foreigners of 2023 has significantly changed return proceedings, accelerating the procedures and sharply limiting migrants' rights (shortening the deadline for filing an appeal against the decision to oblige them to return, abolishing the suspensive effect of a complaint filed with the court). The most important change, however, is the transfer of the return obligation proceedings entirely to the Border Guard. For the procedures started before April 7, 2023, the appeal body continues to be the Head of the Office for Foreigners. As is evident from our legal practice (some of the co-authors are law practitioners on a daily basis), the time of examining appeals against return decisions in Poland was (in cases started before April 2023) very long (even 2-3 years). We do not have data on the duration of current appeal procedures. The inspectors (migration officers) applied the provisions regarding, among others, integration into Polish society or the special interest of a foreigner. There are no statistics on appeal proceedings conducted under the new rules. The Border Guard, the body that currently deals comprehensively with return proceedings, is not effectively controlled by external stakeholders or courts, which raises doubts as to the correctness of the decision control in appeal proceedings.

There is no particular support for vulnerable persons regulated by Polish law. Foreigners who are in the return procedure (with the exception of those being released from detention and directed to stay in the Fundacja Dialog facility) have neither access to medical assistance, psychologists, and interpreters nor the right to work. There are also no accommodation facilities provided, except the detention centres. Unaccompanied minor foreigners against whom return obligation proceedings have been initiated are not always properly represented. In practice, finding curators is difficult because there is a lack of qualified personnel who understand return and asylum-related procedures. Poland does not seem to promote effective monitoring of the return operations of forced removal due to the lack of funding for the institutions who carry out these duties (NGOs) and too late informing them about the planned returns.

In 2021-2022, the number of people staying in detention centres increased significantly due to the humanitarian crisis on the Polish-Belarusian border. The former government of the right-wing parties' coalition led by the Law and Justice (in Polish: *Prawo i Sprawiedliwość*) established temporary detention centres where conditions were assessed by the Ombudsman (among others) and found to be not satisfying. Foreigners staying in overcrowded centres initiated numerous protests.

The policy of pushbacks on the border was put in effect almost 10 years ago. Since mid-2021, the number of foreigners trying to cross the Polish-Belarusian border (including irregular border crossings) has increased. The number of people trying to enter Poland (who were physically pushed by Belarusian border guards onto Polish territory) and later pushed back by the Polish border guards has increased. The Polish border guards refused to accept international protection requests from those people and pushed them back to the Belarusian side multiple times.

As a result of the 2023 parliamentary elections, a new government was formed by a coalition, which includes broad political forces from the Centre-Right to the Left and is acting in a reserved manner when it comes to the rapid changes of the policy on the Polish-

Belarusian border. The Prime Minister, Donald Tusk, repeatedly emphasised the need to 'protect the border'. Currently, the government is working on a new national migration strategy, as well as the issue of pushbacks. Maciej Duszczek, the vice-minister of the Interior, announced the launching of search-and-rescue teams of the Border Guard; however, he stated that he has no plans to stop pushbacks for now.

Our report also formulates policy recommendations based on our desk research and the expertise of some of us as practitioners dealing with legal support for foreigners in Poland with the goal to respect human rights. First of all, we suggest introducing legal changes such as eliminating detention of children in return procedures, restoring the 14-day period for filing an appeal against the return decision and amending the Act on foreigners, under which it will not be possible to initiate return proceedings against a foreigner who has already submitted an application for a temporary residence permit and who has a family life in Poland. Secondly, we recommend enabling and providing funds for the Ombudsman to monitor the enforcement of the return decision as well as increasing the use of alternatives to detention in return procedures. Last but not least, our suggestions include increasing cooperation between the Border Guard and NGOs dealing with counteracting human trafficking, especially in the case of unaccompanied minors and establishing at least three open centres or allocating places in existing centres open to foreigners for people who have no place of residence and are waiting for a decision or return.

The GAPS Project

GAPs is a Horizon Europe project that aims to conduct a comprehensive multidisciplinary study of the drivers of return policies and the barriers to and enablers of international cooperation on return migration. The overall aim of the project is to examine the disconnects and discrepancies between expectations of return policies and their actual outcomes by decentring the dominant, one-sided understanding of “return policymaking.” To this end, GAPs:

- examines the shortcomings of the EU’s return governance,
- analyses enablers of and barriers to international cooperation, and
- explores the perspectives of migrants themselves to understand their knowledge, aspirations and experiences with return policies.

GAPs combines its approach with three innovative concepts:

- a focus on return migration infrastructures, which allows the project to analyse governance gaps;
- an analysis of return migration diplomacy to understand how relations between EU member states and with third countries hinder cooperation on return; and
- a trajectory approach, which uses a socio-spatial and temporal lens to understand migrant agency.

GAPs is a three-year interdisciplinary research project (2023–2026), coordinated by Uppsala University and the Bonn International Centre for Conflict Studies (BICC) with 17 partners in 12 countries on four continents. GAPs’ fieldwork has been conducted in 12 countries: Sweden, Nigeria, Germany, Morocco, the Netherlands, Afghanistan, Poland, Georgia, Turkey, Tunisia, Greece and Iraq.

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1. Statistical Overview Regarding Returns and Readmissions at the National Level

The whole data table on return-related statistics, which mainly draws from the Eurostat database, is included in **Annex I**. Besides Eurostat statistics, quite rich statistical data on returns are available at the national level from sources published by or obtained from the Border Guard and the Office for Foreigners. The data on readmissions and returns are not disaggregated and are collected separately by the Border Guard and the Office for Foreigners. Some of the data are collected and published in a systematic and coherent way, but not all of them.

The Border Guard publishes quarterly statistics on the number of foreign citizens returned (literally in the report they are ‘handed over’)¹ based – as indicated by the Border Guard – on Readmission [agreements and clauses – authors], Dublin III Regulation², national administrative decisions obliging them to leave the territory of the Republic of Poland and other agreements, along with the details on the country of citizenship. Also, the data about pushbacks (officially called a ‘return to the border line’) were being published day-by-day by the Border Guard on social media (mostly Twitter³) and aggregated data were provided to one of the NGOs upon the procedure of obtaining access to public information⁴. The Office for Foreigners publishes yearly data on foreign citizens in relation to those who received decisions obliging them to leave the territory of Poland as well as decisions on refusal of entry, along with the details on the country of citizenship and gender. Also, the Office for Foreigners counts the number of people for whom it provided assisted voluntary return, but these data are not publicly accessible (they can be obtained upon the procedure of obtaining access to public information).

From 2015 until the outbreak of the Covid-19 pandemic, the number of irregular migrants found to be present in Poland was increasing – rising from 12,557 persons in 2015 to 26,625 in 2019. The year 2020 marked a reversal of the trend, and from then until 2022, the numbers dropped: from 9,823 to 7,166. Similarly, the number of foreigners ordered to leave was the highest in 2018 and 2019 (more than 29,000 annually), growing each year since 2015, in line with the figures on Dublin returns. During the time the state of Covid-19 epidemic emergency⁵, these figures dropped from 12,003 persons in 2020 to 8,412 in 2022. Also, the biggest number of foreigners utilised voluntary return in 2017 and 2018 (yet, the numbers are rather small, 507

¹ Straż Graniczna, Statystyki SG, accessed March 29, 2024, <https://www.strazgraniczna.pl/pl/granica/statystyki-sg/2206,Statystyki-SG.html>.

² Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast).

³ The X account of the Border Guard, https://twitter.com/Straż_Graniczna.

⁴ Joanna Klimowicz. Nie 47 tys. wywozek ludzi do Białorusi, a ponad 50 tysięcy. Autopoprawka Straży Granicznej. Gazeta Wyborcza. Last modified January 1, 2024, <https://bialystok.wyborcza.pl/bialystok/7,35241,29314977,nie-47-tys-wywozek-ludzi-do-bialorusi-a-ponad-50-tysiecy.html>.

⁵ The state of epidemic emergency has been officially called off on 1 July 2023 and it had various consequences on extension of legality of the stay of foreigners in Poland. See more: <https://www.gov.pl/web/udsc-en/revocation-of-the-state-of-epidemic-emergency--consequences-for-the-legal-situation-of-foreigners>, accessed March 26, 2024.

and 450, respectively). During the epidemic emergency, these figures dropped, reaching only 100 in 2022, then increasing to 183 in 2023.

The main nationality of third country nationals ordered to leave in the years 2015-2021 were Ukrainians. 2022 and 2023 marked a change in this matter, as at the first place were citizens of Georgia. Ukraine occupied the second place in 2022 and, interestingly, sixth in 2023 (as of 30 November) which can be explained by the Russian invasion on this country. However, the invasion did not cancel the returns thoroughly as there were still 435 Ukrainians returned in 2023. Other four main nationalities returned between 1 January and 30 November of 2023 were Belarusians, Moldovans, Russians and Turks. In 2022, the third place was occupied by citizens of Iraq and in 2021 the second which can be explained by the humanitarian crisis on the Polish-Belarusian border (ongoing since August 2021) within which Iraqis were considerable foreigners entering Poland irregularly (lack of exact data on this matter but some estimations are accessible⁶). In 2015-2017 among the five most numerous nationalities returned were Vietnamese who form a considerable community in Poland since the time of Poland-Vietnam cooperation under communist rule. In general, the first five places on this list are occupied by the citizens of Poland's eastern neighbours as well as Georgia and Moldova.

However, other statistics do not match these trends. For instance, the number of asylum applications was the highest in the beginning of the studied period (more than 12,000 applications per year in 2015 and 2016). Then, it started to drop and was less than 3,000 in 2020, mainly due to the pandemic restrictions. Since then, it increased to 9,993 in 2022. The number of foreigners refused entry on the border does not manifest any regularity: the highest figure was reached in 2016 (almost 104,00) while the lowest was in 2022 (28,272).

Interestingly, there is a steadily growing trend of Polish nationals readmitted to Poland. In 2015, it was only 17 persons, the number exceeded 100 in 2017, while it was 500 persons in 2020. The data from 2023 (collected until 30 November) indicate that as many as 683 Polish nationals were readmitted.

The statistics on Dublin returns show contradictory trends. While the number of Dublin returnees to Poland decreased considerably (from over 1,400 in 2016 and 2017 to less than 250 in the pandemic years 2020-2021), the number of foreigners returned from Poland increased. However, the figures of Dublin transfers from Poland are much smaller – not exceeding 100 per year (with the exception in 2021). The highest number of foreigners returned from Poland through Dublin procedures was noted in 2021 (120 persons), however also the years 2018, 2022 and 2023 were marked by the relatively high numbers – exceeding 80 per year. In turn, the lowest number was at the beginning of the research period: only 9 in 2016. Also, a decrease in the pandemic year of 2020 can be observed when compared to 2019 and 2021.

Some of the data is not accessible. As the Border Guard answered to the request for provision of the statistics, this institution is not collecting the specific data on return decisions issued upon negative asylum applications. The data on third country unaccompanied minors returned following an order to leave are accessible only concerning the years 2022 and 2023 – there was only one such case per year in this period.

⁶ M. Krępa. Traktowanie osób migrujących na granicy polsko-białoruskiej jako przemoc systemowa. In K. Fiałkowska, K. Łukasiewicz (eds.). Raport z realizacji projektu „Wyjść z Cienia. Wsparcie pokrzywdzonych z nienawiści”. Warsaw: Association for Legal Intervention. 2022, pp. 63–72.

The detailed data are presented in the charts below.

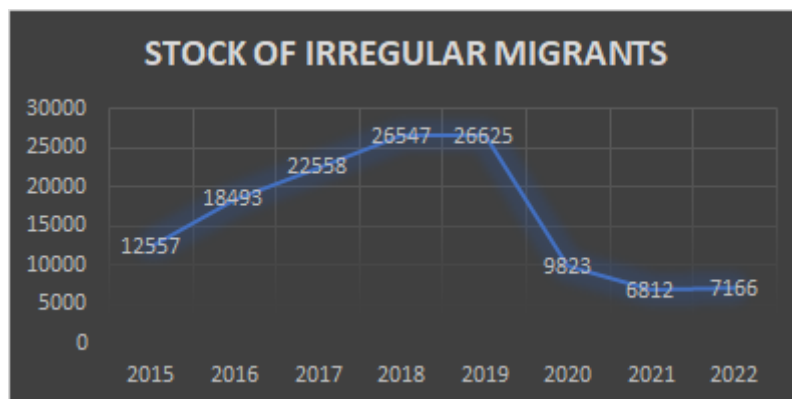


Figure 1: Stock of irregular migrants

Source: The Border Guard, Statystyki SG, <https://www.strazgraniczna.pl/pl/granica/statystyki-sg/2206,Statystyki-SG.html>, accessed March 19, 2024.

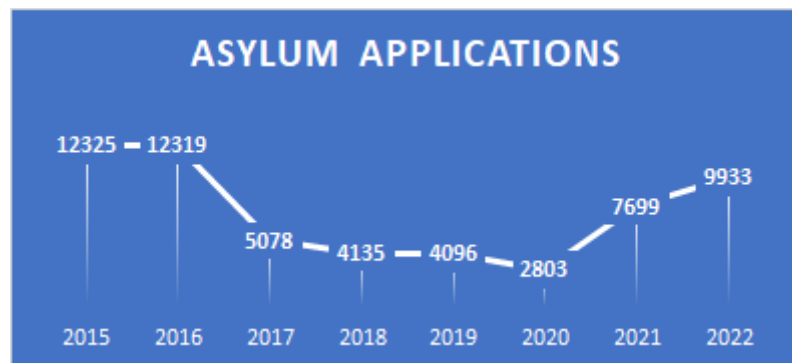


Figure 2: Asylum applications (for the purpose of comparison between the countries, this data concerns number of applicants, as in Poland several persons can be included in one application if they are family)

Source: The Office for Foreigners, Zestawienia roczne, <https://www.gov.pl/web/udsc/zestawienia-roczne>, accessed 19 March 2024.

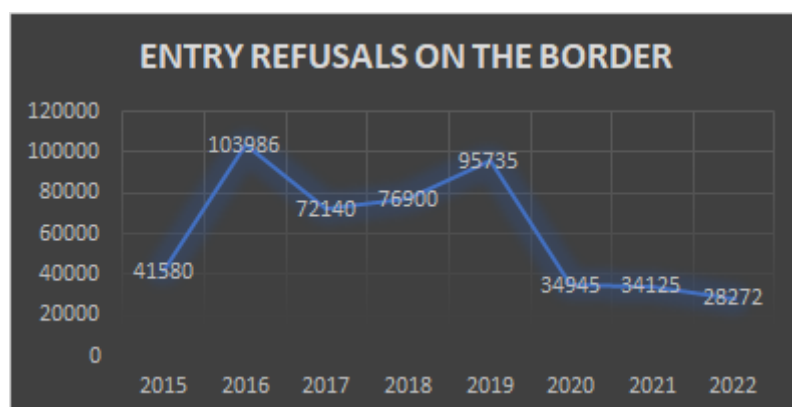


Figure 3: Entry refusals on the border

Source: The Office for Foreigners, Zestawienia roczne, <https://www.gov.pl/web/udsc/zestawienia-roczne>, accessed 19 March 2024.

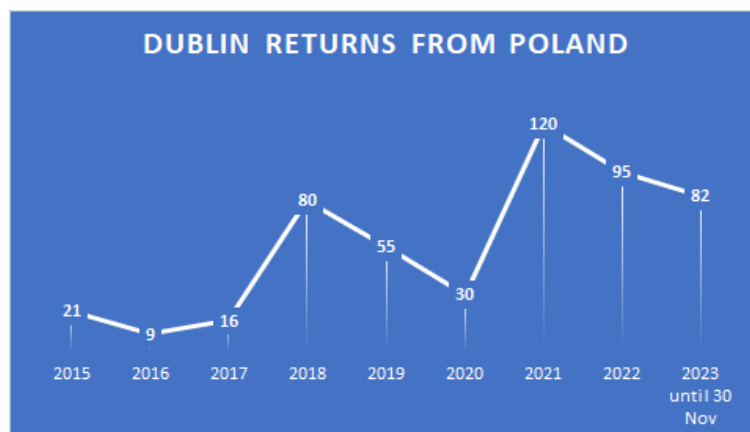


Figure 4: Dublin returns from Poland

Source: The Office for Foreigners, Raporty miesięczne, <https://www.gov.pl/web/udsc/miesieczny-raport-z-dzialalnosci-urzedu>, accessed 19 March 2024.

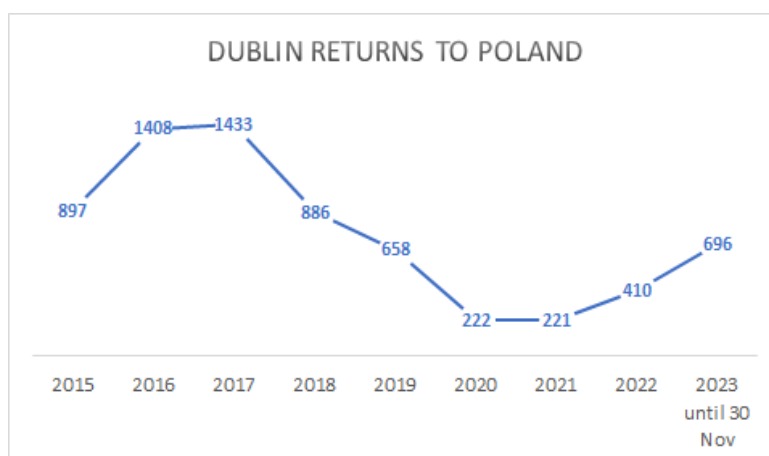


Figure 5: Dublin returns to Poland

Source: The Office for Foreigners, Raporty miesięczne, <https://www.gov.pl/web/udsc/miesieczny-raport-z-dzialalnosci-urzedu>, accessed 19 March 2024.



Figure 6: Orders to leave

Source: The Office for Foreigners, Zestawienia roczne, <https://www.gov.pl/web/udsc/zestawienia-roczne>, accessed 19 March 2024.

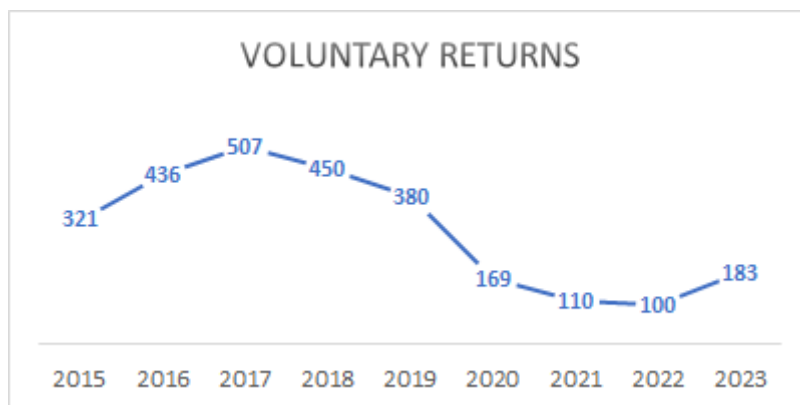


Figure 7: Voluntary returns

Source: The Border Guard (statistics obtained upon request).

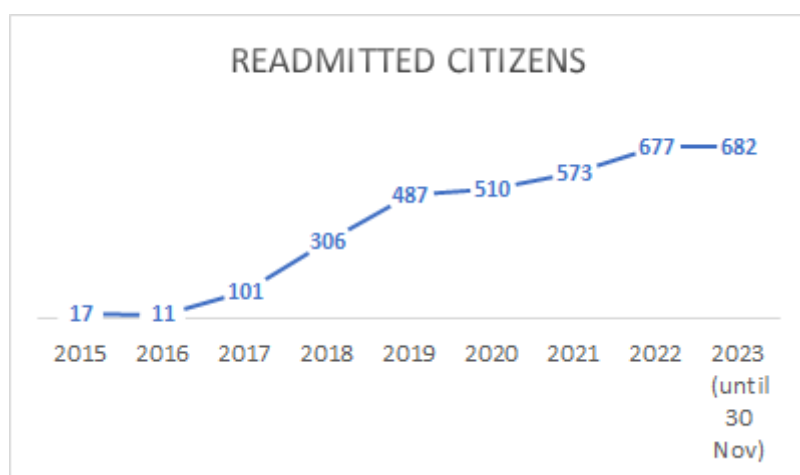


Figure 8: Readmitted Polish citizens

Source: The Border Guard (statistics obtained upon request).

2. The Political Context

From 2012 to the present, the Polish authorities have been trying to design and adopt a government policy on migration. In 2012, the document ‘Polish Migration Policy: Current State of Play and Proposed Actions’ was adopted by the Council of Ministers. In 2016, this document was invalidated. Since then, numerous documents, project outlines, and projects regarding migration policy have been developed, including a draft resolution of the Council of Ministers on the adoption of the document ‘Poland’s Migration Policy – Directions of Action 2021-2022’, which was withdrawn in the fourth quarter of 2022⁷. The attempts to adopt a comprehensive migration strategy/policy failed officially due to ‘the fact of rapid changes taking place in Poland’s environment, affecting the characteristics of migration movements’ such as the actions of the Belarusian authorities and the war in Ukraine⁸. The main reasons for the failure were the lack of defined goals and assumptions of migration policy and the differences between the declarations and the actions taken to implement them. The topic of the national migration strategy is back after the recent parliamentary elections (October 2023). The current government has started working on a new migration policy for 2025-2030⁹.

The Return Directive was implemented into Polish law only in 2013 with the introduction of the new Act on foreigners¹⁰. The year 2015 was important for Polish migration policy due to the national parliamentary elections and the migration-management crisis in Europe. The elected right-wing, national conservative party Law and Justice (in Polish: *Prawo i Sprawiedliwość*) took a negative attitude towards accepting asylum seekers under the EU temporary relocation scheme planned for 2015-2017. Between 2015 and 2023, numerous reforms in the field of return policy were introduced. The tightening of return regulations occurred mainly in 2021-2023, directly related to the humanitarian crisis on the Polish-Belarusian border that started in mid-2021¹¹. The changes introduced were aimed mainly by allowing pushbacks, enforcing return decision more quickly, and restricting access to international protection¹². The Polish authorities evacuated also Afghan collaborators of the Polish military contingent and Polish diplomacy. Out of 1,718 Afghan applicants for international protection in 2021 about 1,100 were evacuated from Afghanistan by Polish

⁷ S. Łodziński and M. Szonert. Polityka migracyjna “bez polityki”. Antynomie tworzenia polityki migracyjnej w Polsce w okresie 2016-2022, CMR Working Papers No 130 (188). 2023.

⁸ Kancelaria Prezesa Rady Ministrów, Draft resolution of the Council of Ministers on the adoption of the document “Migration policy of Poland—directions of action 2021-2022”. Accessed January 8, 2024. <https://www.gov.pl/web/premier/projekt-uchwaly-rady-ministrow-w-sprawie-przyjecia-dokumentu-polityka-migracyjna-polski-kierunki-dzialan-2021-2023>.

⁹ Ministry of the Interior and Administration, Harmonogram prac nad stworzeniem kompleksowej, odpowiedzialnej i bezpiecznej strategii migracyjnej Polski na lata 2025-2030. Accessed March 4, 2024. <https://www.gov.pl/web/mswia/harmonogram-prac-nad-stworzeniem-kompleksowej-odpowiedzialnej-i-bezpiecznej-strategii-migracyjnej-polski-na-lata-2025-2030>.

¹⁰ Act of December 12, 2013, on foreigners, Dz. U. 2013 item 1650.

¹¹ In fact, the Border Guard data confirm that Belarus has suspended the readmission cooperation with Poland in October 2020, dismantling the existing on Belarussian side of the border post-Soviet “systiema”. The Rule of Law Institute study shows that before the winter season in October-November 2020 the initial small groups of migrants were apprehended on this border and Belarus has not agreed to accept them back under readmission agreement. T. Sieniow, Migrants have the right to have rights – dostęp do ochrony międzynarodowej, Raport FIPP 1/2022, Lublin 2022, p. 10. Accessed January 26, 2024. <https://panstwoprawa.org/wp-content/uploads/2023/01/Dostęp-do-ochrony-międzynarodowej.pdf>

¹², G. Baranowska, Pushbacks in Poland: Grounding the Practice in Domestic Law in 2021, XLI Polish Yearbook Of International Law 2021. Accessed January 26, 2024. <https://journals.pan.pl/dlibra/publication/142346/edition/125552/content>.

authorities and received a special treatment with the fast-track asylum procedures¹³. The remaining part came irregularly mostly via Belarus and were detained. The double standards in receiving asylum seekers became more evident after 24 February 2022, when the Polish authorities facilitated access to Polish territory to virtually everyone trying to flee Ukraine. Poland accepted about 30% of all Ukrainian forced migrants¹⁴. The government introduced temporary protection for the newcomers¹⁵ and other temporary solutions for Ukrainians who were already living in Poland.

¹³ The Office for Foreigners. Informacja dot. afgańskich współpracowników i ich rodzin ewakuowanych z Kabulu. Accessed February 8, 2024. <https://www.gov.pl/web/udsc/informacja-dot-afganskich-wspolpracownikow-i-ich-rodzin-ewakuowanych-z-kabulu>.

¹⁴ Council of the European Union. Infographic - Refugees from Ukraine in the EU. Last updated January 22, 2024. Accessed January 26, 2024. <https://www.consilium.europa.eu/pl/infographics/ukraine-refugees-eu/>.

¹⁵ European Union applied the temporary protection mechanism for the first time (March 2022). Currently, EU has extended the temporary protection of Ukrainian citizens to March 2025. See more: https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/temporary-protection_en. Accessed January 26, 2024. However special law on the aid to the citizens of Ukraine has been amended by Polish Sejm on February 9, 2024, to provide for preferential treatment of Ukrainian citizens fleeing Ukraine after February 24, 2022, only until June 30, 2024. (ustawa z dnia 9 lutego 2024 r. o zmianie ustawy o pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium tego państwa, ustawy o podatku dochodowym od osób fizycznych oraz ustawy o podatku dochodowym od osób prawnych). By June 2024 polish government will have to decide what will be the social status of beneficiaries of temporary protection in Poland.

3. Relationship Between National Law/EU Law/Public International Law

Taking into account the turbulence over the general position of EU law in the Polish legal system, it should be said that since 1 May 2004 (accession to the European Union), EU law has taken precedence over national law. EU legal regulations are applied directly (including the Eurodac Regulation¹⁶ and the Dublin III Regulation¹⁷), and the directives are transposed into national law (mainly into the Act on foreigners¹⁸ or Act on granting protection to foreigners within the territory of the Republic of Poland¹⁹).

The unique status of the EU law in Polish legal order is decided by the provisions of the 1997 Polish Constitution²⁰. Article 91 of the Constitution stipulates that a ratified international agreement after promulgation thereof in the *Journal of Laws of the Republic of Poland* (in Polish: *Dziennik Ustaw Rzeczypospolitej Polskiej, Dz.U.*), shall constitute part of the domestic legal order and shall be applied directly, unless its application depends on the enactment of a statute. Moreover, an international agreement ratified upon prior consent granted by statute shall have precedence over statutes if such an agreement cannot be reconciled with the provisions of such statutes. To facilitate Poland's membership in the EU, art. 91.3. of the Constitution provides that the laws established by an international organisation (if the agreement establishing this organisation has been ratified by Poland) shall be applied directly and have precedence in the event of a conflict of laws. This specific character of secondary EU law differs from other international law instruments, which require transposition into the Polish legal system in the form of ratification (see the discussion below).

Until 2015, the relationship between national and EU law had been (as it is the case in many other EU Member States) a matter of a delicate dialogue between the Court of Justice of the European Union (CJEU) and the Polish Constitutional Tribunal. In the past the Constitutional Tribunal engaged largely in a union-friendly interpretation²¹ of the Polish

¹⁶ Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast).

¹⁷ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

¹⁸ Directives relating to the matter of return and readmission are transposed into the Act on foreigners, i.a., Directive 2008/115/EC of 16 December 2008 on common standards and procedures applicable by Member States in the return of illegally staying third-country national, Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions expelling third-country nationals, Council Directive 2003/110/EU of 25 November 2003 on assistance in cases of transit for the purposes of deportation by air.

¹⁹ Act of June 13, 2003 on granting protection to foreigners in the territory of the Republic of Poland, Dz.U. 2003 nr 128 item 1176.

²⁰ Constitution of the Republic of Poland of April 2, 1997, Dz.U. 1997 nr 78 item 483.

²¹ Comprehensive analysis of the shift from union-friendly to a hostile interpretation is included in the European Parliament's LIBE Committee study, *The Primacy of EU Law and the Polish Constitutional Law Judgment*. December 2022. Available at

Constitution, ensuring the general application and validity of EU law. The non-confrontational approach ended after the Law and Justice government attempted to introduce controversial reforms of the Polish judiciary²². Moreover, the ruling party in the end of 2015 violated the Polish Constitution²³ by appointing new jurists in the place of those already selected by the previous parliament (but not appointed by the President). Since the end of 2015, the majority of the members of the Constitutional Tribunal were considered to be politically declared supporters of the Law and Justice party. The Polish Constitutional Tribunal since then constantly questioned well-established principles of EU law. And this institution became an internal organ to certify compliance with the constitution of governmental actions questionable from an EU law point of view. The illegality of these actions was so evident that the European Court of Human Rights (ECtHR) declared that this composition of the Constitutional Tribunal violated the right to a fair trial and to a tribunal established by law (art. 6.1. ECHR)²⁴.

As a consequence, the Polish Constitutional Tribunal controversially held some provisions of the Treaty on European Union (TEU)²⁵ and art. 6 (1) ECHR²⁶ as incompatible with the Polish Constitution. In its judgement of 10 March 2022 (K 7/21), the Constitutional Tribunal found the provision of the European Convention on Human Rights (ECHR) guaranteeing everyone the right to a fair and public hearing within a reasonable time by an independent and impartial court established by law to be contrary to the Constitution of the Republic of Poland (art. 6(1) ECHR – Law to a fair trial). It ruled that ‘Article 6(1), first sentence, of the Convention for the

[https://www.europarl.europa.eu/RegData/etudes/STUD/2022/734568/IPOL_STU\(2022\)734568_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/734568/IPOL_STU(2022)734568_EN.pdf).

²² These reforms have raised serious doubts about their conformity with the EU law, which has been underlined by the CJEU on multiple occasions: Case C-619/18, *Commission v Poland* (Independence of the Supreme Court), 24 June 2019, EU:C:2019:531; Case C-192/18, *Commission v Poland* (Independence of Ordinary Courts), 5 November 2019, EU:C:2019:924; Case C-791/19, *Commission v Poland*, 15 July 2021, EU:C:2021:596. Joined Cases C-585/18, C-624/18; C-625/18, A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court), 19 November 2019, EU:C:2019:982; Case C-824/18, A.B. and Others (Appointment of Judges to the Supreme Court – Actions), 2 March 2021, EU:C:2021:153.

²³ Constitutional Tribunal Judgment of 3 December 2015, K 34/15.

²⁴ The ECtHR, in its judgement of 7 May 2021, in the case of *Xero Flor w Polsce sp. z o.o. v. Poland* (application no. 4907/18) saw ‘no reason to disagree with the Constitutional Court’s findings that there had been irregularities amounting to manifest breaches of domestic law in the appointment of those judges’. It found that the actions of the legislature and executive, in particular ‘the authorities’ failure to abide by the relevant Constitutional Court judgments, was linked to their challenging—with a view to usurping—the Constitutional Court’s role as the ultimate interpreter of the Constitution and the constitutionality of the law’. It thus considered that the applicant company had been denied its right to a ‘tribunal established by law’ owing to the irregularities in the appointment of Judge M.M. specifically.

²⁵ On 7 October 2021, the Constitutional Tribunal ruled that some provisions of the Treaty of the European Union (TEU) are unconstitutional (Judgement K 3/21). The CT found that an understanding of art. 1 read in conjunction with art. 4 (3) TEU, which required or authorised Polish adjudicative bodies to issue decisions that disregarded the Polish Constitution or to apply laws that contravened the Polish Constitution, to be in breach of Arts. 2, 7, 8 (1) in conjunction with 8 (2), 90 (1) and 91 (2), as well as 178 (1) of the Polish Constitution. Second, the CT interpreted art. 19 (1), second paragraph, read in conjunction with art. 4 (3) TEU requiring or authorising Polish adjudicative bodies to apply laws which were previously declared unconstitutional by the Constitutional Tribunal to be in breach of Arts. 2, 7, 8 (1) in conjunction with 8 (2) and 91 (2), 90 (1), 178 (1) as well as 190 (1) of the Polish Constitution. Third, the CT considered art. 19 (1), second paragraph, read in conjunction with art. 2 TEU, allowing Polish courts to review the independence of judges appointed directly by the President of the Republic or by request of the National Council of the Judiciary, to be incompatible with Arts. 8 (1) in conjunction with 8 (2), 90 (1), 91 (2), 144 (3) 17 as well as 186 (1) of the Polish Constitution.

²⁶ The case K7/21, accessed March 6. 2024, <https://trybunal.gov.pl/s/k-7-21>.

Protection of Human Rights and Fundamental Freedoms, drawn up in Rome on 4 November 1950, subsequently amended by Protocols Nos. 3, 5 and 8 and supplemented by Protocol No. 2 (Journal of Laws of 1993, No. 61, item 284, as amended) insofar as: (...) is incompatible with Article 188, paragraphs 1 and 2, and with Article 190, paragraph 1, of the Constitution’.

It is expected that after Law and Justice lost power in the 15 October 2023 elections that the influence of the politicians on the Constitutional Tribunal would diminish. The process of reinstating the rule of law in Poland after eight years of ignoring the judgements of the CJEU and ECtHR will be long and difficult. Any legislative or constitutional changes promised before the 2023 parliamentary elections by the new governmental coalition will require collaboration with the President, who is not willing to admit to committing a constitutional delict in the past.

Poland ratified acts of international law regarding human rights and refugee law in most of the second half of the 20th century. The Convention relating to the Status of Refugees (1951)²⁷ is directly applied in the process of granting international protection. The other most frequently used legal act is the Convention on the Rights of the Child²⁸. Other international law documents (including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment²⁹) are often ignored when considering individual return or readmission cases. Poland generally implements judgments of international and European tribunals. Every year, the Plenipotentiary of the Minister of Foreign Affairs for proceedings before the European Court of Human Rights presents a report on the execution of judgments by Poland. At the time of preparation of the report, results for 2022 were not yet available. From 2011 to 2021, as few as 31 (2020) and as many as 357 (2014) judgments were executed annually. Since 2014, there has been a significant downward trend in the execution of judgments—in 2021, 35 judgments were executed. Currently, 97 cases are in the execution phase. The number of judgments against Poland also changed; for comparison, in 2011, 71 judgments were issued, and in 2012, as many as 72 judgments were issued. The least number of judgments was issued in 2019 – only 12. In 2021, 23 judgments were handed down³⁰. Considering the number of judgments issued, their implementation and ‘in implementation’, Poland executes judgments with a delay. Implementing judgments regarding access to the international protection procedure is also delayed³¹.

Poland joined the Council of Europe on 26 November 1991. The European Convention on the Protection of Human Rights and Fundamental Freedoms came into force on 19 January 1993, when Poland filed ratification documents to the Council of Europe.

Poland has signed and/or ratified the following UN human rights treaties:

- International Convention on the Elimination of All Forms of Racial Discrimination (signed: 1966, ratified: 1968), reservation art. 22;
- International Covenant on Civil and Political Rights (signed: 1967, ratified: 1977), no reservations;

²⁷ Dz.U. 1991, No. 119, items 515 and 517.

²⁸ Dz.U. 1991 No. 120 item 526.

²⁹ Dz.U. 1989 No. 63 item 378.

³⁰ Ministry of Foreign Affairs. Raporty rządu na temat wykonywania orzeczeń ETPC. Accessed January 8, 2024. <https://www.gov.pl/web/dyplomacja/raporty-roczne-rzadu-na-temat-wykonywania-orzeczen-etpc>.

³¹ J. Barcik. Wykonywanie wyroków Europejskiego Trybunału Praw Człowieka przez Polskę. Justitia 2 no. 12 (2013). Accessed January 8, 2024. <https://www.kwartalnikiustitia.pl/wykonywanie-wyrokow-europejskiego-trybunalu-praw-czlowieka-przez-polske,5011>.

- International Covenant on Economic, Social and Cultural Rights (signed: 1967, ratified: 1977), no reservations;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (signed: 1986, ratified: 1989), no reservations;
- Convention on the Rights to the Child (signed: 1990, ratified: 1991), reservation art. 7 and art. 38;
- Optional Protocol to the International Covenant on Civil and Political Rights (signed: 2000, ratified: 2014), no reservations;
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (signed: 2004, ratified: 2005), no reservations;
- International Convention for the Protection of All Persons from Enforced Disappearance (signed: 2013, ratification: none).

Poland did not sign and refused the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

The status of public international law in domestic Polish law is commonly qualified as a monist system³². Pursuant to art. 9 of the 1997 Constitution: ‘The Republic of Poland respects international law binding on it’. Based on art. 87 of the Constitution, only ratified international agreements are a source of generally applicable law³³; without ceasing to be a source of international law, they become a source of national law. There is a dispute as to whether the norm of customary international law is considered a source of binding law. Consequently, compliance with international law agreements will manifest mainly in their transposition into the Polish legal order. The Constitution states that the sources of generally applicable law in Poland are: the Constitution, statute (act of Parliament, in Polish: *ustawa*), ratified international agreements, and governmental ordinances (in Polish: *rozporządzenie*).

Moreover, Poland may, on the basis of an international agreement, delegate to an international organisation or an international body the competence of state organs in certain matters (art. 90 of the Constitution)³⁴. The most important international acts regarding human rights and refugee law, i.e., the Convention relating to the Status of Refugees or Convention on the Child Rights, are ratified and incorporated directly into national law through publication in the official legislative journal.

³² M. Borski. Miejsce umów międzynarodowych w porządku prawnym Rzeczypospolitej Polskiej. *Roczniki Administracji i Prawa : teoria i praktyka*, Rok XIV t. II (2014) , pp. 17-32.

³³ Pursuant to art. 87 of the Constitution of the Republic of Poland, only ratified international agreements are a source of generally applicable law. International agreements are ratified and announced by the President. The ratification procedure is regulated in detail in the Act of 14 April 2000 on international agreements. According to its provisions, the choice of the method of ratification of an international agreement is decided by the Council of Ministers, adopting a resolution to submit the agreement to the President for ratification. Under the above resolution, the Minister of Foreign Affairs submits the agreement together with the ratification document to the President for ratification, provided that in the case of an agreement meeting the conditions arising from art. 89 section 1 of the Constitution or art. 90 of the Constitution, obtaining prior consent for its ratification is necessary.

³⁴ A law giving consent to the ratification of this international agreement shall be passed by the Sejm (Parliament) by a two-thirds majority vote in the presence of at least half of the statutory number of deputies and by the Senate by a two-thirds majority vote in the presence of at least half of the statutory number of senators. The consent to ratifying such an agreement may be passed in a nationwide referendum following the provisions of art. 125 of the Constitution. The resolution on the choice of the mode of consent to ratification shall be adopted by the Sejm by an absolute majority of votes in the presence of at least half of the statutory number of deputies.

On 21 January 2021, Polish authorities sent information to the Council of Europe on implementing individual measures. The very first judgement regarding the refusal of access to the international protection procedure in Poland is worth mentioning. In the case of *M.K. and Others v. Poland* (applications no. 40503/17, 42902/17 and 43643/17), the ECtHR ruled that Poland had violated art. 3 of the ECHR (prohibition of torture and other inhuman, degrading treatment in Chechnya), art. 4 of Protocol No. 4 to the Convention on the grounds of collective expulsion of foreigners, art. 13 of the Convention (the right to effective remedy), and art. 34 of the ECHR. On 8 December 2021, an action plan to implement the judgement was sent³⁵. The Committee of ministers of the Council of Europe will return to the question of implementing this judgement in March 2024.

³⁵ Opinion of the Helsinki Foundation for Human Rights, Accessed January 26, 2024. <https://hfhr.pl/upload/2023/03/helsinki-foundation-for-human-rights-opinion-mk-and-others-vs-poland.pdf>.

4. Institutional Framework and Operational Infrastructure

Migration and border policy comes under the Ministry of the Interior and Administration (Department of International Affairs and Migration). The main authority responsible for return policy and readmission is the Border Guard. An additional authority in charge of organising voluntary return assistance is the Head of the Office for Foreigners. As a result of legislative changes in March 2023, the Border Guard took over the overall competence for processing return cases at the two-instance level.

The Border Guard is responsible for receiving applications for international protection. Also, the same authority – the Border Guard – is responsible for the return and readmission process. The Border Guard also deals with arrests and detention centres for foreigners. The detention centres are fully managed by the Border Guard posts (or units) on whose territory they are located. A foreigner is placed in a detention centre at the request of the territorially competent commanding officer of the Border Guard post (unit). The detention centre is located on the territory of the border guard post or unit. It has its own manager, a Border Guard officer. The Border Guard may decide to apply alternative measures to detention, also to foreigners who have been issued with a decision to oblige the foreigner to return (more: section 5).

As a rule, control of the legality of stay is carried out by the Border Guard and the Police. The Head of the Office for Foreigners and the Voivodes³⁶ may conduct control of the legality of stay to the extent necessary for their proceedings concerning foreigners. Control of the legality of stay may also be carried out by the Head of the Customs and Fiscal Office to the extent specified in separate ordinances. The Act on foreigners obliges all state authorities (governmental and self-governmental administration) to cooperate with the authorities carrying out control of the legality of stay. Tasks related to performing control of the legality of stay, issuing decisions on the obligation to return and readmission are specified in the Act on foreigners and implementing acts.

The Border Guard, in accordance with its territorial competence, carries out control of the legality of stay. Also, in accordance with its territorial competence, it accepts foreigners for readmission. Territorial competence depends on the choice of the way of transfer of foreigners—by land or by air. The tasks of the Border Guard officers, including the way of execution of a forced return, are specified in the ordinances implementing the Act on foreigners.

In the Board for Foreigners of the Border Guard Headquarters, there is the Division III for the Organisation of Voluntary Returns and Dublin Proceedings, which undertakes activities related to the implementation, supervision, and monitoring of assistance to foreigners in their voluntary return from Poland.

According to his/her territorial competence, the Border Guard post's commanding officer issues a decision to oblige the foreigner to return or to accept the foreigner under a readmission agreement. The role of the Head of the Office for Foreigners was significantly reduced in March

³⁶ It is 'a one-person body of the local-government administration and the constitutional representative of the council of ministers in the voivodship' – see Encyklopedia Administracji Publicznej, Faculty of Political Science and International Studies, University of Warsaw, accessed March 25, 2024, <http://encyklopediaap.uw.edu.pl/index.php/Voivode>.

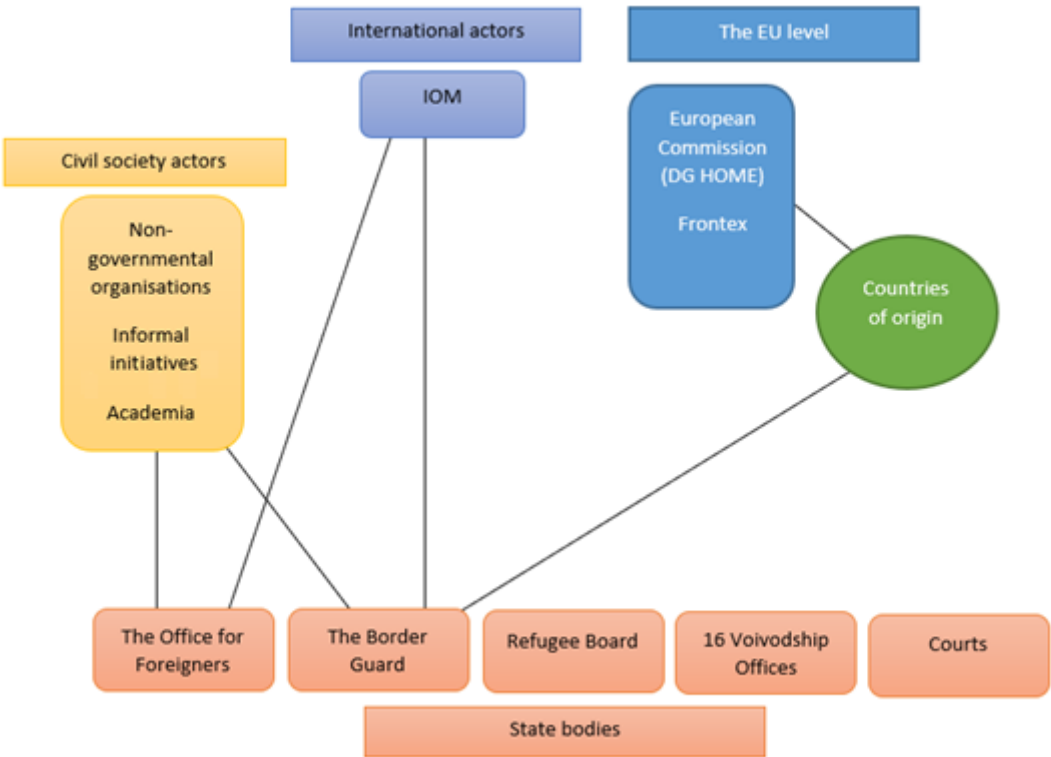
2023. As a result of the reform of the Act on foreigners in April 2023, the Border Guard is now entirely in charge of the proceedings to oblige a foreigner to return. Before the change, the Head of the Office for Foreigners conducted the appeal proceedings.

As a rule, the return of a foreigner is ordered by the relevant Border Guard post. In the case of a declaration of voluntary return – the Commander-in-Chief of the Border Guard organises assistance in voluntary return. The Act on foreigners provides for the possibility to outsource the organisation of voluntary return to another entity. Currently, this entity has been the International Organisation for Migration (IOM) since 2005 on the basis of an agreement between the Minister of the Interior and Administration and the IOM of 12 July 2005. This agreement clearly defines the tasks of the Minister, the IOM and the mode of the cooperation.

IOM is the only entity cooperating in the organisation of voluntary returns of foreigners. The Act on foreigners specifies that the Commander-in-Chief of the Border Guard may commission the organisation of a voluntary return by the IOM.

Figure 9: Flowchart of Return Migration Infrastructure in Poland

Source: Own elaboration.



5. The National Legal Framework/Return Infrastructure

5.1. Definitions and Concepts

To describe the national legal framework regarding returns, the following frequently occurring terms should be analysed. They are defined in the acts of parliament, incorporated from international/EU law, or adopted for the purpose of public statistics (e.g., Poland's Central Statistical Office or Eurostat):

- Third-country nationals – anyone who does not possess Polish citizenship (Act on foreigners art.3 point 2) or an EU Member State citizenship;
- Illegal/irregular stay – there is no legal definition of this term in Polish legislation. The stay of a foreigner should be considered illegal when it is inconsistent with the provisions regulating the stay of foreigners in the territory of the Republic of Poland, including the Act on foreigners and the Act of 13 June 2003 on granting protection to foreigners in the territory of the Republic of Poland³⁷). An irregular stay is considered a situation in which a foreigner does not have a document entitling him/her to a legal stay in the country's territory, which means the lack of a visa, residence card, or overstay under visa-free travel. Irregular stay also results from entering the territory of Poland without proper documents of entry; however, there is a discrepancy in interpretation (between the government and NGOs) on how this rule applies to migrants pushed to Poland by Belarusian forces regarding the principle of non-refoulement. Also, the art. 3 point 2 of the Return Directive defines 'illegal stay';
- International protection – protection of asylum seekers granted in the form of refugee status (based on the 1951 Geneva Convention), or subsidiary protection introduced to the national law by the 2011 EU Qualification Directive³⁸. It should be noted that 'asylum' (in Polish: *azyl*) in Poland is a separate kind of protection stemming only from domestic law and rarely applied³⁹;
- Return – the return of a foreigner to his/her country of origin, transit country, or other third country to which he/she decided to return and by which he/she was accepted (following the Act on foreigners art. 3 point 12);

³⁷ Dz. U. 2003 No. 128 item 1176.

³⁸ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).

³⁹ For more, see: M. Szulecka, M. Pachocka and K. Sobczak-Szelc. Poland—Country Report: Legal and Policy Framework of Migration Governance. Working Paper Series. Global Migration: Consequences and Responses, no. 2018/09. doi: 10.5281/zenodo.1418583; M. Pachocka and K. Sobczak-Szelc. Refugee Protection Poland Country Report. RESPOND Working Papers. Global Migration: Consequences and Responses. Paper 2020/35, January 2020.

- Return decision (in Polish: *decyzja o zobowiązaniu do powrotu*) – a decision issued by the competent commander of the Border Guard post or unit (Division Commander, in Polish: *Komendant Oddziału*);
- Removal order – there is no legal definition of this term in Polish legislation; however, the Act on entrance, stay and exit of the citizens of the Member States of the European Union and family members (Act on citizens of the EU⁴⁰) in art. 65p stipulates the grounds for the expulsion from the territory of Poland of EU citizens or family members who are not EU citizens and do not have the right of residence. Moreover, art. 303b of the Act on foreigners allows the Border Guard commander to issue an order to leave (in Polish: *nakaz opuszczenia*) the territory of the Republic of Poland to the foreigner apprehended immediately after crossing the border irregularly;
- Risk of absconding – there is no legal definition, but the Act on foreigners (art. 315(3)) indicates factors to assess the ‘probability of absconding’ by a foreigner: It shall be taken into account, in particular, whether the foreigner:
 - a) has declared his/her non-compliance with the obligations arising from the receipt of the decision on the foreigner’s obligation to return, or
 - b) is not in possession of documents proving his/her identity, or
 - c) has crossed or attempted to cross the border in violation of the law, or
 - d) has entered the territory of the Republic of Poland within the period of validity of an entry to the list of foreigners whose stay on the territory of the Republic of Poland is undesirable, or to the Schengen Information System for the purpose of refusing entry and stay;
- Voluntary departure – the Act of 9 March 2023 amending the Act on foreigners and certain other acts has changed the statutory term ‘voluntary return’ to ‘voluntary departure’. Currently, following art. 315(1) of the Act on foreigners: ‘The decision on the obligation of the foreigner to return shall specify the period of voluntary departure, which shall be from 8 to 30 days, counted from the day of delivery of the decision’.
- Assisted return – is organised by the Commander-in-Chief of the Border Guard. The Act on foreigners specifies who can benefit from assisted return (based on art. 334 of the Act on foreigners), to whom to apply and the deadline for submission of this application. Foreigners who are eligible to apply may receive multiple types of decisions, among others:
 - a) a decision to oblige a foreigner to return with a deadline for voluntary departure,
 - b) a decision to oblige a foreigner to return subject to compulsory execution and who, due to the circumstances referred to in art. 400 of the Act on foreigners, has not been placed in a detention centre or in respect of whom an arrest for foreigners has not been applied or who has been released from a detention centre or an arrest for foreigners when it has been established that the circumstances referred to in art. 400 of the Act on foreigners apply, and in the case referred to in art. 406(1)(3) of the Act on foreigners,

⁴⁰ Act of July 14, 2006, on entry into, stay in and departure from the territory of the Republic of Poland territory of citizens of the European Union Member States and their family members, Dz. U. Nr 144 item 1043.

- c) foreigner who has been issued a decision to refuse refugee status or subsidiary protection or a decision to declare an application for international protection inadmissible,
- d) foreigner who has been issued a decision to discontinue the proceedings on granting international protection,
- e) foreigner whose application for granting international protection was left without consideration for formal reasons,
- f) foreigner staying on the territory of the Republic of Poland on the basis of a certificate referred to in art. 170 of the Act on foreigners (certificate confirming the presumption that the foreigner is a victim of trafficking in human beings) or on the basis of a temporary residence permit referred to in art. 176 of the Act on foreigners.

Assistance in voluntary return shall be granted upon the foreigner's application. The foreigner submits the application for assistance in voluntary return to the Commander-in-Chief of the Border Guard through indicated authorities: the commanding officer of the Border Guard division (Division Commander) or the commanding officer of the Border Guard post or the Head of the Office for Foreigners⁴¹;

- Vulnerable persons – there is no clear legal definition of vulnerable persons in the Act on foreigners, but the Act on protection in art. 68(1)⁴² mentions persons that may require special treatment, and these are:
 - a) minors,
 - b) disabled persons,
 - c) elderly persons,
 - d) pregnant women,
 - e) single parents,
 - f) victims of human trafficking,
 - g) seriously ill persons,
 - h) mentally disordered persons,
 - i) victims of torture,
 - j) victims of psychological, physical and sexual violence, as well as violence due to gender, sexual orientation and gender identity;

Vulnerable persons may require special assistance: medical assistance or social assistance (e.g., special time and space arrangements for the interview as well as the presence of a psychologist, reception conditions adjusted to special needs, etc., based on the Act on protection [arts. 68 and 69]). Some vulnerable persons (mentally disordered persons, victims of torture, victims of psychological, physical and sexual violence, as well as violence due to gender, sexual orientation, and/or gender identity) shall stay outside of the detention centre while waiting to be returned.

⁴¹ The Office for Foreigners is included in these proceedings under specific conditions: in the case referred to in art. 334 of the Act on foreigners, section 2 points (3) and (4), if the foreigner benefits from social assistance and medical care referred to in art. 70 section 1 of the Act on granting protection to foreigners within the territory of the Republic of Poland of 13 June 2003, or the entity referred to in section 8.

⁴² For more see: K. Sobczak-Szelc, M. Pachocka, K. Pędziwiatr, J. Szalańska and M. Szulecka. From Reception to Integration of Asylum Seekers and Refugees in Poland. Routledge. 2022. Chs. 2.3.

Figure 10: Timeline of Return Policies in Poland

Source: Own elaboration.

| TIMELINE OF RETURN POLICIES: POLAND | | | | | | | | | | |
|---------------------------------------|--|--|------------|---|---|---|--|---|---|---|
| RETURN POLICIES | | | | | | | OTHER MIGRATION RELATED POLICIES | | | |
| Transposition of the return directive | Multiple ordinances regarding formal part of the return of the migrant and stay in the detention camp • Ordinance of the Minister of the Interior of 19 August 2014 on the method of recording in a foreigner's travel document the decision to refuse entry to the territory of the Republic of Poland • Ordinance of the Minister of the Interior of 23 July 2014 on the template of a fingerprint card on which fingerprints are taken from a foreigner in the event of an obligation for the foreigner to return and when the foreigner crossed the border contrary to the law | Introduction of the calculator of the cost of the return process | no changes | Amendment of the Ordinance of the Minister of Interior of 24 April 2015 on the guarded centres and detention centres for foreigners | Ordinance of the Minister of the Interior and Administration of 20 July 2018 on the costs related to the execution of the decision obliging a foreigner to return | Ordinance of the Minister of the Interior and Administration of 21 March 2019 on the template of an application for placement of a foreigner in a detention camp or for applying for a detention center for foreigners and a template of an application for extending the period of stay of a foreigner in a detention center or arrest | Amendment of the Ordinance of the Minister of Interior of 24 April 2015 on the guarded centres and detention centres for foreigners | Readmission agreement with Belarus was "ineffective" since Autumn 2020, when Belarusian border authorities stopped to honor readmission requests from Poland. | Admission of Ukrainian refugees (Act of 12 March 2022 on assistance to citizens of Ukraine in connection with an armed conflict on the territory of this country) | Change of the appeal body - Commander-in-Chief of the Border Guard. |
| Act of 12 December 2013 on foreigners | | Ordinance of the Minister of Interior of 24 April 2015 on the guarded centres and detention centres for foreigners | | | | | Temporary ordinances (COVID-19) regarding the entrance to Poland, extension of visas and residence permits card, extension of deadlines to leave the territory of Poland after issuance of return decision (voluntary return), extension of deadlines to leave the territory of Poland after issuance of final negative decision | • Amendment to the Act on foreigners introduces art. 303b which allows the issue of the obligation to leave Poland (not return process) in cases of illegal border crossing • Amendment of the ordinance on the temporary suspension or restriction of border traffic at specific border crossings • Several amendments of the Ordinance of the Minister of Interior of 24 April 2015 on the guarded centres and detention centres for foreigners | | Multiple amendments to the Act on Foreigners - shortened time for submitting an appeal against the decision to oblige a foreigner to return (from 14 to 7 days) |
| 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 |
| | | | | | | | Covid-19 Pandemic | beginning of the humanitarian crisis on the Polish-Belarusian border | full-scale war in Ukraine | |

5.2. Return at the Border

Poland's borders with Russia, Belarus, and Ukraine are the external Schengen borders. For many years the main gateway for citizens of post-Soviet Union states seeking protection in the European Union has been a train connection between Brest (Belarus) and Terespol (Poland). This connection has been used most often by the Chechens fleeing persecution of Kadyrov's regime or non-state actors⁴³. According to Polish law, asylum applications are registered by the Border Guard and after this initial phase they are being transferred to the Office for Foreigners competent to examine asylum seekers' requests. Despite the lack of statutory competence, the Border Guard officers at the external border in Terespol for many years were involved in the

⁴³ In years 2003-2017 there were 91,500 Chechens filing application for refugee status (international protection) and 69 thousand of them have not waited for the examination of their requests and moved to other EU states, Monika Porończuk, Czczeni mnożą się Morawieckiemu w oczach. Przeszacował ich liczbę sześciokrotnie, OKO Press, 21 of June 2018, <https://oko.press/czczeni-mnoza-sie-morawieckiemu-w-oczach-przeszacowal-ich-liczbe-szesciokrotnie>, accessed 26 March, 2024.

quasi-examination of foreigners' claims and were the restricting foreigner's access to international protection⁴⁴.

As a rule, a foreigner may enter Poland under the visa-free regime (with a biometric passport and not extending the maximum period of stay) or holding a valid visa or residence card. If a foreigner does not have one of the above-mentioned documents, he/she will generally not be able to enter. The Act on foreigners specifies the reasons for refusing entry⁴⁵ as not having the right to enter or not meeting the entry conditions on a visa.

The Schengen Border Code⁴⁶ and the Act on foreigners⁴⁷ provide for exceptions for the foreigners who do not satisfy the entry conditions; application for international protection or receipt of a short-entry permit (valid for 15 days) issued by the Commander of the Border Guard Post (obtaining consent of the Commander-in-Chief of the Border Guard) to enter Polish territory on humanitarian grounds, on grounds of national interest or because of international obligations.

Collective expulsions in Terespol until 2020

Frontex data shows that the number of refusals of entry to the EU has doubled between 2015 and 2016 and that this is clearly the result of the refusals issued at the Polish-Belarusian border⁴⁸. The Helsinki Foundation for Human Rights reported that the place of issuance of around 75% of all refusals of entry in the EU in 2016 was the Polish-Belarusian border which is an increase of 213% since 2015⁴⁹.

This change of attitude in 2016 has been confirmed by the previous Polish Minister of the Interior, Mariusz Błaszczak. It is obvious in this case that the Polish authorities were reinforcing security at the expense of individuals' rights. The anti-immigration sentiments were reflected in the administrative statements of the Minister who called the situation in Terespol 'an attempt to open another route for the influx of Muslims to Europe,' and claimed that 'as long as I am interior minister and as long as Law and Justice party is in power, we will not put Poland in danger of terrorism'⁵⁰. Since 2016 the situation at the border has changed but rather not improved at all. However, in mid-March 2020, due to coronavirus legislation, the arrivals by a 'refugee train' from Brest to Terespol have been completely stopped. Until 2020 the main border crossing through which forced migrants⁵¹ tried to enter Poland was the

⁴⁴ M. Kowalski, Wnioski o ochronę międzynarodową składane na granicy – uwagi na tle środków tymczasowych zarządzonych wobec Polski przez Europejski Trybunał Praw Człowieka, Europejski Przegląd Sądowy 3/2018, s. 11-17

⁴⁵ Art. 28 of the Act on foreigners.

⁴⁶ Art. 3 and art. 6. 5c of the Schengen Border Code.

⁴⁷ Art. 32.1 of the Act on foreigners.

⁴⁸ Frontex Annual Risk Analysis 2017, available at

https://frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2017.pdf.

⁴⁹ Helsinki Foundation for Human Rights, "Access to asylum procedure at Poland's external borders. Current situation and challenges for the future", Warsaw, April 2019, p. 10. https://hfhr.pl/upload/2022/01/doste-p-do-procedury-azylowej-na-polskich-granicach-zewnetrznych_-obecna-sytuacja-i-wyzwania-na-przyszlos-c11T, accessed 26 March 2024.

⁵⁰ This policy statement has been widely discussed also in Russian media: Fleeing Chechen Refugees Stranded on Polish-Belarus Border, The Moscow Times, Aug. 31, 2016, <https://www.themoscowtimes.com/2016/08/31/chechens-running-from-kadyrov-stuck-on-polish-border-a55165>.

⁵¹ See the definition proposed by Pachocka and Wach (2023).

border crossing in Terespol⁵². The Brest-Terespol train connection between Belarus and Poland was suspended on 15 March 2020, and has not been reopened since then (currently Terespol is the only active border crossing point for travellers in vehicles at the Polish-Belarusian border). In practice, the legal pathways to apply for international protection at the Polish-Belarusian border have been greatly reduced.

For many years (even before 2015), Polish NGOs and lawyers have been alerting that passengers of the train from Brest were collectively expelled despite their declared willingness to apply for international protection⁵³. Before lodging their application, they were forced to return to Belarus many times⁵⁴ receiving refusal of entry decisions on the basis of the lack of visa⁵⁵. In the rare cases when foreigners have managed to file an appeal against the decision and even sought judicial review in administrative court the Border Guard, decisions were sometimes overturned but these judgements were normally issued long after the asylum seekers' attempts to cross the border⁵⁶.

The report prepared by the Association of Legal Intervention 'At the Border'⁵⁷ drew attention to the long-standing practice of refusing to accept applications for international protection by the Border Guard at the border crossing point in Terespol. Already in 2016, the report stated that for many years, NGOs have been approached by foreigners who were refused entry to Poland despite their willingness to apply for international protection. The peak of refusals of entry happened in July 2016 during the NATO Summit in Warsaw and the World Youth Day in Cracow. Hundreds of applicants were taking the train from Brest and Terespol

⁵² A. Chrzanowska, P. Mickiewicz, K. Słubik, J. Subko and A. Trylińska. At the border. Report on monitoring of access to the procedure for granting international protection at border crossings in Terespol, Medyka, and Warszawa-Okecie Airport, Analyses, Reports, Evaluations, No. 2/2016, Warsaw: Association for Legal Intervention. Accessed January 26, 2024. <https://interwencjaprawna.pl/wp-content/uploads/2020/04/at-the-border.pdf>; M. Górczyńska and M. Szczepanik. A road to nowhere: The account of a monitoring visit at the Brześć-Terespol border crossing between Poland and Belarus. Helsinki Foundation for Human Rights 2016. Accessed January 26, 2024. <https://www.hfhr.pl/wp-content/uploads/2016/11/raport-droga-donikad-EN-web.pdf>; M. Szczepanik. Border Politics and Practices of Resistance on the Eastern Side of 'Fortress Europe': The Case of Chechen Asylum Seekers at the Belarusian-Polish Border. Central and Eastern European Migration Review. Vol. 7, No. 2. 2018. pp. 69–89; J. Białas, M. Górczyńska and D. Witko. Access to asylum procedure at Poland's external borders. Current situation and challenges for the future (English summary), Warsaw: Helsinki Foundation for Human Rights 2019; M. Pachocka and K. Sobczak-Szelc. Refugee Protection Poland Country Report. RESPOND Working Papers. Global Migration: Consequences and Responses. Paper 2020/35, January 2020.

⁵³ T. Sieniow, Migrants have the right to have rights – dostęp do ochrony międzynarodowej, Raport FIPP 1/2022, Lublin 2022, p. 15. Accessed January 26, 2024. <https://panstwowprawa.org/wp-content/uploads/2023/01/Raport-II-detencja.pdf>.

⁵⁴ In the exemplary case Tomasz Sieniow has intervened to support Chechen applicants trying to cross this border on the train 72 times before their application has been registered on the 17th of September 2019 (Intervention letter of the Rule of Law Institute to the Commander of the Border Guard Post in Terespol of 16 September 2019, Sygn. IPP-TS-4/9/2019).

⁵⁵ Stowarzyszenie Interwencji Prawnej. Czeczeni w niebezpieczeństwie przez odmowę dostępu do procedury uchodźczej. 2018. Accessed January 26, 2024. <https://interwencjaprawna.pl/czeczeni-w-niebezpieczenstwie-przez-odmowe-dostepu-do-procedury-uchodzcej/>; Rzecznik Praw Obywatelskich. ETPC negatywnie ocenił praktykę polskich służb w sprawach osób poszukujących w Polsce ochrony międzynarodowej. 2020. Accessed January 26, 2024. <https://bip.brpo.gov.pl/pl/content/rpo-negatywna-ocena-etpc-braku-dostepu-do-procedur-uchodzcyh>.

⁵⁶ Judgement of the Provincial Administrative Court in Warsaw of 2 June 2017 (sygn. Akt IV Sa/Wa 3021/16) overturning the decision of the Commander-in Chief of the Border Guard and the Commander of the BG Post in Terespol of 3 September 2016 no. NA-TR/29014/D-ODW/2016 on the refusal of entry.

⁵⁷ A. Chrzanowska et al. op. cit.

every day just to be refused entry and try again the following morning. This border practice has been condemned by ECtHR in 2020, in *M.K. and Others v. Poland*⁵⁸ in which the Court found that Poland had violated, among others, art. 3 of the ECHR due to the denial of access to the refugee procedure, which exposed foreigners to the risk of inhuman and degrading treatment or punishment, and due to the ill-treatment of foreigners during border checks⁵⁹. The ECtHR ruled also that the actions of the Border Guard led to the collective expulsion of foreigners due to issuing decisions refusing entry at the border despite submitting declarations for international protection. Similar judgements were issued in other ‘Terespole cases’: *D.A. and Others v. Poland*⁶⁰, *A.I. and Others v. Poland*⁶¹, *A.B. and Others v. Poland*⁶², *T.Z. and Others v. Poland*⁶³.

In the opinion of the NGOs monitoring the situation at the Terespol border crossing point, despite the suspension of the train connection between Belarus and Poland, the situation of asylum seekers has not improved, and the judgement should not be considered implemented⁶⁴. The main reasons for this conclusion are practices performed by the Border Guard at the Polish-Belarusian border but also legal provisions enabling the Border Guard to:

1. return foreigners to Belarus when no decision on a refusal of entry being issued (such practice has been reported in the previous communication of NGOs⁶⁵);
2. return persons who received a decision ordering an immediate removal based on art. 303b of the Act on foreigners;
3. expel to Belarus under the Ordinance of the Ministry of the Interior and Administration of 20 August 2021 (Ordinance of August 2021);
4. push back to Belarus foreigners without any identification nor decision being issued (which is still being reported at the Polish-Belarusian border).

Pushbacks and border rejections based on the 2020 Minister of the Interior and Administration Ordinance

After suspending train connection between Brest and Terespol there were generally two routes left for the citizens of Russia and other post-Soviet states to seek protection in Poland. The first was stimulated by the Belarusian regime encouraging migrants to cross the border

⁵⁸ *M.K. and Others v. Poland*, nos. 40503/17, 42902/17 and 43643/17, 23 July 2020.

⁵⁹ Rzecznik Praw Obywatelskich. Ograniczony dostęp migrantów do procedury uchodźczej w Polsce. Informacje RPO dla Specjalnego Sprawozdawcy ONZ. 2021. Accessed January 26, 2024. <https://bip.brpo.gov.pl/pl/content/ograniczony-dostep-migrantow-do-procedury-uchodzczej-informacje-rpo-dla-sprawozdawcy-onz>.

⁶⁰ *D.A. and Others v. Poland*, no. 51246/17, 21 July 2021.

⁶¹ *A.I. and Others v. Poland*, no. 39028/17, 30 June 2022.

⁶² *A.B. and Others v. Poland*, no. 42907/17, 30 June 2022.

⁶³ *T.Z. and Others v. Poland*, no. 41764/17, 13 October 2022.

⁶⁴ Communication of the Association for Legal Intervention of 12 February 2024 on the execution of the *M.K. and Others v. Poland* judgment. Accessed March 1, 2024 https://interwencjaprawna.pl/wp-content/uploads/2021/01/CoE-M.K.-and-Others-vs-Poland-execution_communication-SIP_March-2024.pdf.

⁶⁵ Communication of the Association for Legal Intervention and the Rule of Law Institute of 27 February 2023 on the execution of the *M.K. and Others v. Poland* judgement. Accessed March 1, 2024 <https://rm.coe.int/0900001680aa7979>.

irregularly by the forest⁶⁶. The other was to reach Poland via one of the land border crossing points by car. During the on-going humanitarian crisis on the Polish-Belarusian border on 10 February 2023 Poland has limited the number of open crossing points available for passenger transport only to Terespol⁶⁷. This meant that persons seeking protection could only access the Polish territory via Belarus in private vehicles (since 17 September 2023 due to implementation of EU sanctions on imported Russian cars) not registered in the Russian Federation.

During the Covid-19 state of emergency, Poland, on 15 March 2020, suspended not only train connections between Brest and Terespol but also personal traffic on external and internal Schengen borders. The Ordinance of the Minister of the Interior and Administration of 13 March 2020⁶⁸ has introduced a catalogue of persons eligible to cross Polish borders. Generally speaking, it provided a list (more and more casuistic over time) of exceptions to the denial of entry to Poland. The Ordinance has been amended 34 times in less than four years and became a legal basis for the unique approach to refusals of entry during and after the state of emergency has been called off. The crucial amendment entered into force on 21 August 2021⁶⁹. Since the entry into force of this amendment, foreigners (who did not fall into the enumerated list of persons eligible to cross the border) were instructed about the obligation to immediately leave the territory of the Republic of Poland if they came to the open border crossing point (§3 point 2a of the 13 March 2020 Ordinance). It is worth mentioning that the instruction about the obligation to leave the territory was not a decision on the refusal of entry. The Ordinance, however, has also referred to the situation of the persons disclosed at these border crossings where border traffic has been since March 2020 suspended or restricted and even outside the territorial scope of the border crossing (despite the title of the Ordinance concerning the border crossings). According to the amended version of §3 point 2b of the 13 March 2020 Ordinance such persons shall be returned to the state border line. The new term used in the Ordinance reflects the factual and legal suspension of the readmission agreement with Belarus, which has discontinued its earlier cooperation and allowed for a simplified readmission of its citizens and other foreigners arriving to Poland from Belarus' territory.

During the years when 'instruction about the obligation to leave the territory' became the option, the number of refusals of entry issued by the Border Guard in Terespol dropped. It seems like the right of access to the territory and the principle of non-refoulement are at risk. Asylum seekers arriving to Terespol by train who were subject to collective expulsions were all given the refusal of entry decisions in writing. They could (and sometimes did) seek administrative and judicial review of these refusals. According to §3 point 2a of the 13 March 2020 Ordinance, foreigners arriving to the Polish border crossing point from Belarus are now only orally instructed to leave the territory of the Republic of Poland and cannot use any remedies against these factual refusals. The post-21 August 2021 practice observations show

⁶⁶ The Polish BG statistical data shows that in 2020 there were 53 Russian citizens stopped when crossing Polish-Belarusian border outside of the border crossing points as compared to just one in 2019, see: Straż Graniczna, Informacja Statystyczna za 2020 r. Accessed March 4, 2024, <https://www.strazgraniczna.pl/pl/granica/statystyki-sg/2206,Statystyki-SG.html>.

⁶⁷ Ordinance of the Minister of the Interior and Administration of February 9, 2023 amending the ordinance on the temporary suspension or restriction of border traffic at specific border crossings, Dz.U. 2023 item. 275.

⁶⁸ Ordinance of the Minister of the Interior and Administration of March 13, 2020, on the temporary suspension or restriction of border traffic at specific border crossings, Dz.U. 2020, item 435.

⁶⁹ Ordinance of The Minister of the Interior and Administration of August 20, 2021, amending the ordinance on the temporary suspension or restriction of border traffic at specific border crossings, Dz.U. 2021, item, 1536.

that they cannot even prove their arrival to the Polish Border Guard post, because the Polish border authorities do not stamp their passports⁷⁰.

Pushbacks on Polish-Belarusian green border: Return to the state border line and administrative order about leaving the territory of the Republic of Poland

The first signals that Belarus will respond to sanctions imposed by the European Union (following forged presidential elections and repressions against political opponents⁷¹) may be traced back to October 2020. The Border Guard data⁷² confirm that Belarus has in fact suspended the readmission cooperation with Poland in October 2020, dismantling the existing on the Belarussian side of the border post-Soviet security barriers called 'sistema'. This led to an unprecedented number of irregular crossings of this border to then very secure fragment of the state border reported by the Border Guard in October-December 2020. Among 122 foreigners stopped while illegally crossing the border in 2020 were 53 citizens of Russia and 23 of Afghanistan. In 2021, Belarus started to issue visas to so-called high-migration risk countries (Iraq and Syria), facilitating irregular arrivals to the territory of the EU. The following year, the number of foreigners entering Belarus has decreased while illegally crossing the border has grown to 2,744. Many more were apprehended inside Poland and during their attempt to leave Poland and enter Germany. In 2021, the number of foreigners trying to cross the Polish-Belarusian border has increased (including irregular border crossings). The number of people trying to enter Poland (who were physically pushed by Belarusian border guards onto Polish territory) and later pushed back by the Polish border guards has increased. Independent reports show that the Polish border guards refused to accept international protection requests from those people and pushed them back to the Belarusian side multiple times⁷³. While it is

⁷⁰ The Rule of Law Institute and the Association for Legal Intervention submission of the 27 of February 2023 to the Committee of Ministers of the Council of Europe includes the following observation of the border practice in Terespol: "Between July 2022 and February 2023, RLI assisted with submitting 70 applications for international protection (covering 219 persons) in Terespol. In most of these cases applicants were earlier "unofficially" returned to Belarus by the Polish Border Guard officers, who did not even put a stamp in the foreigners' passports. Decisions on a refusal of entry were issued only in cases of the third-country nationals with the SIS entry ban or foreigners using forged travel documents. Many of the asylum applicants entering Poland during this period had prima facie evidence of being victims of torture (related to forced mobilisation). Nevertheless, to access Polish territory, they often needed three or four entry attempts. RLI is also aware of a Chechen single mother with 8 children asking for international protection in Terespol, who was pushed back to Belarus at least 8 times between 13 October 2022 and 21 December 2022. Experience of this family is not different from dozens of other cases reported to RLI in the second half of 2022. Our daily border observation during this period shows that usually the Border Guard in Terespol was accepting only 1-2 asylum applications per day", Communication of the Association for Legal Intervention and the Rule of Law Institute on the execution of the M.K and Others v. Poland judgement available at <https://rm.coe.int/0900001680aa7979>.

⁷¹ J. Evans. Belarus dictator threatens to 'flood EU with drugs and migrants'. The Week [online, last update: 28 May 2021]. Accessed January 26, 2024. <https://theweek.com/news/world-news/europe/952979/belarus-dictator-threatens-flood-eu-with-drugs-migrants-avoid-sanctions>; Reuters (2021). How Belarus became a gateway to the EU for Middle East migrants. [online, last update: 9 November 2021]. <https://www.reuters.com/world/how-belarus-became-gateway-eu-middle-east-migrants-2021-11-09/>.

⁷² The Polish BG statistical data shows that in October-December 2020 there were 111 foreigners stopped when crossing Polish-Belarusian border outside of the border crossing points as compared to just nine persons during the first 9 months of 2020, Straż Graniczna, Informacja Statystyczna za 2020 r. Accessed March 1, 2024. <https://www.strazgraniczna.pl/pl/granica/statystyki-sg/2206,Statystyki-SG.html>.

⁷³ Grupa Granica. Humanitarian crisis at the Polish-Belarusian border (K. Byłów, Trans.; W. Klaus, Ed.). 2021. Accessed January 26, 2024. <https://www.grupagranica.pl/files/Grupa-Graniczka-Report-Humanitarian-crisis-at-the-Polish-Belarusian-border.pdf>, Human Rights Watch. Die here or go to Poland: Belarus' and Poland's shared responsibility for border abuses. 2021. Accessed January 26, 2024.

not known the true number of people who have died since mid-2021 due to the restricted access to the asylum procedures in Poland and the practice of pushbacks, there are at least 54 confirmed deaths on both sides of the border⁷⁴.

Poland's response to the instrumentalisation of migration by Lukashenka started with the deployment of additional Border Guard officers and the units of the Army and Police in the border area. From the growing number of asylum seekers in detention, the conclusion may be drawn that the government, for security reasons, decided to place to detention virtually every foreigner who managed to cross the border. Poland has expanded its detention capacity from 384 places in January 2021 to 2,168 in November 2021, and the total number of foreigners detained has grown from 837 in 2020 to 4,052 foreigners, including over 500 children in 2021⁷⁵.

Despite creating extra detention space by mid-August 2021, the Border Guard units started to have problems with finding places in detention for apprehended migrants. Although many were instructed not to apply for international protection in Poland, readmission to Belarus was no longer an option since 28 June 2021, when Belarus announced that it would suspend the readmission agreement with the EU⁷⁶. This seems to be a turning point in the Polish reaction to irregular migration from the territory of Belarus. On 20 August 2021, the 13 March 2020 Ordinance amendment was introduced, becoming a legal basis for returning migrants to the state border line (pushbacks). Moreover, on 2 September 2021, a state of emergency was introduced in parts of the Lubelskie and Podlaskie voivodeships immediately adjacent to the border with Belarus. In the area covered by this order, non-residents were forbidden to enter.

The Polish government was aware that these provisions added to the Border Ordinance on 20 August 2021 lacked⁷⁷ a delegation in the Act on foreigners and were in breach of many international obligations. It was confirmed on 18 January 2024 by the Provincial Administrative Court in Białystok⁷⁸. The court found, with reference to previous judgments on pushbacks, that the Border Guard's reliance on the Ordinance of the Ministry of the Interior and Administration of 20 August 2021 on the temporary suspension or restriction of border

https://www.hrw.org/sites/default/files/media_2021/11/eca_migrant1121_web_0.pdf; Amnesty International. Poland: Cruelty not compassion, at Europe's other borders. 2022. Accessed January 26, 2024. <https://www.amnesty.org/en/wp-content/uploads/2022/04/EUR3754602022ENGLISH.pdf>; K. Czarnota and M. Górczyńska (with Białas, J., Jagura, J., Szuleka, M. and Witko, D.). Gdzie prawo nie sięga: Raport Helsińskiej Fundacji Praw Człowieka z monitoringu sytuacji na polsko-białoruskiej granicy, Helsińska Fundacja Praw Człowieka 2022. Accessed January 26, 2024. https://www.hfhr.pl/wp-content/uploads/2022/06/Raport_Gdzie_Prawo_Nie_Siega-HFPC-30062022.pdf.

⁷⁴ M. Chołodowski. Tajemnicza śmierć Egipcjanina. Już co najmniej 50 ofiar na granicy polsko-białoruskiej. Gazeta Wyborcza [online, last update: 01.01.2023]. Accessed January 26, 2024. <https://bialystok.wyborcza.pl/bialystok/7,35241,30048590,kryzys-na-granicy-na-granicy-polsko-bialoruskiej-juz-co-najmniej.html>.

⁷⁵ T. Sieniow, Migrants have the right to have rights - detencja cudzoziemców. Lublin. 2022, p. 42 and 62. Accessed January 26, 2024, <https://panstwowoprawa.org/publikacje/>.

⁷⁶ Council of the EU Press release of the 9th of November 2021, available at <https://www.consilium.europa.eu/en/press/press-releases/2021/11/09/belarus-council-suspends-visa-facilitation-provisions-for-officials-of-the-belarus-regime/>

⁷⁷ The illegality of pushbacks based on the ministerial Ordinance has been declared by many courts' rulings, i.e. Judgement of the Provincial Administrative Court in Białystok of 15 September 2022 (II SA/Bk 492/22).

⁷⁸ As concluded by Regional Court in Hajnówka (Sąd Rejonowy w Bielsku Podlaskim VII Zamiejscowy Wydział Karny w Hajnówce) in its judgment of 28 March 2022 (VII Kp 203/21), see also Judgement of the Provincial Administrative Court in Białystok of 18 January 2024 (II SA/Bk 664/23).

traffic at certain border crossing points as the legal basis for the act of returning to the border line is invalid and violates art. 92 (1) of the Constitution, which sets out the procedure for issuing ordinances. The court also found that the Ordinance is incompatible with EU law, international agreements and applicable national legislation⁷⁹.

In order to remedy the situation of illegality, the Parliament, on 14 October 2021, adopted amendments to the Act on foreigners⁸⁰. According to the added art. 303b of the Act on foreigners, a foreigner may be issued an administrative order to leave the territory of Poland if he/she is apprehended immediately after crossing the border contrary to the law. This statutory provision became a new legal basis for border rejections and pushbacks. The case law concerning the interpretation of this provision imposes on the Border Guard organs a duty to document the procedures leading to the issuance of the order to leave the territory with proper diligence and respecting the principle of non-refoulement⁸¹.

The duty of the Border Guard officers conducting this procedure is also to provide information about the right to file an international protection application. This last duty interpreted by the courts seems to contradict the Polish legislator's intention. On 14 October 2021, Polish Sejm limited the right to seek asylum in Poland, changing art. 33 of the Act on granting protection to the foreigners on the territory of the Republic of Poland. According to the new provision of art. 33 (1a), the Head of the Office of Foreigners may leave without consideration an application for international protection that was submitted by a foreigner apprehended immediately after crossing the border contrary to the provisions of law, unless the foreigner came directly from the territory where his life or freedom was threatened by persecution or risk of causing serious harm, and presented credible reasons for illegal entry into the territory of the Republic of Poland and submitted an application for international protection immediately after crossing the border. In the Belarusian context, this provision may become a way of limiting the scope of protection against the refoulement (including the chain refoulement) and is not in line with the well-established UNHCR doctrine concerning the right of reaching the territory of the safe state via a short stay in the transit stay⁸².

The Polish authorities implemented the measures introduced in relative secrecy. Access to public information regarding 'activities carried out in the area covered by a state of emergency in connection with protecting the state border and preventing and counteracting illegal migration' was restricted. Due to the expiry of the deadlines for the possible extension of the state of emergency provided for in the Constitution, a no-entry zone was introduced in the same area (made possible by an amendment to the Act on the protection of the state border) on 2 March 2022. These restrictions were lifted only after 30 June 2022. According to various sources of persons actively providing support to migrants in need at the border, migrants were left without any assistance (including shelter, food, water, or medical assistance) while the Polish Border Guard continued to push them back. There were reports about issuing orders to

⁷⁹ See the case report published by the Helsinki Foundation of Human Rights <https://hfhr.pl/en/news/the-border-guard-cannot-effectively-invoke-a-ministerial-regulation-as-a-legal-basis-for-pushbacks->.

⁸⁰ Act of 14 October 2021 amending the Act on foreigners and certain other acts, Dz. u. 2021 item 1918.

⁸¹ Judgement of the Provincial Administrative Court in Warsaw of 27 April 2022 (sygn. akt IV SA/Wa 471/22); Judgement of the Supreme Administrative Court of 10 May 2023 (II OSK 1735/22); Judgement of the Supreme Administrative Court of 9 January 2024 (II OS K 165/23).

⁸² E. Feller, V. Türk, F. Nicholson (eds), *Refugee Protection in International Law*, Cambridge 2003, p. 187-188.

leave the territory of Poland to the injured foreigners, including taking patients from the hospital. In the opinion of the activists working within NGO collective of Border Group (Grupa Granica), the Polish Border Guard and the Army used intimidation, threats to use firearms, use of gas, destruction of smartphones and sim cards, and deliberate deception⁸³. In July 2022, the Polish government constructed the first physical barrier on the Polish-Belarusian border (approx. 187 km long). Through late 2023, many people were trying to enter from the Belarusian side every day and asking for international protection in Poland or travelling to other EU countries to seek protection there. According to the information provided by the Border Guard, migrants are not asking for international protection and are not willing to wait for their claims to be examined in Poland. It is hard to find reliable data on the proportion of migrants declaring their willingness to apply for international protection at the Polish-Belarusian border.

According to the Helsinki Foundation of Human Rights information note on legal developments regarding pushbacks⁸⁴, between October 2021 and December 2022, the ECtHR granted nearly 100 interim measures under Rule 39 of the Court's Rules of Procedure, ordering the Polish authorities to refrain from returning the applicants to Belarus, considering that this could constitute a violation of art. 3 of the European Convention on Human Rights⁸⁵.

Although Poland has welcomed Ukrainian forced migrants since 24 February 2022, some of them complain of difficulties in entering back to Poland (after visiting their country during the time of war). Based on the Act of 12 March 2022 on assistance to Ukrainian citizens in connection with the armed conflict on the territory of this state⁸⁶, every Ukrainian citizen who is a holder of temporary protection needs to use the online system DIIA.pl⁸⁷ to re-enter Poland. Also, if the holder of the temporary protection stays in Ukraine for longer than 30 days, his/her protection in Poland will be cancelled. Many Ukrainian beneficiaries of the Polish form of temporary protection have complained that, despite staying in Ukraine for fewer than 30 days, they could not return to Poland. According to the position of the Border Guard, this happens if Ukrainian citizens do not declare they want to be covered by temporary protection when re-entering Poland. UNHCR and NGOs are monitoring the situation.

The Penal Code and bilateral agreements concluded by Poland regulate the extradition of foreigners from Polish territory. The obstacles to extradition are specified in the Penal Code. Submitting an application for international protection or having a residence permit are not listed in this group. In practice, the extradition judgment is not enforced before the foreigner's claim for international protection is fully examined. The Authors of this report were informed by one of the experts that there were incidents when the court refused to extradite the person, but the same person was deported based on the return decision.

⁸³ Grupa Granica. Humanitarian crisis at the Polish-Belarusian border op. cit.; K. Czarnota and M. Górczyńska. Gdzie prawo nie sięga: Raport Helsińskiej Fundacji Praw Człowieka z monitoringu sytuacji na polsko-białoruskiej granicy, op. cit.

⁸⁴ Helsinki Foundation for Human Rights, Legal brief on judgements in cases involving expedited returns of migrants to Belarus, December 2022. Accessed March 4, 2024, <https://bit.ly/3L2vWAZ>.

⁸⁵ AIDA/ECRE Country Report: Access to the territory and push back. Accessed March 4, 2024. https://asylumineurope.org/reports/country/poland/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/#_ftn14.

⁸⁶ Act of 12 March 2022 on assistance to citizens of Ukraine in connection with an armed conflict on the territory of this country, Dz. U. 2022 item. 583.

⁸⁷ Stowarzyszenie Interwencji Prawnej. Diia—an electronic document for war refugees from Ukraine. 2023. Accessed January 26, 2024. <https://ukraina.interwencjaprawna.pl/diia-an-electronic-document-for-war-refugees-from-ukraine/>.

5.3. Obligation to Issue a Return Decision

A foreigner staying in the Schengen area is subject to passport control. If, during the inspection, it is revealed that the foreigner was staying illegally in the territory of the Republic of Poland, the Border Guard officer generally initiates proceedings to oblige him/her to return (leave Poland) and impose an entry ban. The reasons for initiating return obligation proceedings are broad, i.e. staying for a purpose inconsistent with the declared one⁸⁸. If, during passport control at the airport or land border, a Border Guard officer finds that the foreigner may have been staying in Poland illegally, he/she is subjected to a second-line check. The officer prepares an inspection report. If justified conditions are met, the officer prepares and initiates proceedings to oblige the foreigner to return. The foreigner is interrogated to verify the circumstances in which the length of the permitted stay was violated. The decision to oblige the foreigner to return, along with the entry ban, is issued after the procedures are completed, even if the foreigner has left the country⁸⁹ (airport). The decision is not delivered to the foreigner's foreign address but is included in the case file in Poland (unless the foreigner leaves a Polish correspondence address). Based on the professional experience of the project team members, we know that a foreigner applying via email for a duplicate of a decision usually receives a scan of it relatively fast (the maximum deadline is 30 days). If the foreigner leaves the border by land, the decision on the obligation to leave and the entry ban are issued immediately. Some Border Guard posts initiate return proceedings and issue return decisions on the same day.

5.4. Special Cases and their Relation with the Obligation to Issue a Return Decision

Holders of a return decision issued by another Member State

Chapter 5 of the Act on foreigners sets out the conditions for implementing a decision imposing the return obligation issued by another Member State. Arts. 380-393 of the Act on foreigners specify in detail the conditions for implementing the decision, the possible withdrawal of residence titles held in Poland and the costs of implementing the decision. The Commander-in-Chief of the Border Guard verifies the feasibility of the final decision on the return obligation via the SIRENE Office⁹⁰. It can also be done by using other available means of cooperation and exchange of information with the authorities of the Member State that issued the decision on the return obligation and the Member State that granted the residence permit to the foreigner.

Irregularly staying third-country national holding a right to stay in another Member State

If a third-country national does not apply for a residence permit within 90 days, then in case he/she will apply, his/her application will be rejected because of irregular stay. Then, after

⁸⁸ Art. 302 of the Act on foreigners.

⁸⁹ Art. 302 of the Act on foreigners.

⁹⁰ European Commission. SIRENE cooperation. n.d. Accessed January 26, 2024. https://home-affairs.ec.europa.eu/policies/schengen-borders-and-visa/schengen-information-system/sirene-cooperation_en; Policja. Co to jest Biuro SIRENE? n.d. Accessed January 26, 2024. <https://policja.pl/pol/sirene/biuro-sirene/7842,Co-to-jest-BIURO-SIRENE.html>.

receiving the final decision, he/she will have 30 days to leave the territory of Poland without any consequences⁹¹.

Pursuant to art. 314 of the Act on foreigners, return obligation proceedings shall not be initiated, or the proceedings initiated shall be discontinued, if the foreigner has a residence permit or another permit entitling him/her to stay granted by another country applying EU Return Directive and this is not opposed for reasons of state defence or security or protection of public safety and order. Proceedings will be initiated if the foreigner – after being instructed on the obligation to leave the territory of the Republic of Poland immediately – fails to do so. The authority competent to issue a decision obliging the foreigner to return, i.e., the Border Guard, records the instruction in the appropriate register. The instruction is given in writing in a language understandable to the foreigner. There are no control mechanisms regarding departure after warning. In practice, if the foreigner's stay is rechecked, proceedings will be initiated against him/her to oblige him/her to return. Information is exchanged via SIRENE or other sources, including liaison officers.

Irregularly staying third-country national benefitting from humanitarian (or other) permit/authorisation

The Act on foreigners allows foreigners with an irregular stay to apply for any type of temporary stay⁹². However, in most cases, he/she will receive a refusal decision due to irregular stay⁹³. The exception is a temporary residence permit on the basis of marriage to a Polish citizen or due to respect for family life or respect for children's rights or family reunification⁹⁴. A foreigner may also submit an application due to the so-called special circumstances requiring his/her short-term stay⁹⁵.

After initiating the proceedings for the obligation to return, in the course of the proceedings, the authority considers the conditions for granting a residence permit for humanitarian reasons or a tolerated stay permit (if there are circumstances preventing the granting of a residence permit for humanitarian reasons). If the proceedings for granting a residence permit for humanitarian reasons or tolerated stay were initiated after the decision on the obligation to return was issued, the return decision shall not be executed. A foreigner is refused a residence permit for humanitarian reasons or a tolerated stay permit if his/her stay on the territory of the Republic of Poland may threaten the state's defence or security or the protection of public safety and order⁹⁶.

No regulations prevent the initiation of return obligation proceedings during ongoing proceedings for granting a temporary residence permit. The Voivode or the Head of the Office for Foreigners may control the legality of stay to the extent necessary for these authorities to conduct proceedings. Voivodeship offices and Border Guard posts cooperate in controlling the legality of stay. Therefore, the mere submission of an application for residence exposes the foreigner to the initiation of proceedings for the obligation to return⁹⁷. Moreover, during the

⁹¹ Art. 299 point 6(1) of the Act on foreigners.

⁹² There is no prohibition to submit such an application.

⁹³ Art. 100 (1 point 9) of the Act on foreigners.

⁹⁴ Art. 98 of the Act on foreigners.

⁹⁵ Art. 181 of the Act on foreigners.

⁹⁶ Art. 158, 159, 161, 187, 351 of the Act on foreigners.

⁹⁷ Also, in practice, in some cases, employees of voivodeship offices, when submitting an application for stay or correcting formal deficiencies in the application by appearing in person, contact the Border

proceedings for granting a residence permit, the inspector handling the case directs an inquiry to the following state agencies: the Police, the Internal Security Agency, and the Border Guard. This is the moment when these agencies can check the legality of the stay and, if the conditions are met, initiate proceedings for an obligation to return.

It is worth mentioning the example of the Masovian Voivodeship Office based in Warsaw, where the Border Guard has its own room. As learnt from the participatory observation and the professional activity of the project team members, Border Guard officers conduct random checks on the legality of the stay of foreigners visiting the Office and if the purpose of the visa issuance matches the reason for the stay mentioned in the application form. Officers walk along the corridor. If a foreigner is waiting to submit fingerprints or a residence application and if he/she is checked beforehand by the Border Guard, he/she cannot complete the stay legalisation procedure because he/she is apprehended from the Office⁹⁸. If necessary, direct coercive measures are used, e.g., handcuffs. This practice is used in some other voivodeship offices (e.g., Lublin). For this reason, foreigners without legal stay are afraid to appear in person at the Office to submit an application for residence or leave fingerprints.

A decision on the obligation to return may be issued to a foreigner waiting for a residence permit decision. If a positive decision granting a residence permit is received, the return obligation proceedings are discontinued (unless the return decision has previously become final).

Special rules in legal migration directives on readmission between Member States in cases of intra-EU mobility

There are no special rules regarding apprehensions and return of holders of EU Blue Cards⁹⁹. Pursuant to the Act on foreigners (art. 127-139), return obligation proceedings are not initiated, and initiated proceedings are discontinued in some, indicated cases, for example, if the person is temporarily delegated to provide services in the territory of the Republic of Poland, if the decision would be issued due to the lack of a valid visa or residence permit or as a result of crossing or attempting to cross the border contrary to the law. Proceedings for the obligation to return in a situation where the foreigner exceeds the period of 180 days entitling him/her to stay without the need for a visa shall not be initiated in relation to:

- a foreigner who stays in the territory of the Republic of Poland in connection with the use of short-term mobility of a managerial employee, specialist or employee undergoing an internship as part of an intra-corporate transfer under specified conditions;
- a foreigner who stays in the territory of the Republic of Poland in connection with the use of student mobility under specified conditions;
- a foreigner who stays in the territory of the Republic of Poland in connection with using the short-term mobility of a scientist under specified conditions and a member of the scientist's family using the short-term mobility of a member of the scientist's family under specified conditions.

Guard and ask them to come to the office to check the legality of the stay. In some cases, officers arrive directly after submitting the application to the foreigner's home address.

⁹⁸ There is no legal basis for this practice.

⁹⁹ Directive (EU) 2021/1883 of the European Parliament and of the Council of 20 October 2021 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, and repealing Council Directive 2009/50/EC was not implemented yet into Polish law.

Suppose the decision to oblige a foreigner to return is issued to a foreigner who stayed in the territory of the Republic of Poland based on a temporary residence permit in connection with having a long-term EU resident permit in another EU country. In that case, the decision to oblige the foreigner to return indicates the destination country, the EU Member State, where the foreigner has a long-term EU resident permit.

5.5. Voluntary Return

The period of voluntary return is defined by law (art. 315, Act on foreigners). Under the amendment of the Act on foreigners from March 2023, it ranges from 8 to 30 days (before the reform, the minimum period for voluntary return was 15 days) counted from the date of delivery of the decision. The deadline to return depends on the discretion of the Border Guards. The foreigner has a right to depart to the country of return before the expiration of the deadline specified in the decision. The application for assisted voluntary return (AVR) must be submitted within the deadline specified in the Act that applies to a given case, which may be 5 or 7 days, or in the case of a deadline for voluntary return – a deadline not exceeding it.

The authority responsible for AVR is the Commander-in-Chief of the Border Guard. The IOM performs tasks assigned to them by the Border Guard. Foreigners who want to use AVR must submit an application for assistance within a specified period, depending on the decision issued, i.e., between 5 days and the time of voluntary departure specified in the decision. The Act on foreigners contains a closed list of foreigners who may benefit from assistance in voluntary return (art. 334 par 2). It applies to the specific cases:

- a decision was issued imposing the obligation to return, specifying the date of voluntary departure;
- a decision obliging him/her to return was issued and is subject to compulsory execution and who, due to a threat to his/her health or life or his psychophysical condition, justifies the presumption that he/she has been subjected to violence or other circumstances, but has not been placed in a detention centre or has not been subjected to detention foreigners;
- a decision was issued to refuse to grant refugee status or to grant subsidiary protection or a decision to recognise an application for international protection as inadmissible;
- a decision was issued to discontinue the proceedings for granting international protection;
- the application for international protection was left without examination for formal reasons;
- staying in the territory of the Republic of Poland on the basis of a certificate confirming the existence of the presumption that he/she is a victim of trafficking in human beings, or staying on the basis of a temporary residence permit for victims of trafficking in human beings.

According to the Act on foreigners, the proceedings to oblige a foreigner to return may be discontinued in part relating to determining the date of voluntary departure if the decision to oblige the foreigner to return is issued to a foreigner who voluntarily crosses the border, leaving the territory of the Schengen countries. It is possible to extend the deadline for voluntary departure once, up to a maximum of 1 year. The foreigner should request an extension. The circumstances justifying an extension are listed in the Act. These are: the obligation to appear in person before the Polish public authority or his/her presence on the Polish territory is required by the interests of or due to exceptional personal situation of a foreigner (particularly because of the length of his/her stay, family or social ties or the need of continuing education

by a minor child of foreigner)¹⁰⁰. The deadline for voluntary return is not set if there is a risk of absconding or if it is required to defend or protect public security and order.

If the foreigner does not leave within the deadline for voluntary return, the decision waiving the ban on re-entry into the territory of the Republic of Poland and other Schengen countries additionally rules on this ban and determines its period in the event that the foreigner, within the period of voluntary departure: will not leave the territory of the Schengen countries; crosses or attempts to cross the border contrary to the law¹⁰¹.

Neither the Act on foreigners nor the Agreement between the Minister of the Interior and Administration of the Republic of Poland and the International Organisation for Migration on the co-operation in the field of voluntary returns of foreigners leaving the territory of the Republic of Poland regulates the issue of voluntary return monitoring.

5.6. Forced Return/Removal/Exit

The return decision is issued by the Border Guard. Foreigners have a right to appeal within 7 days against the decision. The Commander-in-Chief of the Border Guard issues the second-instance decision (the final decision). The returnee has a right to submit a complaint to the Voivodeship Administrative Court, but since April 2023, filing a complaint no longer produces a suspensory effect¹⁰².

Enforcement of the return decision shall be suspended if a foreigner files for international protection or, in his/her case, the procedure for granting a humanitarian or tolerated stay is launched by the Border Guard. The Border Guard initiates proceedings (humanitarian or tolerated stay) ex officio. A foreigner may submit an application to initiate proceedings, but this does not mean automatic initiation. These procedures may be initiated following the application of the foreigner, the Commissioner for Human Rights (Ombudsman) or the Commissioner for the Rights of the Child. NGOs specialising in protecting migrants' rights can also petition to initiate proceedings leading to granting humanitarian stay, but in their case, the Border Guard does not have a duty to launch the procedure.

Poland is cooperating with Frontex in collecting return operations (CROs) or joint return operations (JROs) organised by Frontex¹⁰³. The Agency's return operations may be monitored by Polish return monitors appointed by NGOs in cooperation with the Border Guard and Frontex. The Border Guard mostly uses commercial flights, but some charter flights are organised, and Polish authorities may participate in Frontex operations.

Four Polish NGOs have a right to monitor the forced return: The Helsinki Foundation for Human Rights, The Rule of Law Institute Foundation, The Halina Nieć Legal Aid Centre, and The MultiOcalenie Foundation¹⁰⁴. The monitoring organisations are, in principle, notified a

¹⁰⁰ Art. 316 par. 1 of the Act on foreigners.

¹⁰¹ Art. 329 of the Act on foreigners.

¹⁰² Art. 321 of the Act on foreigners.

¹⁰³ ICMPD. Human Rights Monitoring of Forced Returns in Europe Forced-Return Monitoring Projects – Cooperation with the European Border and Coast Guard Agency, the European Union Agency for Fundamental Rights and Member States. 2021. Accessed January 26, 2024. https://www.icmpd.org/content/download/56831/file/FReM%20III_Final%20Publication_Quart_WEB.pdf.

¹⁰⁴ Fundamental Rights Agency. Forced return monitoring systems - 2022 update. Accessed January 26, 2024. <https://fra.europa.eu/en/publication/2022/forced-return-monitoring-systems-2022-update>.

minimum of 7 days before the planned return operation and can submit interest to participate in the monitoring mission. Representatives of some of those NGOs complain that they do not receive information on monitoring. No state funding is available to cover the monitoring costs, so most operations are organised by the NGOs on an ad hoc basis, a couple of times a year, and the monitoring is conducted mostly only during the Warsaw airport phase of the operation¹⁰⁵. Within two weeks after the operation, the monitoring institution has the duty to submit a monitoring report to the Commander-in-Chief of the Border Guard. The monitors may evaluate the treatment of the returnee (dignity and safety), the behaviour of the escorts, and means of restraint. However, in operations concerning individual returnees, the NGOs are not invited to the phase of the procedure started in the detention centres, where the fitness for travel and medical examinations are supposed to be performed¹⁰⁶.

5.7. Return of Unaccompanied Minors

The return decision issued to a minor foreigner shall be enforced if the child is provided with the care of parents, other adults, or care institutions in the country to which he/she was obliged to return. The care should be provided in accordance with the standards set out in the Convention on the Rights of the Child. The child can return as well if the return takes place under the care of the statutory representative, or the child will be handed over to his/her statutory representative or a representative of the country's competent authorities to which the return will take place.

The child will get his/her official representative within the return process and, who should represent the child's best interest. In practice, there are multiple obstacles. There is a lack of qualified representatives. For several years (until 2016), there was a list of employees of NGOs whom the Border Guard could contact regarding the establishment of guardianship of an unaccompanied minor¹⁰⁷. Persons who are available at the moment are appointed as curators. There are no regulations regarding the requirements that candidates for curators must meet. According to the experience of the authors of this report, curators were appointed between court employees and border guard officers due to a lack of people. There are difficulties in communicating with unaccompanied minors due to the lack of free availability of an interpreter. The interpreter is available only during the interview with the Border Guard. If a curator wants to communicate with a child, he/she needs to find an interpreter of his/her own. Employees of NGOs were looking for translators, i.e. among their volunteers or friends. In practice, even if the decision on the obligation to return is issued to the unaccompanied minor, it is not executed due to the absconding of the minor¹⁰⁸.

¹⁰⁵ On 11 August 2023 a member of the Polish GAPS project team participated in the first-ever monitoring of a land return operation from the detention centre in Kętrzyn to the Bezledy border crossing point (Russian Federation. Kaliningrad District).

¹⁰⁶ Ordinance of the Minister of the Interior and Administration of April 18, 2014, regarding the presence of representatives of non-governmental organisations in the course of activities related to bringing a foreigner to the border or to the airport or sea port of the country to which he is brought, Dz. U. 2014 item 534.

¹⁰⁷ In 2016, funding for non-governmental organisations decreased significantly. The list has stopped functioning.

¹⁰⁸ Art. 397, Act on foreigners; A. Trylińska. Małoletni bez opieki ubiegający się o ochronę międzynarodową. Rola kuratora [Unaccompanied minor asylum seeker. The role of the curator]. *Studia Prawnicze* 1(213) 2018. Accessed March 4, 2024. <https://czasopisma.inp.pan.pl/index.php/sp/article/view/394>.

A very important problem is the issue of examining the age of minors. The age of the minor is determined based on an x-ray of the wrist. This test is imprecise (the error may be up to 2-3 years). Therefore, it sometimes happens that unaccompanied minors are placed in detention centres with adult foreigners. This problem became especially visible during the ongoing humanitarian crisis on the Polish-Belarusian border and overcrowded detention centres.

Officially, the Convention on the Rights of the Child is fully recognised in Poland. In practice, the Convention is not always respected. The Convention is often violated in return proceedings and in cases regarding the detention of children. NGOs indicate that the biggest problem is the lack of attention paid to the child's best interest¹⁰⁹.

5.8. Entry Bans

According to art. 318 of the Act on foreigners, the entry ban (to Poland and Schengen zone) is a part of the decision on the obligation to return. After amendments to the Act on foreigners following the Polish-Belarusian border crisis, the entry ban is also a part of the order to leave the territory of the Republic of Poland following the irregular entry¹¹⁰. A person against whom an entry ban has been issued in the form of an order to leave has the right to appeal, but the appeal does not suspend enforcement of the order.

An entry ban is generally the prohibition of re-entry, issued based on the decision obliging return. The Act on foreigners specifies the circumstances when the entry ban may be waived, or the entry ban into the territory of the Republic of Poland may be narrowed¹¹¹.

The entry ban, depending on circumstances¹¹², may be issued for a period of 6 months to a maximum of 10 years. Issuing an entry ban for a period exceeding 5 years (up to 10 years) may be justified by reasons of state defence, state security, protecting public order, the interest of the Republic of Poland¹¹³, or grounds for believing that the foreigner might be involved in terrorist or espionage activities¹¹⁴.

The authority that issued the decision in the first instance obliging the foreigner to return may withdraw the prohibition referred to in art. 318 of the Act on foreigners at the request of the foreigner. If the foreigner demonstrates that he/she has fulfilled the obligations arising from the decision obliging the foreigner to return or his/her re-entry into the territory of the Republic of Poland or other Schengen countries is to take place due to justified circumstances, especially for humanitarian reasons or has been granted assistance for voluntary return, as referred to in art. 334 of the Act on foreigners. - entry ban will be waived. In practice, the entry

¹⁰⁹ In 2023 there were a couple of incidents concerning the repatriation of Ukrainian orphan children from Poland to the territory of Ukraine. It has raised concerns of Polish stakeholders providing temporary care to them, but the return of minors has been demanded by the Ukrainian authorities. See: Alternative report to the Committee on the Rights of the Child, August 2020 r., p. 7-8, accessed March 6, 2024, na: <https://interwencjaprawna.pl/wp-content/uploads/2020/09/RAPORT-ALTERNATYWNY-WERSJA-POLSKA.pdf>.

¹¹⁰ Art. 303b of the Act on foreigners.

¹¹¹ Art. 320 of the Act on foreigners.

¹¹² Art. 319 of the Act on foreigners.

¹¹³ Art. 302(1)(9) of the Act on foreigners.

¹¹⁴ Art. 329a of the Act on foreigners.

ban is usually waived at the request of the foreigner after half of the time of the specified ban has passed¹¹⁵.

When considering the application to withdraw the ban referred to in art. 318, the authority, takes into account in particular: the circumstances in which the decision obliging the foreigner to return was issued and circumstances due to which the foreigner is to re-enter into the territory of the Republic of Poland or other Schengen countries.

In the return decision, which specifies the deadline for voluntary departure or in which the procedure to oblige the foreigner to return is discontinued, in part concerning determining the deadline for voluntary departure under art. 315 section 4b of the Act on foreigners, the ruling on the ban on re-entry into the territory of the Republic of Poland and other Schengen countries may be waived if the evidence or circumstances available to the authority indicate a high probability that the foreigner, in the event of re-entry into the territory of the Republic of Poland, will comply with the legal order, including legal provisions specifying the principles and conditions of entry of foreigners into the territory of the Republic of Poland, their passage through this territory, their stay there and their departure from it. The decision waiving the ban on re-entry into the territory of the Republic of Poland and other Schengen countries shall additionally rule on this ban and specify its period in the event that the foreigner, within the period of voluntary departure: 1) does not leave the territory of the Schengen countries; 2) crosses or attempts to cross the border contrary to the law.

The legal entry of the foreigner to Polish/Schengen territory during the validity of the entry ban is possible only on humanitarian grounds. If a foreigner re-enters the country during his/her entry ban, he/she will receive a decision to return with a longer period of the entry ban.

5.9. Procedural Safeguards

Generally, procedural safeguards are guaranteed in the Act on foreigners and the Code of Administrative Procedure applicable in all immigration procedures. An administrative process to oblige the foreigner to return is initiated by the local unit of the Border Guard. The officer interrogates the foreigner before the issuance of the return decision. It is conducted with the assistance of an interpreter arranged by the Border Guard (if necessary). A foreigner has the right to see the case file before the issuance of a decision and submit motions and requests¹¹⁶. This right is somewhat limited in practice. The foreigner is not able to see the files located in different units. The Border Guard unit responsible for the return procedure is determined territorially, based on where the legality of the foreigner's stay was checked. Sometimes, the responsible office is hundreds of kilometres away, and the deadline to see the case file is too short. Moreover, foreigners in the detention centre are not allowed to leave only to see the case file, and it is rather exceptional to be represented by an attorney.

The return decision is issued in Polish in writing. It includes reasons for the decision and information concerning the remedies. Sometimes, the information on legal remedies is translated into a language that the foreigner understands¹¹⁷. Unlike in international protection

¹¹⁵ See, art 320 sec. 2, point 4 of the Act on foreigners.

¹¹⁶ Art. 10 of the Code of Administrative Procedure.

¹¹⁷ According to the study presented on 14 December 2023 by the Rule of Law Institute at the UNHCR-organised seminar on legal assistance to refugees and migrants, in return procedures in the years 2016-

procedures, the state guarantees no free legal assistance in return cases (improper implementation of art. 13 of the EU Return Directive)¹¹⁸.

Under special circumstances (for instance, the need for a child to finish school) mentioned in the Act on foreigners (art. 316), it is possible to postpone return up to one-year maximum only once in case the foreigner does not submit an appeal. Submission of the appeal prolongs the process for a couple of months. There are still two appeals systems. The first one regards the cases initiated before April 2023 when the Head of the Office for Foreigners conducts the appeal proceedings. The other system concerns cases when foreigners may appeal against the return decision with which they disagree. The appeal proceeding is considered by the Commander-in-Chief of the Border Guard (authority of the second instance), who issues the final administrative decision. A foreigner has a right to appeal it to the Voivodeship Administrative Court in Warsaw. Due to recent changes in the Act on foreigners (March 2023), the submission of the claim will not suspend the return process.

Form of decisions, translation, written confirmation

The return decision is issued and delivered to the foreigner in most cases. At land borders, foreigners leaving Poland after staying in the country without legal title will receive a decision before they leave the territory of Poland. In case of exit by plane after the interrogation of the returnee, the decision may be issued and posted by mail to the Polish address provided by the foreigner or left in the case file¹¹⁹. It is possible to receive a decision scan after a request is sent by email. This decision has not been fully translated (just the title and entry ban)¹²⁰.

The decisions issued in Poland are in writing, and, in most cases, they include written translations of information about the legal basis, the country of return, and the length of the entry ban. As indicated above, the information about the legal remedies is not always translated. If the foreigner is detained, the detention centre personnel should provide an oral translation of the decision, but it might be difficult outside the more popular foreign languages. If the decision is delivered in person, the returnee shall sign the confirmation of receiving the decision. Due to rumours, some foreigners refuse to sign the confirmation to receive the decision. They believe the decision will not be valid if they do not sign it. Some foreigners refuse to sign anything written in Polish, being afraid that they might consent to deportation. This might be reasonable since, in practice, foreigners are often asked to sign a declaration (in Polish) of waiving their right to appeal¹²¹. In such a situation, a Border Guard officer writes a

2020 just 39% of examined decisions (sample of 100 cases) included a translation of the information about legal remedies.

¹¹⁸ In fact, the state-funded legal aid is available upon request before the administrative Court, but only 80 foreigners out of 60,000 obliged to return in 2019-2022 were granted this assistance. Since there is no suspensory effect during the 30 days for filing a complaint against second-instance Border Guard return decision it may not be considered an effective legal remedy [the data provided by the study presented by the Rule of Law Institute: <https://www.linkedin.com/pulse/do-migrants-return-procedures-have-right-rights-15th-tomasz-sieniow-jdm5f%3FtrackingId=b6lCQIbQR22PLqijFeNNvQ%253D%253D/?trackingId=b6lCQIbQR22PLqijFeNNvQ%3D%3D>, accessed 19 March, 2024.

¹¹⁹ It is worth noting that the return process, starting at the airport, is usually completed after the foreigner leaves Poland (unless the foreigner is detained and does not want to be returned to the country of origin).

¹²⁰ Art. 327 of the Act on foreigners.

¹²¹ Only in the first half of 2023 in the Division of the Border Guards, 272 first-instance return decisions out of 592 became enforceable immediately after the foreigners declared that they were waiving their right to appeal [data provided by the Podlaski Division Border Guard in the correspondence PD-OI-

short note about the refusal of signature (the second officer cosigns it as a witness). Some detainees report that Border Guard officers try to convince them not to submit an appeal as an ineffective way of preventing deportation. Some foreigners, once they receive the decision to return, sign the form where they waive their right to submit an appeal. Such a decision becomes effective immediately. It is not sure if they understand what they have signed or at least can take such a decision when they receive a decision—sometimes after many hours of an interview. Sometimes, they sign the resignation from appeal, and just a few hours later, after consultation with a lawyer, they want to appeal against the decision. Some persons, despite translation, do not understand what it means to submit an appeal and the consequences of not doing it. It is worth mentioning that some foreigners feel pressured or forced to sign a resignation from the appeal.

There are also two additional contexts where we may examine the remedies against the ‘decisions related to return’ (in Polish: *postanowienie o opuszczeniu*). The first one concerns the orders to leave the territory of Poland issued by the Border Guard in a situation of apprehension immediately after irregularly crossing the border. They are enforced immediately, and challenging these decisions does not suspend their enforcement. According to the data provided by the Border Guard, in just the first half of 2023, 1,010 of these orders were issued against 1,015 foreigners (5 children). In none of these situations, despite available remedies (art. 303(b.1.) of the Act on foreigners guarantees the right to appeal to the Commander-in-Chief of the Border Guard), were the foreigners able to file appeals¹²². A second context relates to the border crossing point with Belarus in Terespol, where asylum seekers in the past were issued a standardised form of refusal of entry based on the lack of a visa¹²³. Since the pandemic, they have been returned without any indication of their attempt to cross the Polish border. The claims of asylum seekers were repeatedly ignored, and they were not even-handed a standardised form with the refusal of entry decision against which they could file an appeal¹²⁴.

Access to linguistic assistance, free legal aid, representation

The authority conducting the proceedings to issue a decision obliging a foreigner to return informs the foreigner about NGOs providing assistance to foreigners¹²⁵, including legal support. This information is provided in writing, although the contact information is sometimes not precise (old contact details, non-existing organisations or the entities not

V.0180.26.2023 of 31.10.2023]. The Podlaski Division controls the border with Belarus, where all of the crossing points were closed, so these waivers were not signed by the Belarusian citizens willing to be returned immediately to the country of origin.

¹²² Data provided by the Podlaski Division Border Guard to the Rule of Law Institute in the correspondence PD-OI-V.0180.26.2023 of 31.10.2023.

¹²³ *M.K. and Others v. Poland* (applications no. 40503/17, 42902/17 and 43643/17).

¹²⁴ An example case: the requests of a family fleeing mobilisation to the Russian Army fighting in Ukraine was received in December 2022 only after the 10th attempt to cross the border (international protection case DPU.420.6410.2022). On the first nine attempts, there are only stamps of the border service of Belarus in the family’s passports. The foreigners have never received a written refusal of entry despite three months of attempts to legally cross the border and request for international protection according to the arts. 3 and 4 of the Border Schengen Code. In practice, they were always coerced to turn the van around and go back to Belarus.

¹²⁵ Urząd do Spraw Cudzoziemców. Bezpłatna pomoc prawna. nd. Accessed January 26, 2024. <https://www.gov.pl/web/udsc/bezpłatna-pomoc-prawna>.

providing help to returnees). In practice, the access to free legal help is also limited due to the small number of lawyers in NGOs.

Access to interpreters is provided by the state during the initial interview. During the later stages of the procedure, all correspondence and evidence provided in the return case must be sent to the Border Guard in Polish. Evidence in the foreigner's original language must be accompanied by a sworn translation paid for by the foreigner.

The foreigner has a right to be represented in this administrative procedure by a proxy, who does not have to be an attorney or even a person with a law degree. The foreigner covers the costs of this representation. It is possible to get free legal advice from organisations supporting migrants, but there is a high probability that they will not be able to handle the case. During the last four years, only the Voivodeship Administrative Court in Warsaw has granted free legal aid in only 80 cases of complaints against final return decisions. During this time, 60,000 foreigners were obliged to return. This may not be considered an effective legal remedy. The petition for granting free legal aid before the court is a rather complicated legal form that requires a thorough understanding of the Polish language and law, so it is unlikely that the foreigner will fill out this motion without the help of a Polish lawyer.

Safeguards pending return

The Commander-in-Chief of the Border Guard provides foreigners with help in their voluntary return. The assistance includes medical care, travel costs, accommodation, and meals before the return¹²⁶. There is no information about the family unity rule. Access to psychological care is limited. Foreigners placed in detention centres have access to a psychologist hired by the Border Guard.

Situations of protracted irregularity ('non-removability') and the rights of non-removable persons

In a situation in which, during the return procedure, the Border Guard discovers that the decision on the obligation of return may not be issued against irregularly staying foreigners due to the protection of the rights of the foreigner, he/she may be granted a humanitarian stay¹²⁷, or when the decision is not enforceable, the foreigner may be granted a tolerated stay. (art. 351 of the Act on foreigners).

The conformity of the return procedures/policies with the non-refoulement principle

There are two types of residency that may be granted to non-returnable people: a residence permit on humanitarian grounds¹²⁸ and consent for a tolerated stay¹²⁹. Chapter 3 of the Act on foreigners states that a residence permit for humanitarian reasons may be granted if the foreigner may be expelled only to a state in which (within the meaning of the Convention for the Protection of Human Rights and Fundamental Freedoms): a) his/her right to life, liberty and security of person would be at risk, or b) he/she would be liable to be subjected to torture or to inhuman or degrading treatment or punishment, or c) he/she would be liable to be forced

¹²⁶ Art. 335 of the Act on foreigners.

¹²⁷ Art. 348 of the Act on foreigners.

¹²⁸ Art. 348 of the Act on foreigners.

¹²⁹ Art. 351 of the Act on foreigners.

to work, or d) he/she would be deprived of the right to a fair trial or punished without legal basis. This permit can also be granted if the return would violate the foreigner's right to family or private life, or the child's rights, as defined in the Convention on the Rights of the Child, to the extent that it would significantly endanger his/her psychophysical development.

Based on art. 351 of the Act on foreigners, a permit for a tolerated stay on the territory of the Republic of Poland shall be granted to a foreigner under the circumstances listed above (a-d), or if the return is impracticable for reasons beyond the control of Poland. Also, the return can be decided to be inadmissible by a court or the Minister of Justice.

The foreigner's stay in the return procedure is considered illegal. A person waiting for the decision or the final decision does not have the right to work or state-funded accommodation and food. Access to state-funded medical care is available only if the foreigner is detained or in emergency cases. Since the appeal procedure against the return decision could last even a couple of years (old rules, there is no data about the current system), foreigners during this time tend to file applications for international protection, having access to some life-saving services of the state. Most universities will consider foreigners ineligible to study while awaiting the final decision on their return.

According to art. 400a of the Act on foreigners, the Commander-in-Chief of the Border Guard shall provide assistance to foreigners who must not be detained due to the fact that their detention may be detrimental to their health or life or who are presumed to be victims of violence¹³⁰. So, individuals with this alternative to detention (especially after they were released from the detention centre) are eligible for social, medical, and psychological assistance. In the past (2020), the Border Guard subcontracted an NGO (Fundacja Dialog) to assist this most vulnerable group¹³¹. The majority of foreigners (also vulnerable) in the return procedures are not eligible for this assistance¹³². The persons with vulnerabilities (single parents, pregnant women, persons with disabilities) use repeated asylum procedures when they are covered by medical insurance and can use accommodation facilities available for asylum seekers. Lack of assistance is often an argument for fleeing to another EU Member State.

There is a particular solution for people with special needs, including medical assistance, which is provided within the help in the voluntary return. They may receive medicines or additional needed medical exams before the return. Based on the professional experience of the project team members, we know that there are some cases of ill persons who were obliged to return without the assistance of a doctor. Generally, Poland lacks a support system for persons with vulnerabilities during the return procedures. If this is available in detention centres, it contradicts the principle of not detaining vulnerable migrants.

5.10. Detention

There are six detention centres for foreigners in Poland. They are used to detain both asylum seekers and foreigners awaiting their return. Detention centres are located on the

¹³⁰ Art. 400 of the Act on foreigners specifies these two categories of foreigners who are non-detainable.

¹³¹ Assistance covers i.a.: food, shelter, medical and psychological assistance.

¹³² Fundacja Dialog, Pomoc instytucjonalna cudzoziemcom. Accessed March 4, 2024. <https://fundacjdialog.pl/projekt-fami/pomoc-instytucjonalna-cudzoziemcom/>.

premises of Border Guard¹³³ units or divisions in Biała Podlaska, Białystok, Kętrzyn, Krosno Odrzańskie, Lesznowola, and Przemyśl. During the period of the intense humanitarian crisis on the Polish-Belarusian border in 2021, an additional temporary detention centre for foreigners was established in Wędrzyn (August 2021 - August 2022), located on the premises of a military training ground. During 2021-2022, the buildings of two (open) reception centres for refugees in Czerwony Bór and Biała Podlaska were also used as additional detention facilities¹³⁴. The only existing detention centre for male foreigners is located in Przemyśl, next to the detention centre for foreigners at the Bieszczadzki Division of the Border Guard seat.

Detention is legally possible only based on a local court order issued on the motion of the Border Guard. A foreigner has a right to submit an appeal against the court order on placing him/her in detention or extending detention. This may be done within 7 days from the day of receiving the translation of the court order. In practice, the review procedure typically lasts about a month, but there are also cases when the higher court has not managed to review the detention order within 60 or 90 days (the period of detention). Only a few courts have experience in detention cases. Most judges automatically accept the Border Guard's requests to place or extend detention. Detention cases are dealt with quickly (a couple of minutes), often without the participation of a representative or a foreigner. In most cases, the courts do not consider the foreigner's situation individually and are unfamiliar with the asylum regulations. It is relatively rare to be represented by a lawyer in these procedures because of the isolation of the foreigner. It happens, though, that the courts appoint, upon request (public) defence lawyers (penal procedure code is applicable), who represent foreigners in detention appeal procedures. Since the basis for detention is the application of the Act on foreigners, not many attorneys can apply this law. The representation is then rather ineffective. Unlike general practitioners (advocates or legal advisors), the NGOs specialising in asylum and migration law are better prepared to argue against administrative detention. However, there are few NGO lawyers admitted to practising in criminal courts as defence attorneys, so they normally prepare complaints to the court that the detained foreigners themselves are signing. During the humanitarian crisis at the Polish-Belarusian border in 2021, courts burdened with requests for placement and extension of stay did not inform attorneys of court dates or informed them so late (e.g., 30 minutes before the hearing) that an attorney could not reach them¹³⁵.

The foreigner can also file a motion to be released from the detention centre. This motion is examined by the Commander of the Border Guard unit/division responsible for the detention centre. If the release is not granted, the detainee has a right to file an appeal against it to the local court.

In the return context, a foreigner shall be detained for the reasons specified in art. 398a of the Act on foreigners. According to this provision, a foreigner is placed in a detention centre if:

¹³³ There was no discussion in Poland about the privatisation of detention facilities for foreigners, which is the case of open reception centres for asylum seekers.

¹³⁴ More about the practices of detention during the 2021 crisis: T. Sieniow. Migrants have the right to have rights - detencja cudzoziemców. Lublin. 2022. Accessed January 26, 2024 <https://panstwowoprawa.org/publikacje/>.

¹³⁵ Straż Graniczna. Nowoczesny budynek mieszkalny dla cudzoziemców w Lesznowoli. 2022. Accessed January 26, 2024. <https://www.strazgraniczna.pl/pl/aktualnosci/10746,Nowoczesny-budynek-mieszkalny-dla-cudzoziemcow-w-Lesznowoli.html>.

- there is a probability that a decision to oblige the foreigner to return without specifying a deadline for voluntary departure has been issued and this is due to a circumstance¹³⁶ referred to in art. 315(2)(2) of the Act on foreigners,
or
- a decision to oblige the foreigner to return without specifying a deadline for voluntary departure has been issued and there is a need to secure its enforcement and the issuance of this decision is due to a circumstance referred to in art. 315(2)(2),
or
- there is a need to secure the transfer of the foreigner to a third country on the basis of an international agreement on the transfer and reception of persons and his immediate transfer to that country is not possible,
or
- at least one of the cases referred to in art. 398(1) has occurred¹³⁷ and: a) the application of the measures referred to in art. 398(2) (alternatives to detention) is not possible, b) the foreigner fails to comply with the obligations set out in the decision to apply to him/her the alternatives to detention referred to in art. 398(2).

According to art. 315(2) of the Act on foreigners, the decision obliging the foreigner to return without a possibility of a voluntary departure (not specifying the deadline for voluntary departure), shall be issued when: 1) there is a risk of the foreigner's absconding or 2) this is required for reasons of national defence or state security or the protection of public security and public order.

The risk of absconding is established, taking into account whether the foreigner: 1) has declared non-compliance with obligations arising from the receipt of a decision obliging a foreigner to return, or 2) does not possess any documents confirming his/her identity, or 3) has crossed or has attempted to cross the border illegally, or 4) entered the territory of the Republic of Poland during the period of validity of the entry in the list of foreigners whose stay in the territory of the Republic of Poland is undesirable, or in the Schengen Information System for the purpose of refusing entry and stay (art. 315.3. of the Act on foreigners).

It must be stressed that even if there is a risk of absconding, the legislator has imposed on the Border Guard and the courts the consideration of first imposing the measures alternative to detention (art. 398 of the Act on foreigners). The catalogue of available alternatives includes: 1) reporting at specified intervals to the Border Guard body indicated in the decision, 2) paying cash security (bail) in the amount specified in the decision, not lower than twice the minimum wage provided for in provisions on minimum wages, 3) depositing the travel document with the authority indicated in the decision, 4) residing at the place indicated in the decision (art. 398.3. of the Act on foreigners). Theoretically, detention should be considered only when the application of the alternatives is not possible or the foreigner has failed to comply with them (art. 398a.4. of the Act on foreigners). In practice, though, the courts consider the risk of absconding as an argument against applying these alternative measures.

¹³⁶ 'Reasons of national defence or state security or the protection of public security and public order'.

¹³⁷ Act on foreigners.

Detention should safeguard the smooth adoption of the return decision and facilitate the enforcement of it. It starts with the Border Guard motion to the district court to place a foreigner in a detention centre for foreigners or in the arrest for foreigners (a detention facility with the stricter regime used for foreigners who do not respect the rules of the detention centre). The district court decides to place the foreigner in a detention centre for up to 90 days. A foreigner participates in the initial court hearing when the court decides to place him/her in detention. This is usually the only moment when the foreigner sees a judge during his/her detention – a period lasting a maximum of 24 months (including a maximum of 18 months during the return procedure and 6 months if he/she lodges an application for international protection). There is no legal duty of the foreigner's presence in any subsequent court hearings and in practice, the foreigner is not brought to the court even if he/she expresses the will to participate in the court's hearing deciding about prolonging the detention.

The stay in a detention centre for the purpose of return can last up to 18 months (the maximum period according to EU Return Directive). The court reviews the necessity of continuing the detention every 90 days when the court examines the Border Guard motion for the subsequent extension. Pursuant to art. 403 point 3a of the Act on foreigners, after a 6-month stay in a detention centre, the stay may be extended for a specified period, not longer than another 12 months, if there is a justified assumption that the period of enforcement of the decision obliging the foreigner to return will be extended, and when: 1) a foreigner who has been issued a decision obliging the foreigner to return does not cooperate with the Border Guard authority in the implementation of this decision, or 2) the execution of the decision obliging the foreigner to return is temporarily impossible due to delays in obtaining the documents necessary for this purpose from third countries. This means the maximum stay period can be as long as 18 months. In practice, this stay may be even longer, because, in accordance with art. 403 point 4 of the Act on foreigners the periods referred to in section 1-3a, the period of stay of a foreigner in a detention centre or a detention centre for foreigners in connection with the application for international protection submitted by him/her (maximum 6 months) is not included.

Detention conditions are stipulated in the Act on foreigners (art. 410-427) and in the Ministry of the Interior Ordinance¹³⁸. The technical conditions generally meet European standards, but at the peak of the 2021 border crisis, the Minister of the Interior and Administration¹³⁹ reduced the space per detained person in the detention centre from 4m² to 2m². This was much below ECtHR standards for penitentiary facilities. The ad hoc detention facility for men at the Wędrzyn military training ground has not met any standards and was finally closed in August 2022. It was sometimes described as 'the Polish Guantanamo'¹⁴⁰.

The detention centres for foreigners are not penitentiary facilities for convicted individuals or ones awaiting a criminal trial. Foreigners waiting for deportation are placed together with asylum seekers in detention centres dedicated to foreigners, but the character of this detention and the conditions of deprivation of liberty are not much different from punitive detention.

¹³⁸ Ordinance of the Minister of the Interior of April 24, 2015, on detention centres and detention centres for foreigners, Dz. U. 2023, item 719.

¹³⁹ Ordinance of the Minister of the Interior and Administration of August 13, 2021, amending the ordinance on detention centres and detention centres for foreigners, Dz. U. 2021, item 1482.

¹⁴⁰ Amnesty International. Witamy w Guantanamo. Okrutne traktowanie na granicy polsko-białoruskiej i w ośrodkach dla cudzoziemców. 2022. Accessed January 26, 2024. <https://www.amnesty.org.pl/okrutne-traktowanie-na-granicy-polsko-bialoruskiej-i-w-osrodkach-dla-cudzoziemcow>.

The detention centres are also used to detain foreigners after they are released from prison and before their deportation to their country of origin. Very often, the residence status of the convicted foreigners expires during their imprisonment. So, they continue to be detained based on immigration, not criminal law.

Poland is infamous for detaining families and children. Numerous judgments of the European Court for Human Rights confirm it¹⁴¹. Pursuant to art. 397(3) of the Act on foreigners, an unaccompanied minor who has attained the age of 15 may be placed in a detention centre. Accompanied minors are placed in detention together with their guardians. All family members should be placed in detention together, usually in the same room. However, during the 2021 crisis, there were many situations when bigger families were divided, and adult children ended up in detention centres different from those of their parents and siblings. There were also cases of dividing spouses. Six existing detention centres in Poland have specific profiles. As a rule, they either are used for single men only or for families, single women, and unaccompanied minors. The number of detention centres for families, women, and UAMs is changing every year. During the peak of the humanitarian crisis at the Polish-Belarusian border, families and children were placed in all but one detention centre (Krosno Odrzańskie/Wędrzyn). In October 2023, there was only one detention centre for families, single women, and unaccompanied minors: the detention centre for foreigners in Lesznowola. The profiles of detention centres have changed over the years. Many detention centres were not suitable for families with children. The detention centre for families with children in Lesznowola has a well-developed infrastructure adapted to families with children since 2022.

The rights, obligations, and restrictions towards foreigners are defined in detail in the Act on foreigners and the ordinance¹⁴² of the Minister of the Interior and regulations of individual centres¹⁴³. The regulations vary and are not generally available (one should request their content from the Border Guard). Upon admission to the detention facility, the foreigner signs that he/she has familiarised himself/herself with the regulations (art. 411 of the Act on foreigners). A foreigner admitted to a detention centre or arrest for foreigners is instructed in a language which he/she understands about the rights and obligations and is familiarised with the regulations governing the stay in a detention centre or arrest for foreigners. The foreigner confirms the instruction with his/her own signature.

Based on the Act on foreigners (art. 410-427), a foreigner placed in a detention centre or arrest for foreigners has the right to contact Polish state authorities, a diplomatic representation or a consular post of a foreign state, non-governmental or international organisations providing assistance to foreigners, and his/her representative. Also, these foreigners are entitled to social assistance and medical care. They can access the internet at the computer workstations and a library and are allowed to meet relatives in specially designated rooms, with the consent of the Border Guard. Foreigners in detention have a right to take at least a two-hour walk in the open air daily unless otherwise prescribed by a doctor. Finally, they can have contact with other foreigners in custody, with the permission of an officer on duty in the custody, at a specified place and time, and play day-room games at a time and place

¹⁴¹ *Bistieva and Others v. Poland*, Application no. 75157/14; *Bilalova and others v. Poland*, Application no. 23685/14; *A.B. and Others v. Poland* Application no. 15845/15 i 56300/15; *Nikoghosyan and Others v. Poland*, Application no. 14743/17.

¹⁴² Ordinance of the Minister of the Interior of April 24, 2015, on detention centres and detention centres for foreigners, Dz. U. 2023, 719.

¹⁴³ A model regulation of the detention centre is published as an appendix to the Ordinance of the Minister of the Interior of 24 April 2015.

specified by an officer on duty in the custody. The regulations also stipulate more detailed rights, such as using sports equipment or buying tobacco and newspapers. In practice, the most burdensome restriction for foreigners is the prohibition of having telephones with an image-recording function.

The incidents of medical and psychological problems after long detention are very common in Poland¹⁴⁴. On many occasions, foreigners undergoing detention are transferred back and forth from the detention centre for foreigners in Przemyśl to the psychiatric hospital in Jarosław. Some incidents of suicide or the death of foreigners in detention have been reported¹⁴⁵. The detention of pregnant women sometimes leads to miscarriages¹⁴⁶.

5.11. Emergency Situations

As a result of the humanitarian crisis on the Polish-Belarusian border, the Minister of the Interior and Administration issued the Ordinance of 13 August 2021 amending the ordinance on arrests and detention centres for foreigners¹⁴⁷. Poland has referred to the emergency situation¹⁴⁸ as justifying the derogation of the established space standard per a detained foreigner in the detention centre for foreigners. According to §11 point 1a of the Ordinance, if it is necessary to place a large number of foreigners in a detention centre or arrest at the same time, and in the absence of vacancies in rooms for foreigners or residential cells, a foreigner may be placed in detention, for a specified period of time. In August 2021, the Polish Border Guard not only started using the military training ground in Wędrzyn as an ad hoc detention centre for men but also announced it would use 'registration centres' in Połowce and Dubicze Cerkiewne for the short-term detention of foreigners apprehended while crossing the border¹⁴⁹.

5.12. International Cooperation

Readmission agreements are initiated and negotiated at the level of the Border Guard Headquarters in cooperation with representatives of the Ministry of the Interior and the

¹⁴⁴ Rzecznik Praw Obywatelskich. Sytuacja cudzoziemców w ośrodkach strzeżonych w dobie kryzysu na granicy Polski i Białorusi. June 2022. Accessed January 26, 2024. <https://bip.brpo.gov.pl/pl/content/kmpt-cudzoziemcy-strzezone-osrodki-raport>.

¹⁴⁵ A. Gorczyca, D. Maliszewski. Zagadkowa śmierć w ośrodku dla uchodźców. Rodzina dowiedziała się od dziennikarza. *Gazeta Wyborcza* 12.04.2023. Accessed January 26, 2024. <https://rzeszow.wyborcza.pl/rzeszow/7,34962,29656134,w-strzezonym-osrodku-dla-uchodzcow-zmarl-28-letni-syryjczyk.html>.

¹⁴⁶ *V.M. and Others v. Poland*, Application no. 40002/22.

¹⁴⁷ Ordinance of 24 April 2015.

¹⁴⁸ According to Article 18.1. of the Directive 2008/115, in situations where an exceptionally large number of third-country nationals to be returned places an unforeseen heavy burden on the capacity of the detention facilities of a Member State or on its administrative or judicial staff, such a Member State may, as long as the exceptional situation persists, decide to allow for periods for judicial review longer than those provided for under the third subparagraph of Article 15(2) and to take urgent measures in respect of the conditions of detention derogating from those set out in Articles 16(1) and 17(2).

¹⁴⁹ *Dziennika Gazeta Prawna*. Straż Graniczna: Uruchamiamy nowe ośrodki dla cudzoziemców. 19 August 2021. Accessed January 26, 2024. <https://www.gazetaprawna.pl/wiadomosci/kraj/artykuly/8228840,osrodki-cudzoziemcy-staz-graniczna.html>.

Ministry of Foreign Affairs¹⁵⁰. Poland has signed over 35 readmission agreements, including recent ones with Armenia and Vietnam. Some agreements concern just readmission. Some agreements are international agreements with a readmission clause. However, the readmission agreement with Belarus was suspended in October 2021¹⁵¹.

¹⁵⁰ Instytut na Rzecz Państwa Prawa. Acquis Return. Doświadczenia implementacji i rozwój polityki powrotowej Unii Europejskiej. 2015. Accessed January 26, 2024. <https://panstwoprawa.org/wp-content/uploads/2015/10/Acquis-return.pdf>.

¹⁵¹ See the Annex.

6. Funding Return (Budget) and Related Programmes

The return policy is co-financed from EU funds and Norway funds in majority. The single return process is financed from the state funds (through the Border Guard). Foreigners placed in detention centres finance their stay there during the return process (from their private budget). The Polish IOM office is financed by among others EU funds, Polish government, Polish-Switzerland cooperation program and Norway funds.

The Act on foreigners determines which entities finance the return procedure. These are mostly state funds (through the Border Guard) and private funds of the foreigner. Pursuant to the Act on foreigners, the Border Guard is responsible for financing assistance in voluntary return and organising forced return. Moreover, the Commander of the Border Guard unit or the commanding officer of the Border Guard post is competent for the compulsory execution of the decision obliging a foreigner to return, and if the foreigner is staying in a detention centre or a detention centre for foreigners – the Border Guard authority to which this centre or detention centre is subordinate, determines, by way of decision, the amount of the costs referred to the cost of stay in the detention centre and return, and entities obliged to cover these costs. As a rule, these costs are borne by the foreigner, but they may also be borne by the entity inviting or entrusting the job or internship to a foreigner.

The EU funds used in return policy include the Asylum, Migration and Integration Fund (AMIF) and the Internal Security Fund (ISF)¹⁵². The ISF can finance, e.g., the development of the Schengen Information System (SIS), the Secure Information Exchange Network Application (SIENA) system or transborder control. Under the AMIF, the return procedure costs about EUR 8 million, averaging EUR 4 million; return and expulsion cost more than EUR 8 million; vulnerable persons and UAMs are about EUR 3 million; and there is about EUR 8 million for measures to prevent irregular migration¹⁵³.

¹⁵² Department of European Funds of the Ministry of the Interior and Administration. Fundusz Bezpieczeństwa Wewnętrznego 2021-2027. n.d. Accessed February 8, 2024. <https://www.gov.pl/web/dfe-mswia/program-funduszu-bezpieczenstwa-wewnetrznego-2021-2027>.

¹⁵³ Ministry of the Interior and Administration. Fundusz Azylu Migracji i Integracji 2021-2027. n.d. Accessed January 26, 2024. <https://www.gov.pl/web/dfe-mswia>.

7. Gaps

Based on our research and analysis, we have identified several gaps in Poland's return policy in a few working areas of the legal and institutional framework and infrastructure. In addition, a significant gap is limited public access to comprehensive databases regarding returns and readmissions. After a request, some data can be received from the public institutions (Border Guard, Office for Foreigners). In addition, the Return Directive is improperly implemented. Poland is also not honouring some CJEU judgements.

Legal gaps

Gaps in the legal framework are linked with improper implementation of the Return Directive. Foreigners have limited access to legal remedies, including appeals. A foreigner against whom return proceedings have been initiated is not entitled to free legal assistance. He/she may seek help from NGOs providing free assistance to foreigners, which depends on received state funding, but it is not certain whether they will be able to deal with his/her case in a comprehensive manner (i.e., full representation before the authority) due to the large number of people in need of help. Moreover, some foreigners indicate that Border Guard officers discourage them from appealing and suggest the foreigner sign a waiver of the right to appeal (suggesting the pointlessness of filing an appeal). The reform of the Act on foreigners of 2023 has significantly changed return proceedings, accelerating the proceedings and sharply limiting migrants' rights (shortening the deadline for filing an appeal against the decision to oblige them to return, abolishing the suspensive effect of a complaint filed with the court). The most important change, however, is the transfer of the return obligation proceedings entirely to the Border Guard. For the procedures started before 7 April 2023, the appeal body continues to be the Head of the Office for Foreigners. The time of examining appeals against return decisions in Poland was (in cases started before April 2023) very long (even 2-3 years). The inspectors applied the provisions regarding, among others, integration in Polish society or the special interest of a foreigner. There are no statistics on appeal proceedings conducted under the new rules. It should be noted that Poland has not decided to establish special immigration courts responsible only for migration and asylum matters. All complaints in these matters go to the same court: the Voivodeship Administrative Court in Warsaw, which deals with all administrative cases.

Border Guard officers are stationed permanently in some voivodeship offices and randomly check foreigners applying for temporary residence. This practice is incomprehensible, especially since foreigners who are staying illegally and may receive a positive decision as a result of initiated proceedings are often spouses of Polish citizens, foreigners leading a family life, or having a child in Poland.

There is no particular support for vulnerable foreigners regulated by Polish law. It must be noted that foreigners in the return process (except for some of them being released from detention and directed to stay in the Fundacja Dialog facility) do not have access to medical assistance, psychologists, interpreters, or the right to work. There are also no accommodation facilities provided, except the detention centres. Vulnerable persons placed in the detention centre may leave it due to poor physical or mental health (reasonable suspicion of being subjected to torture) and be placed in the only facility in Poland run by an NGO (Fundacja Dialog) where they can wait for their return. The Polish authorities abuse the use of detention, which can last up to two years (in the case of a foreigner whose application for international

protection was not approved and proceedings for return obligation were later initiated). Detention should be used as a measure of last resort¹⁵⁴, not only during the pre-return period but also during the entire proceedings (in some cases). The chances of a foreigner leaving the detention centre are low if proceedings obliging him/her to return have been initiated. Various district courts issue decisions regarding the application of detention or its extension. Courts do not conduct their own evidentiary proceedings and do not consider applications submitted by foreigners. This was especially visible in 2021-2022 during the peak of the humanitarian crisis on the Polish-Belarusian border. This includes cases of the detention of foreigners applying for international protection who are placed in a detention centre under the pretext of a lack of financial resources or lack of a place of residence and when¹⁵⁵, according to the law, a person applying for international protection is covered by social assistance and receives monthly benefits and can live in an open reception centre for foreigners.

Unaccompanied minor foreigners against whom return obligation proceedings have been initiated must have a representative (curators) in the case. In practice, finding curators is difficult because there is a lack of qualified personnel knowing immigration and asylum procedures. It is not uncommon for Border Guard officers (not involved in the return procedure) or court staff to become a curator. This raises some questions about a conflict of interest. There was a list of NGO employees expressing readiness to become curators for some time. However, these declarations could not be kept when the government limited EU funding of these organisations after 2016.

Poland does not seem to promote effective monitoring of the return operations. Indeed, identifying four NGOs to perform these tasks may seem like a policy choice promoting transparency. However, since it is not accompanied by any financial incentives (it is not a delegated task supported by subsidies or grants), the monitoring is a facade, probably masking unwillingness to be monitored.

Institutional gaps

The number of authorities and other bodies involved in returns is strictly limited. These are mainly the Border Guard, the IOM, and four NGOs allowed to run the monitoring.

The Border Guard is the body that deals comprehensively with return proceedings but is not effectively controlled by external stakeholders or courts, which raises doubts about the correctness of the decision control in appeal proceedings.

After prior training, NGO employees have the right to monitor returns (currently, there are four organisations). However, there is no independent body monitoring the return. The Ombudsman applied for such a right, but his request was not accepted¹⁵⁶.

¹⁵⁴ Stowarzyszenie Interwencji Prawnej, Prawa cudzoziemców w Polsce w 2020 roku. Accessed March 6, 2024. https://interwencjaprawna.pl/wp-content/uploads/2021/01/raport_SIP_w_dzialaniu_2020.pdf.

¹⁵⁵ Numerous judgments regarding unfair detention. i.a. Court of Appeal in Warsaw (judgement of March 1, 2023, II AKa 487/21), The Supreme Court in its judgement of April 12, 2023, II KK 149/22.

¹⁵⁶ Rzecznik Praw Obywatelskich. Rzecznik powinien monitorować deportacje cudzoziemców. Marcin Wiącek prosi MSWiA o wyjaśnienia. 2022. Accessed January 26, 2024. <https://bip.brpo.gov.pl/pl/content/rpo-deportacje-cudzoziemcow-monitoring-mswia>.

In practice, sometimes, the information about the enforcement of some return decisions is provided to the monitoring NGOs too late, thus making monitoring impossible (information provided a couple of minutes before the return).

Infrastructure gaps

There are also no accommodation facilities provided for foreigners subject to return proceedings, except the detention centre and only one facility for returnees released from detention run by an NGO (financed by Border Guard funds). Foreigners awaiting a decision to oblige them to return (or granting them a humanitarian stay) or for their case to be considered after submitting an appeal are not guaranteed a place to stay. The argument of not having a place of residence is often used by the court in cases of an extension of stay in detention centres. Therefore, foreigners waiting to return from the IOM are provided with accommodation in Warsaw.

In 2021-2022, the number of people staying in detention centres increased significantly due to the humanitarian crisis on the Polish-Belarusian border. Temporary detention centres were established, including the infamous centre in Wędrzyn¹⁵⁷. This centre was established on the territory of a military base. Foreigners staying at the centre heard gunshots every day. This centre did not meet basic conditions of stay, including sanitary conditions. Foreigners remained crammed into a very small area. For several months, NGO representatives (lawyers) could not visit the foreigners staying there. The centre was monitored by national bodies¹⁵⁸. The foreigners staying there were frequently protesting and on one occasion there were serious riots¹⁵⁹. The centre was closed on 19 August 2022¹⁶⁰.

Implementation of the Return Directive

The Return Directive has not been implemented properly in Poland. Undoubtedly, the returnees have been deprived of access to effective legal remedies. The Act on foreigners does not provide for free legal assistance, apart from generally available assistance provided by NGOs offering free assistance to foreigners. Moreover, a complaint to the court no longer has a suspensive effect, which means that the only independent body will not have time to issue a judgement before the return. The deadline for filing an administrative appeal has been shortened to 7 days, which prevents the effective implementation of this right. In case of issued return decisions, entry bans are applied automatically.

¹⁵⁷ Najwyższa Izba Kontroli, Wystąpienie pokontrolne zmienione zgodnie z treścią uchwały nr KPK-KPO.443.045.2022 Zespołu Orzekającego Komisji Rozstrzygającej w Najwyższej Izbie Kontroli z dnia 18 maja 2022 r. D/21/506 – Przygotowanie organów państwa na wypadek masowego napływu cudzoziemców do Polski. 2021. Accessed January 26, 2024. Retrieved from <https://bip.nik.gov.pl>.

¹⁵⁸ Rzecznik Praw Obywatelskich. Ośrodek dla cudzoziemców w Wędrzynie nie spełnia standardów ochrony ich praw. Wnioski po trzeciej wizytacji BRPO. 2022. Accessed January 26, 2024. <https://bip.brpo.gov.pl/pl/content/rpo-wedrzyn-cudzoziemcy-osrodek-standardy>.

¹⁵⁹ Rzecznik Praw Obywatelskich. Bunt w ośrodku dla cudzoziemców w Wędrzynie. Straż Graniczna podała szczegóły. 2021. Accessed January 26, 2024. <https://bip.brpo.gov.pl/pl/content/rpo-kmpt-bunt-cudzoziemcy-wedrzyn-sg-pytania>.

¹⁶⁰ Polska Agencja Prasowa. Straż Graniczna: zamknęliśmy wszystkie dodatkowe ośrodki strzeżone dla cudzoziemców. 2022. Accessed January 26, 2024. <https://www.pap.pl/aktualnosci/news%2C1426073%2Cstraz-graniczna-zamknelismy-wszystkie-dodatkowe-osrodki-strzezone-dla>.

Pushbacks

The policy of pushbacks on border crossing point Terespol, which the European Court of Human Rights has condemned, should be scrutinised and the pushbacks practices should be ended. The 2021-2023 amendments to the Act on foreigners reducing the procedural safeguards in access to protection, allowing for expulsion without access to effective legal remedies, seem to contradict the Border Schengen Code, the Return Directive, and the EU Charter of Fundamental Rights¹⁶¹. Introducing some procedural safeguards in the Act on foreigners has no real consequence for foreigners irregularly crossing the border. It is worth mentioning that judgments of the European Court for Human Rights confirmed that there were numerous violations of art. 3 of the ECHR (applicants' treatment by the Polish authorities during border checks exposing them to the risk of inhuman and degrading treatment in the countries of origin, and repeating instances of collective expulsions at the Terespol/Brześć crossing point).

¹⁶¹ Numerous judgments of Polish courts stating that pushback acts are illegal, i.a. Provincial Administrative Court in Białystok (ref no. II SA/Bk 492/22), judgement of the Provincial Administrative Court in Warsaw of April 26, 2022, ref. no. IV SA/Wa 420/22, judgement of the Provincial Administrative Court in Warsaw of April 27, 2022, ref. no. IV SA/Wa 471/22, judgement of the Provincial Administrative Court in Warsaw of 20/05/2022, ref. no. IV SA/Wa 615/22, judgement of the Provincial Administrative Court in Warsaw of May 27, 2022, ref. no. IV SA/Wa 772/22, Supreme Administrative Court: ref. no. II OSK 165/23, II OSK 2749/22, II OSK 2750/22, II OSK 2751/22.

8. Policy Suggestions

Poland's return policy has become more and more restrictive over the years. Considering several gaps regarding the return governance in the country, we have formulated some recommendations in this field, including legal, institutional and infrastructure ones.

Legal policy suggestions

They include:

- restoring the 14-day period for filing an appeal against the return decision;
- restoring the effect of suspending the execution of the return decision as a result of submitting a complaint to the court;
- fully implement the Return Directive to introduce a system of state-funded legal assistance in return appeal procedures (similar to the one available in asylum appeal procedures);
- broadening access to translation and interpretation services to underprivileged foreigners who are not able to afford providing sworn translations of their crucial evidence;
- considering the transfer of competences of the appeal body to different authorities then Border Guard meeting the criteria of art. 13 of the Return Directive ('competent judicial or administrative authority or a competent body composed of members who are impartial and who enjoy safeguards of independence');
- introducing an amendment to the Act on foreigners, under which it will not be possible to initiate return proceedings against a foreigner who has already submitted an application for a temporary residence permit and leads family life in Poland with a Polish citizen, an EU citizen or a foreigner;
- introduction of mandatory professional representation before district courts in matters relating to placement and extension of stay in a detention centre;
- assessment of the health and psychological condition of a foreigner staying in detention before each court session on placement or extension of stay in detention; the assessment should be made by independent specialists not employed/paid by the Border Guard;
- enabling the Ombudsman Office to monitor the enforcement of the return decision and provide necessary funds for that;
- greater transparency in the scope of monitoring of return operations, including observing the law obliging the Border Guard to inform monitoring bodies in advance;
- conducting training for judges issuing decisions on placing and extending the detention of a foreigner and judges of the District Administrative Court in Warsaw on the Return Directive guarantees;
- repeal of the Ordinance amending the ordinance on the temporary suspension or restriction of border traffic at specific border crossings being a basis of by-passing Schengen Border Code and the Return Directive obligations¹⁶²;
- regulating the situation of people belonging to vulnerable groups in terms of special assistance also when they appeal the return decision;
- taking steps to shorten and eliminate detention of children in return procedures (especially unaccompanied minors);

¹⁶² Dz.U. 2022, item 423.

- creating a state-financed system of support to unaccompanied minors who are facing return (special reception facility being an alternative to detention, a list of curators for unaccompanied minors, training, reimbursement of travel costs);
- increasing use of alternatives to detention in return procedures;
- regulating the situation of access to medical services and psychological care for all foreigners in the lengthy return procedures.

Institutional policy suggestions

They encompass:

- increasing cooperation with Frontex (including extending Frontex's mandate to monitor national detention and return practices);
- increasing the transparency of the national return operations by allowing monitoring by Frontex, the Ombudsman, next to current monitoring NGOs;
- increasing cooperation between the Border Guard, the Office for Foreigners and NGOs, the Ombudsman for Children and the Ombudsman restoring the abandoned (in 2016) practice of annual consultative forums;
- introducing the state funding of return operations' monitoring;
- dissemination among foreigners considering a voluntary return an accurate knowledge about it and post-return reintegration support by the IOM or Frontex partners;
- creating an interinstitutional council or advisory body responsible for oversight of compliance with EU and national safeguards in return proceedings; it should include representatives of public institutions and international and non-governmental organisations.

Infrastructure policy suggestions

They include:

- making sure that the construction of the barrier on the Polish-Belarusian border (or Polish-Russian border) next to state sovereignty over its territory takes into account imperatives of human security and does not violate state obligations in the fields of respecting the principle of non-refoulement and guaranteeing access to asylum procedures;
- making sure that the national reception facilities for foreigners are sufficient to host not only asylum seekers but also returnees; considering extending the eligible group of residents of reception centres for asylum seekers to the foreigners awaiting judicial decisions on refusal of granting them international protection and to the foreigners whose return procedures have been initiated (who are currently forced to file consecutive asylum applications just to receive shelter and medical assistance during their return procedures).

9. Conclusions

This report on Poland's return governance analyses the law and practice and should be treated as a guideline that will enable changes to be made to improve compliance with migrants' rights while respecting the law of the receiving country. The report analyses the legal, institutional and infrastructure frameworks regarding the return proceedings from Poland for foreigners. The report covers the years 2015-2023 (and 2024 in some contexts).

The Authors of the report presented in detail the legal regulations and practices in the field of return proceedings. The procedures regarding the principles of return proceedings and the execution of decisions were explained. The report discussed the relationship of EU law to Polish law, Poland's compliance with EU law and the implementation of judgments of European tribunals. Reference was made to cooperation between national institutions and organisations as well as international cooperation. The Authors also elaborated on the detention policy and migrants' rights in this context. The report indicated specific examples of practices that raise doubts as to their legality. The report identified several legal gaps (including those in the field of the implementation of the Return Directive) as well as institutional and infrastructural ones. The Authors pointed to changes in the national law that were and are inconsistent with the Return Directive. The report also presented pushbacks as illegal practices at the Polish land borders.

Even though Poland is very effective in the enforcement of return decisions (70%), migrants' rights need to be protected. Indeed, one of the reasons for this result has been the possibility of returning migrants with irregular stay via land borders (with Ukraine, Belarus or the Russian Federation). Restrictive changes in the law since 2021, which began with the humanitarian crisis on the Polish-Belarusian border, have limited the rights of foreigners (reducing the procedural safeguards against arbitrary expulsion).

The humanitarian crisis has had a significant impact on the relations between the Border Guard and organisations working for foreigners, as well as on the inhabitants of border regions and Polish society. It is hard to accept the policy of pushbacks on the Polish-Belarusian border that has been condemned by the European Court of Human Rights and the new amendments to the Act on foreigners reducing the procedural safeguards against arbitrary expulsion without access to effective judicial remedies.

10. Appendices

Table 1. Standard Readmission agreements signed

| Title | Signatory State/Target Third Country | Date | | Link to the document |
|---|--------------------------------------|-----------|----------------------------------|---|
| | | Signature | Entry into force | |
| Agreement between the European Community and the Republic of Albania on the readmission of persons residing without authorisation | Albania (EU) | 2005 | 2006 | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A22005A0517%2802%29 |
| Agreement between the European Union and the Republic of Armenia on the readmission of persons residing without authorisation | Armenia (EU) | 2013 | 2014 | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22013A1031(02) |
| Agreement between the Government of the Republic of Poland and the Federal Government of the Republic of Austria on the reception of persons staying without permission | Austria | 2002 | 2005 | https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20060510373 |
| Agreement between the European Union and the Republic of Azerbaijan on the readmission of persons residing without authorisation | Azerbaijan (EU) | 2014 | 2014 | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22014A0430%2801%29 |
| Agreement between the European Union and the Republic of Belarus on the readmission of persons residing without authorisation | Belarus (EU) | 2020 | 2020 (suspended by Belarus 2021) | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22020A0609%2801%29 |
| Agreement between the European Community and Bosnia and Herzegovina on the readmission of persons residing without authorisation - Joint Declarations | Bosnia and Herzegovina (EU) | 2007 | 2008 | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22007A1219%2804%29 |
| Agreement between the Government of the Republic of Poland and the Government of the Republic of Bulgaria on the transfer and reception of persons staying without permission | Bulgaria | 1993 | 1994 | |
| Agreement between the European Union and the Republic of Cape Verde on the readmission of persons residing without authorisation | Cape Verde (EU) | 2013 | 2014 | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A22013A1024%2802%29 |
| Agreement between the Government of the Republic of Poland and the Government of the Republic of Croatia on the transfer and reception of persons staying without permission | Croatia | 1994 | 1995 | |
| Agreement between the Government of the Republic of Poland and the Government of the Czech Republic on the transfer of persons across a common state border | Czechia | 1993 | 1993 | |
| Agreement between the Government of the Republic of Poland and the Government of the Republic of Greece on the transfer and reception of persons staying without permission | Greece | 1994 | 1996 | |
| Agreement between the European Union and Georgia on the readmission of persons residing without authorisation | Georgia (EU) | 2010 | 2011 | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22011A0225%2803%29 |

| | | | | |
|--|----------------------|------|------|---|
| Agreement between the European Community and the Government of the Hong Kong Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation | Hong Kong (EU) | 2001 | 2004 | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A22004A0124%2801%29 |
| Agreement between the Government of the Republic of Poland and the Government of the Republic of Hungary on the transfer and reception of persons staying without permission | Hungary | 1994 | 1995 | |
| Agreement between the Government of the Republic of Poland and the Government of Ireland on the transfer and reception of persons staying in the territories of their countries without authorization | Ireland | 2001 | 2002 | https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WMP20020310498 |
| Agreement between the Government of the Republic of Poland and the Government of the Republic of Kazakhstan on the readmission of persons | Kazakhstan | 2016 | 2017 | https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20170001623 |
| Agreement between the Government of the Republic of Poland and the Government of the Republic of Latvia on the transfer and reception of persons staying without permission | Latvia | 2006 | 2007 | https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20080150093 |
| Agreement between the Government of the Republic of Poland and the Government of the Republic of Lithuania on the transfer and reception of persons | Lithuania | 1998 | 2000 | https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WMP20060900940 |
| Agreement between the European Community and the Macao Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation | Macao (EU) | 2003 | 2004 | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A22004A0430%2801%29 |
| Agreement between the European Community and the Republic of Moldova on the readmission of persons residing without authorisation | Moldova (EU) | 2007 | 2008 | https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22007A1219%2810%29 |
| Agreement between the European Community and the Republic of Montenegro on the readmission of persons residing without authorisation | Montenegro (EU) | 2007 | 2008 | https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22007A1219(02) |
| Agreement between the European Community and the former Yugoslav Republic of Macedonia on the readmission of persons residing without authorisation | North Macedonia (EU) | 2007 | 2008 | https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22007A1219%2801%29 |
| Agreement between the European Community and the Islamic Republic of Pakistan on the readmission of persons residing without authorisation | Pakistan (EU) | 2009 | 2010 | https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A22010A1104%2802%29 |
| Agreement between the European Community and the Russian Federation on readmission | Russia (EU) | 2006 | 2007 | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22007A0517%2803%29 |
| Agreement between the Government of the Republic of Poland and the Government of Romania on the mutual transfer of persons staying without authorization in the territory of one of the countries of the Contracting Parties | Romania | 1993 | 1994 | |
| Agreement between the European Community and the Republic of Serbia on the | Serbia (EU) | 2007 | 2008 | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22007A1219%2803%29 |

| | | | | |
|---|----------------|----------------|----------------|---|
| readmission of persons residing without authorisation | | | | |
| Agreement between the Government of the Republic of Poland and the Government of the Republic of Slovakia on the transfer of persons across a common state border | Slovakia | 1993 | 1993 | |
| Agreement between the Government of the Republic of Poland and the Government of the Republic of Slovenia on the transfer and reception of persons staying without permission | Slovenia | 1996 | 1998 | https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WMP20070340388 |
| Agreement between the Republic of Poland and the Kingdom of Spain on the admission of persons staying without permission | Spain | 2002 | 2003 | https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20042282300/O/D20042300.pdf |
| Agreement between the European Community and the Democratic Socialist Republic of Sri Lanka on the readmission of persons residing without authorisation | Sri Lanka (EU) | 2004 | 2005 | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A22005A0517%2803%29 |
| Agreement between the government of the Republic of Poland and the government of the Kingdom of Sweden on the admission of persons staying without permission | Sweden | 1998 | 1999 | |
| Agreement between the Government of the Republic of Poland and the Federal Council of the Swiss Confederation on the transfer and reception of persons staying without permission | Switzerland | 2005 | 2006 | https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20061621147 |
| Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorisation | Turkey (EU) | 2013 | 2014 | https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A22014A0507%2801%29 |
| Agreement between the European Community and Ukraine on the readmission of persons | Ukraine | 1993 (2007 EU) | 1994 (2008 EU) | https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22007A1218%2801%29 |
| Agreement between the Government of the Republic of Poland and the Government of the Socialist Republic of Vietnam on the transfer and admission of citizens of both States | Vietnam | 2004 | 2005 | https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20051561306 |

Source: The Border Guard (statistics obtained upon request).

Table 2. EU migration partnerships including a clause on the readmission/removal of irregular foreigners

| Title | Signatory State/Target Third Country | Date | | | Link to the document |
|--|--|-----------|-------------|------|---|
| | | Signature | Entry force | into | |
| Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed at Cotonou on 23 June 2000 | African, Caribbean and Pacific countries (ACP) | 2002 | 2003 | | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A22000A1215%2801%29 |
| Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part | Algeria | 2002 | 2005 | | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22005A1010%2801%29 |

| | | | | |
|---|---|------|---------|---|
| Political Dialogue and Cooperation Agreement between the European Community and its Member States, of the one part, and the Andean Community and its Member Countries (Bolivia, Colombia, Ecuador, Peru and Venezuela), of the other part | Andean Community (Bolivia, Colombia, Ecuador, Peru) | 2003 | pending | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016JC0004 |
| Framework agreement EU-Australia | Australia | 2003 | pending | https://eur-lex.europa.eu/EN/legal-content/summary/framework-agreement-eu-australia.html |
| Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Arab Republic of Egypt, of the other part | Egypt | 2001 | 2004 | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22004A0930%2803%29 |
| Cooperation Agreement between the European Community and the Kingdom of Cambodia | Cambodia | 1997 | 1999 | https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A21999A1019%2801%29 |
| Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Canada, of the other part | Canada | 2016 | pending | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.329.01.0045.01.ENG |
| Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part | Chile | 2002 | 2005 | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A22002A1230%2801%29 |
| Memorandum of Understanding between the European Community and the National Tourism Administration of the People's Republic of China on visas and other matters relating to tour groups from the People's Republic of China | China | 2004 | 2004 | https://home-affairs.ec.europa.eu/memorandum-understanding-between-european-community-and-national-tourism-administration-peoples_en |
| EU-Central America political dialogue and cooperation agreement | Costa Rica | 2003 | 2014 | https://eur-lex.europa.eu/EN/legal-content/summary/eu-central-america-political-dialogue-and-cooperation-agreement.html |
| Political Dialogue and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Cuba, of the other part | Cuba | 2016 | pending | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22016A1213%2801%29 |
| EU-Central America political dialogue and cooperation agreement | Guatemala | 2012 | pending | https://eur-lex.europa.eu/EN/legal-content/summary/eu-central-america-political-dialogue-and-cooperation-agreement.html |
| EU-Central America political dialogue and cooperation agreement | Honduras | 2012 | pending | https://eur-lex.europa.eu/EN/legal-content/summary/eu-central-america-political-dialogue-and-cooperation-agreement.html |
| Framework Agreement on Comprehensive Partnership and cooperation between the European Community and its Member States, of the one part, and the Republic of Indonesia, of the other part | Indonesia | 2009 | 2014 | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52013PC0230 |
| Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Iraq, of the other part | Iraq | 2012 | 2018 | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22012A0731%2801%29 |
| EU-Japan Strategic Partnership Agreement | Japan | 2018 | pending | https://eur-lex.europa.eu/EN/legal-content/summary/eu-japan-strategic-partnership-agreement.html |
| Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part | Jordan | 1997 | 2002 | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22005A1026%2802%29 |
| Enhanced Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Kazakhstan, of the other part | Kazakhstan | 2015 | 2020 | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22016A0204%2801%29 |
| Framework Agreement between the European Union and the Republic of Korea | South Korea | 2010 | 2014 | https://eur-lex.europa.eu/EN/legal-content/summary/framework-agreement-between-the-european-union-and-the-republic-of-korea.html |
| Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo*, of the other part | Kosovo | 2015 | 2016 | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22016A0316%2801%29 |
| Cooperation Agreement between the European Community and the Lao People's Democratic Republic | Laos | 1997 | 1997 | https://ec.europa.eu/assets/near/neighbourhood-enlargement/cvista/mt/21997a1205(01)-mt.doc |
| Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the Republic of Lebanon, of the other part | Liban | 2002 | 2006 | https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22006A0530%2801%29 |

| | | | | |
|--|--------------|------|---------|---|
| Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and Mongolia, of the other part | Mongolia | 2013 | 2017 | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22017A1209(01) |
| Partnership Agreement on Relations and Cooperation between the European Union and its Member States, of the one part, and New Zealand, of the other part | New Zealand | 2016 | pending | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22016A1129%2801%29 |
| EU-Central America political dialogue and cooperation agreement | Nicaragua | 2012 | pending | https://eur-lex.europa.eu/EN/legal-content/summary/eu-central-america-political-dialogue-and-cooperation-agreement.html |
| EU-Central America political dialogue and cooperation agreement | Panama | 2012 | pending | https://eur-lex.europa.eu/EN/legal-content/summary/eu-central-america-political-dialogue-and-cooperation-agreement.html |
| Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and the Republic of the Philippines | Philippines | 2012 | 2018 | https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22017A1222%2801%29 |
| EU-Central America political dialogue and cooperation agreement | El Salvador | 2012 | pending | https://eur-lex.europa.eu/EN/legal-content/summary/eu-central-america-political-dialogue-and-cooperation-agreement.html |
| Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Singapore, of the other part | Singapore | 2018 | 2020 | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52014PC0070 |
| Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Republic of Tajikistan, of the other part | Tajikistan | 2004 | 2010 | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22009A1229%2801%29 |
| Proposal for a Council and Commission Decision on the conclusion of the Partnership and Cooperation Agreement between the European Communities and their Member States and Turkmenistan | Turkmenistan | 1998 | pending | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:51997PC0693 |
| Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Republic of Uzbekistan, of the other part, to take account of the accession of the Republic of Croatia to the European Union | Uzbekistan | 1996 | 1999 | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22017A0916%2801%29 |
| Framework Agreement on Comprehensive Partnership and Cooperation between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part | Vietnam | 2012 | 2016 | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22016A1203%2802%29 |

Source: The Border Guard (statistics obtained upon request).

Table 3. Deals

| Title | Signatory State/Target Third Country | Date | | | Link to the document |
|--|--------------------------------------|-----------|---|--|---|
| | | Signature | Entry into force | | |
| Joint Declaration on Migration Cooperation between Afghanistan and the EU | Afghanistan | 2021 | 2021 (suspended the same year by Afghanistan) | | https://www.eeas.europa.eu/eeas/eu-afghanistan-joint-declaration-migration-cooperation_en?s=234 |
| EU-Bangladesh Standard Operating Procedures for the identification and return of persons without a residence permit | Bangladesh | 2017 | 2017 | | https://arts.unimelb.edu.au/__data/assets/pdf_file/0009/3409830/Bangladesh-1.pdf |
| Admission procedure for the return of Ethiopians from European Union Member States | Ethiopia | 2018 | 2018 | | https://www.statewatch.org/media/documents/news/2018/jan/eu-council-regugees-return-ethiopians-15762-17.pdf |
| Good practices between the Government of the Republic of The Gambia and the European Union in carrying out effective identification and return of unauthorized persons | Gambia | 2018 | 2018 | | |

| | | | | |
|--|---------------|------|------|--|
| EU-Guinea: Code of Good Practice for the Efficient Handling of Returns | Guinea | 2017 | 2017 | |
| Joint document of the Government of the Republic of Côte d'Ivoire and the European Union on procedures for the identification and readmission of immigrants suspected of being Côte d'Ivoire nationals illegally staying in the European Union | Cote d'Ivoire | 2018 | 2018 | |

Source: The Border Guard (statistics obtained upon request).

Table 4. Ongoing standard readmission agreement negotiations

| No. | Country | State of play |
|-----|-------------|---|
| 1. | Philippines | Permission was sought to start the negotiation process |
| 2. | Kyrgyzstan | The first round of contract negotiations June 12-16, 2023 |
| 3. | Tajikistan | The first round of contract negotiations May 8-12, 2023 |
| 4. | Uzbekistan | The first round of contract negotiations May 22-26, 2023 |

Source: The Border Guard (statistics obtained upon request).

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Act of 14 July 2006 on entry into, stay in and departure from the territory of the Republic of Poland territory of citizens of the European Union Member States and their family members, Dz. U. Nr 144 item 1043.

Act of 14 October 2021 amending the Act on foreigners and certain other acts, Dz. u. 2021 item 1918.

Act of December 12, 2013 on foreigners, Dz. U. 2013 item 1650.

Act of June 13, 2003 on granting protection to foreigners in the territory of the Republic of Poland, Dz.U. 2003 nr 128 item 1176.

Constitution of the Republic of Poland of April 2, 1997, Dz.U. 1997 nr 78 item 483.

Directive (EU) 2021/1883 of the European Parliament and of the Council of 20 October 2021 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, and repealing Council Directive 2009/50/EC was not implemented yet into Polish law.

Directive 2008/115/EC of 16 December 2008 on common standards and procedures applicable by Member States in the return of illegally staying third-country national, Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions expelling third-country nationals, Council Directive 2003/110/EU of 25 November 2003 on assistance in cases of transit for the purposes of deportation by air.

Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).

Ordinance of the Minister of the Interior and Administration of April 18, 2014, regarding the presence of representatives of non-governmental organisations in the course of activities related to bringing a foreigner to the border or to the airport or sea port of the country to which he is brought, Dz. U. 2014 item 534.

Ordinance of The Minister of the Interior and Administration of August 20, 2021, amending the ordinance on the temporary suspension or restriction of border traffic at specific border crossings, Dz.U. 2021, item, 1536.

Ordinance of the Minister of the Interior and Administration of February 9, 2023 amending the ordinance on the temporary suspension or restriction of border traffic at specific border crossings, Dz.U. 2023 item. 275.

Ordinance of the Minister of the Interior and Administration of March 13, 2020, on the temporary suspension or restriction of border traffic at specific border crossings, Dz.U. 2020, item 435.

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Annex I: Statistics

| <u>Year</u> | Stock of irregular migrants and/or # TCNs found to be illegally present (data in Eurostat) | <u># Asylum applications</u> | # TCNs/foreign nationals* refused entry at the border | # pushbacks (if available) (unofficial data by NGOs also acceptable; please indicate the data source) | <u># Dublin returns</u> | # TCNs/foreign nationals* ordered to leave | # Third country unaccompanied minors returned following an order to leave | <u># assisted 'voluntary' return</u> | <u># Readmitted citizens</u> |
|---------------|--|------------------------------|---|---|---|--|---|--------------------------------------|------------------------------|
| 2015 | 12 557 | 12 325 | 41 580 (EU-13) | | 21 (from PL); 897 (to PL) | 13 797 | NA | 321 | 17 |
| 2016 | 18 493 | 12 319 | 103 986 (UK-1; EU-12) | | 9 (from PL); 1408 (to PL) | 20 252 | NA | 436 | 11 |
| 2017 | 22 558 | 5 078 | 72 140 (EU-6) | | 16 (from PL); 1433 (to PL) | 24 882 | NA | 507 | 101 |
| 2018 | 26 547 | 4 135 | 76 900 (EU-17) | | 80 (from PL); 886 (to PL) | 29 733 | NA | 450 | 306 |
| 2019 | 26 625 | 4 096 | 95 735 (UK-3; EU-35) | | 55 (from PL); 685 (to PL) | 29 072 | NA | 380 | 487 |
| 2020 | 9 823 | 2 803 | 34 945 (Swiss-1; EU-11) | | 30 (from PL); 222 (to PL) | 12 003 | NA | 169 | 510 |
| 2021 | 6 812 | 7 699 | 34 125 (UK-15; EU-7) | at least 50 000 cases between August 2021 and the end of 2022 | 120 (from PL); 221 (to PL) | 10 177 | NA | 110 | 573 |
| 2022 | 7 166 | 9 933 | 28 272 (UK-55; Swiss-1; EU-220) | | 95 (from PL); 410 (to PL) | 8 412 | 1 | 100 | 677 |
| 2023 | | | | | 82 (to PL), 696 (to PL) until 30 November | | 1 until 30 November | 183 | 682 (until 30 Nov) |
| Data sources: | Border Guard | Office for Foreigners | Office for Foreigners | Border Guard | Office for Foreigners | Office for Foreigners | Border Guard (obtained upon request) | | |

Source: Own elaboration based on available data sets and data received upon request.

Annex II: List of Authorities Involved in the Migration Return Governance

| Authority (English and Polish) | Type of organisation | Area of competence in the fields of return | Link |
|---|----------------------|---|---|
| Ministry of the Interior and Administration – Department of International Affairs and Migration <i>Ministerstwo Spraw Wewnętrznych i Administracji – Departament Spraw Międzynarodowych i Migracji</i> | governmental | Developing and coordinating migration policy, coordination of European and international cooperation, internal security policy coordination. | https://www.gov.pl/web/mswia/departament-spraw-miedzynarodowych-i-migracji |
| Ministry of the Interior and Administration – Department of Public Order <i>Ministerstwo Spraw Wewnętrznych i Administracji – Departament Porządku Publicznego</i> | governmental | Responsible for overseeing Police and Border Guard. Competence in the field of strategic analysis and public order. | https://www.gov.pl/web/mswia/departament-porzadku-publicznego |
| Border Guard Headquarters – Board for Foreigners <i>Komenda Główna Straży Granicznej – Zarząd do Spraw Cudzoziemców</i> | governmental | Responsible (since 7 April 2023) for examining of appeals against return decisions. Organizing and coordinating activities related to the forced return of foreigners, the transfer of foreigners under the Dublin III Regulation and voluntary returns. Supervising the operations of local divisions and units of the Border Guard related to the foreigners and detention centers for foreigners. Conducting appeal proceedings against decisions of the Border Guard authorities (the decision to refuse entry to the territory of the Republic of Poland, determining the amount of costs related to the issuance and execution of the decision obliging to return, imposing a penalty on the carrier, withdrawing or invalidating a visa). | https://strazgraniczna.pl/pl/straz-graniczna/struktura-sg/komenda-glowna-sg/komorki-organizacyjne-k/zarząd-do-spraw-cudzoziemcow-Komendy-Główny-Straży-Granicznej.html |

| | | | |
|---|--------------|--|---|
| | | <p>Preparing positions for complaints filed by foreigners before the European Court of Human Rights.</p> <p>Cooperation with European Union bodies and agencies, in particular with the European Commission and Frontex.</p> <p>Cooperation with UNHCR and NGOs.</p> <p>Cooperation with the authorities of the USA in the exchange of border and migration information related to border security and legalization of stay.</p> <p>Obtaining and using foreign funds to perform administrative activities towards foreigners.</p> <p>Preparing cyclical and periodic statistical, information and analytical materials in the area of illegal migration, in particular in the field of migration movements of foreigners as well as returns of foreigners.</p> <p>Developing ICT solutions to improve the implementation of activities performed towards foreigners by the Border Guard authorities.</p> <p>24/7 implementation of tasks and powers related to the management and operation of the return alert (Article 3) of the Schengen Information System.</p> | |
| <p>Border Guard Divisions and local Units</p> <p><i>Oddziały i Placówki Straży Granicznej</i></p> | governmental | <p>Organizational units of the Border Guard in the field of return migration governance are responsible for conducting the immigration procedure and issuing return decisions and decisions on humanitarian or tolerated stay. They are responsible for registering requests for international protection. In the structures of divisions or local units of the BG operate six detention centres for foreigners. The border guard officers are assisting detained migrants in voluntary returns.</p> | www.strazgraniczna.pl |
| <p>Border Guard Detention Centres for Foreigners</p> <p><i>Strzeżone Ośrodki dla Cudzoziemców Straży Granicznej</i></p> | governmental | <p>Six places of administrative detention of foreigners (asylum seekers and returnees). They are located in the seats of BG Divisions (Krosno Odrzańskie, Białystok, Kętrzyn and Przemyśl) or local BG Units (Biała Podlaska and Lesznowola). In these detention facilities migrants stay during return proceedings and during the time before return. The border guard officers (return assistants) are assisting detained migrants in voluntary returns.</p> | www.strazgraniczna.pl |
| <p>Office for Foreigners</p> <p><i>Urząd do Spraw Cudzoziemców</i></p> | governmental | <p>Examines appeals against decisions of voivodes in matters of legalization of stay - residence permits for foreigners, visas and invitations, registration of stay and</p> | https://www.gov.pl/web/udsc |

| | | | |
|--|-----------------------|---|---|
| | | <p>permanent residence rights of European Union citizens and their family members, and controls voivodes in this respect;</p> <p>conducts visa consultations and exchanges data between Member States on visas;</p> <p>handles matters related to granting and depriving foreigners of protection – international protection (refugee status, subsidiary protection), asylum, temporary protection and conducts ‘Dublin’ proceedings; provides social and medical assistance to foreigners applying for international protection; runs IT systems.</p> <p>In return context the Office for Foreigners was responsible for examining appeals against BG return decisions (in procedures started until 6 April 2023).</p> | |
| <p>Commissioner for Human Rights (Ombudsman)</p> <p><i>Rzecznik Praw Obywatelskich</i></p> | Independent Authority | <p>Within the equal treatment team of the Commissioner’s office there is a unit responsible generally for the rights of the foreigners in Poland. Commissioner may join or initiate legal procedure concerning foreigners.</p> <p>Commissioner is a national body responsible for National Preventive Mechanisms. Thus Commissioner is visiting detention facilities and prepares relevant reports on the treatment of detainees.</p> <p>One of the competences of the Commissioner is to initiate the procedure leading to issuing the returnee by the Border Guard the consent on humanitarian stay.</p> | https://bip.brpo.gov.pl/en |
| <p>Commissioner for the Right of the Child</p> <p><i>Rzecznik Praw Dziecka</i></p> | Independent Authority | <p>Independent authority intervening in the legal proceedings concerning (migrant) children. In practice is able to demand information about minors access to territory (protection), denying entry, detention or other matters when rights of the child may be endangered.</p> <p>One of the competences of the Commissioner is to initiate the procedure leading to issuing the returnee by the Border Guard the consent on humanitarian stay (to protect human rights of children).</p> | https://brpd.gov.pl |
| <p>General Courts (criminal divisions of District and Regional Courts)</p> <p><i>Sądy powszechne (wydziały karne w</i></p> | governmental | <p>Place foreigners in detention based on the border guard motions. Decide about extension of detention. Appoint curators in cases of UAMs in return procedures. Examine motions for compensation in case of arbitrary detention.</p> | |

| | | | |
|--|--------------------|--|---|
| <i>Sądach Rejonowych i Okręgowych)</i> | | | |
| Administrative Courts (Provincial Administrative Court in Warsaw and Supreme Administrative Court) Sądy administracyjne (Wojewódzki Sąd Administracyjny w Warszawie i Naczelny Sąd Administracyjny) | governmental | Judicial review of return decisions after a returnee submits a complaint against them. The administrative courts may suspend enforcement of return decisions until the final judgment is issued. | www.warszawa.wsa.gov.pl www.nsa.gov.pl |
| The European Border and Coast Guard Agency (Frontex) | international (EU) | Return and reintegration of foreigners is one of the activities of Frontex. In practice Frontex supports the Border Guard in organizing return operations. Next to joint and collective flights, it may also finance operations organized on the commercial flights. Frontex Fundamental Rights Officer may monitor compliance of Frontex officers operation with Fundamental Rights. | www.frontex.europa.eu/ |
| International Organisation for Migration (IOM) Poland | international | Organises and implements AVR. Delegates cultural assistants in the detention facilities. | https://poland.iom.int/pl |
| NGOs authorised to participate in return operations monitoring | non-governmental | Four Polish NGOs have a right to monitor the forced return: The Helsinki Foundation for Human Rights, The Rule of Law Institute Foundation, The Halina Nieć Legal Aid Centre, and The MultiOcalenie Foundation. Despite the authorisation and training of monitors by the Border Guard, the monitoring institutions do not receive funding to perform monitoring mandate. | www.panstwoprawa.org https://hfhr.pl/en https://www.pomocprawna.org/ https://www.multiocalenie.org.pl/ |
| Other civil society actors | non-governmental | The Border Guard when initiating the return procedures is providing the foreigner with the short list of organizations assisting migrants in Poland. This list includes Caritas services in different parts of Poland (specializing in humanitarian aid). The main task of other organizations is predominately integration and psychological support (Ocalenie Foundation, MultiOcalenie Foundation, Foundation 'Civic Perspective'). Finally the list includes four organizations that are providing legal aid to foreigners (The Helsinki Foundation for Human Rights, The Rule of Law Institute Foundation, The Halina Nieć Legal Aid Centre, Association for Legal Intervention). The list of the | various websites |

| | | | |
|--|--|--|--|
| | | providers of integration assistance should be extended to other civic society actors: Polish Migration Forum, Nomada Association, Polish Humanitarian Action, Volunteers Centre in Lublin. | |
|--|--|--|--|

Source: Own elaboration.

Annex III: Overview of the Legal Framework on Return Policy

| The title of the policy/legislation in English | The title in the original language | Policy Type/Area | Date AnnouncedYear | Active Period (note down if it is expired or repealed) | Description of Policy or short Overview |
|---|--|------------------------------|--------------------|--|---|
| Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland | Ustawa z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej (t.j. Dz. U. z 2023 r. poz. 1504.) | protection | 13 June 2003 | Amendments - last 2023 | Regulations regarding granting international and national protection to foreigners |
| Act of 12 December 2013 on foreigners | Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach | border management, residence | 12 December 2013 | Amendments - last 2023 | Regulations regarding entrance and residence of foreigners in Poland |
| Ordinance of the Minister of the Interior of 24 April 2015 on the guarded centres and detention centres for foreigners | Rozporządzenie Ministra Spraw Wewnętrznych z dnia 24 kwietnia 2015 r. w sprawie strzeżonych ośrodków i aresztów dla cudzoziemców | detention | 24 April 2015 | Amendments - last 2021 | Regulations regarding: conditions to be met by guarded centers and detention centers for foreigners; organizational and order regulations for the stay of foreigners in a guarded center and detention center for foreigners; conditions for receiving meals and drinks by foreigners placed in a guarded center or detained in a detention center for foreigners and the value of a daily food standard |
| Ordinance of the Minister of the Interior and Administration of July 20, 2018 on the costs related to the execution of the decision obliging a foreigner to return | Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 20 lipca 2018 r. w sprawie kosztów związanych z wykonaniem decyzji o zobowiązaniu cudzoziemca do powrotu | | 20 July 2018 | Active | The ordinance specifies: a detailed method of calculating the costs associated with bringing a foreigner to the border or to the airport or sea port of the country to which he is brought; the amount of the flat-rate daily costs of a foreigner's stay in: a) a room of the Border Guard or Police intended for detained persons, b) a guarded center or arrest for foreigners. |
| Ordinance of the Minister of the Interior and Administration of 21 March 2019 on the template of an application for placement of a foreigner in a detention camp or for applying for a detention center for foreigners and a template of an application for extending the period of stay of a foreigner in a detention center or arrest | Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 21 marca 2019 r. w sprawie wzoru wniosku o umieszczenie cudzoziemca w strzeżonym ośrodku albo o zastosowanie wobec niego aresztu dla cudzoziemców oraz wzoru wniosku o przedłużenie okresu pobytu cudzoziemca w strzeżonym ośrodku albo areszcie | technicalities | 21 March 2019 | Active | The ordinance regulates document templates |
| Act of March 12, 2022 on assistance to citizens of Ukraine in connection with an armed conflict on the territory of this country | Ustawa z dnia 12 marca 2022 r. o pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium tego państwa | Ukrainian Crisis | 12 March 2022 | Amendments - last 2023 | The Act specifies specific rules for legalizing the stay of citizens Ukrainians who came to the territory of the Republic of Poland from the territory of Ukraine in connection with hostilities carried out on the territory of this country, and citizens of Ukraine holding the Pole's Card who, together with their immediate family, arrived on the territory of the Republic of Poland due to these hostilities |

Source: Own elaboration.

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