

**RESPOND**

## **Working Papers**

### **Global Migration: Consequences and Responses**

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## **Refugee Protection Poland Country Report**

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## List of Abbreviations

Abbreviation	Full name
<b>AIDA</b>	Asylum Information Database
<b>AMIF</b>	Asylum, Migration and Integration Fund
<b>BCPs</b>	Border Crossing Points
<b>BG</b>	Border Guard
<b>Dz.U.</b>	<i>Dziennik Ustaw</i> (in Polish); Journal of Laws (in English)
<b>EASO</b>	European Asylum Support Office
<b>ECRE</b>	European Council on Refugees and Exiles
<b>ECtHR</b>	European Court of Human Rights
<b>EDAL</b>	European Database of Asylum Law
<b>EU</b>	European Union
<b>FRONTEX</b>	European Border and Coast Guard Agency
<b>HFHR</b>	Helsinki Foundation for Human Rights
<b>IGOs</b>	Intergovernmental Organisations
<b>IOM</b>	International Organization for Migration
<b>IOs</b>	International Organisations
<b>MFA</b>	Ministry of Foreign Affairs
<b>MFLSP</b>	Ministry of Family, Labour, and Social Policy
<b>MIA</b>	Ministry of the Interior and Administration
<b>MSs</b>	Member States
<b>NGOs</b>	Non-governmental Organisations
<b>OF</b>	Office for Foreigners
<b>RESPOND</b>	Multilevel Governance of Mass Migration in Europe and Beyond
<b>t.j.</b>	<i>Tekst jednolity</i> (in Polish); Consolidated text (in English)
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>WP1/2/3/4/5</b>	Work Package 1 / 2 / 3 / 4 / 5
<b>z późn. zm.</b>	<i>z późniejszymi zmianami</i> (in Polish); with amendments (in English)

## About the Project

RESPOND is a Horizon 2020 project that aims to study the multilevel governance of migration in Europe and beyond. The consortium is formed of 14 partners from 11 source, transit, and destination countries and is coordinated by the Uppsala University in Sweden. The main aim of this Europe-wide project is to provide an in-depth understanding of the governance of recent mass migration at the macro, meso and micro levels through cross-country comparative research and to critically analyse governance practices with the aim of enhancing the migration-governance capacity and policy coherence of the European Union (EU), its Member States, and third countries. RESPOND studies migration governance through a narrative constructed along five thematic fields: (1) Border management and security, (2) Refugee protection regimes, (3) Reception policies, (4) Integration policies, and (5) Conflicting Europeanisation. Each thematic field reflects a juncture in the migration journey of refugees and is designed to provide a holistic view of policies, their impacts, and responses given by affected actors within each. To better focus on these themes, the research activities were divided into Work Packages (WPs). The present report is concerned with the findings related to Work Package 3 (WP3), which focuses specifically on asylum procedures, refugee protection, and asylum policy.

## Executive Summary

This work is the country research report prepared within Work Package 3, focused on refugee protection and asylum policy in Poland, delivered under the H2020 project *RESPOND—Multilevel Governance of Mass Migration in Europe and Beyond*. The main aims of this report are:

- to analyse policies and practices in the field of international protection implemented by state and non-state actors;
- to analyse the experiences, actions, perceptions, and opinions of state and non-state actors and forced migrants with regard to the functioning of the national refugee system and implemented asylum policy;
- to provide empirical analysis based on the macro- (WP1 country report), meso- and micro-level (from fieldwork) analyses;
- to identify examples of good practices in the area under study;
- to evaluate the national refugee system and implemented asylum policy and provide recommendations for policy development.

With reference to the common guidelines for WP3 reports under the RESPOND project, the section concerning the legal and institutional framework of asylum policy in Poland has been firmly embedded in the two previous national reports, that is, report WP1 (political, legal, and institutional context of the asylum system) and report WP2 (border control and migration control). At the same time, great emphasis was put on the extensive use of qualitative research material from in-depth individual interviews conducted at the meso and micro levels (16+30 interviews), in particular in sections 2 and 3 of this report. In addition, due to the wide scope of the report, the authors focused on selected issues from the field of refugee protection and asylum policy in Poland that they identified as being particularly relevant. The problem of vulnerability was also highlighted. To this end, an important part of the report is comprised of the considerations regarding good practices.

In 2017, a proposal for amending the Law on Protection was announced and followed by its revised version in 2019. The proposed amendment concerned, among others, the introduction of a border procedure and lists of safe countries and safe third countries. The planned changes were criticised by many NGOs in Poland. In recent years, however, it was rather the implementation of the law, government policy, and unofficial practices (e.g., of the Border Guard) that raised more doubts than the changes in the law and planned amendments.

The most important public institutions in Polish asylum policy remain the Border Guard and the Office for Foreigners, and thus, the Ministry of the Interior and Administration (which supervises them). Other significant actors are the Refugee Board and administrative courts. A special role is played by NGOs providing legal support to forced migrants, both in Poland and abroad (e.g., in cases before the ECtHR). The interviews also raised issues of cooperation with international organisations such as the UNHCR and the EU, and other EU Member States, including Germany and the Visegrad Group countries, e.g., in the context of Dublin transfers, the Dublin system and its reform or relocation scheme. In many meso-level interviews, attention was drawn to the tensions and difficult relations between public-administration institutions and NGOs and the unfavourable political climate.



The analysis clearly shows that in the years 2015 and 2016 there was a breakthrough in the asylum system in Poland in terms of implementation because the new government formed by the Law and Justice Party after the parliamentary elections in 2015 referred to the migration and refugee crisis in Europe to justify policy and legal changes. The change of power has influenced the politicisation of migration and asylum issues in the country. Poland withdrew from relocation and resettlement schemes and eventually did not implement them. The Ministry of the Interior and Administration significantly changed the rules for financing projects from EU money through AMIF, which limited the activities of many NGOs providing legal support for asylum seekers and refugees. Since 2015-2016, the situation on the eastern border of Poland was difficult—the limited access to Polish territory for asylum seekers was observed, multiple pushbacks at the Brest-Terespol railway border crossing were recorded, and different unofficial practices of the Border Guard were reported. At the same time, the Ombudsman for Human Rights, NGOs and lawyers became involved in the situation at the border in different ways, such as monitoring visits, interventions, and actions at border crossings, publications of reports, etc. The situation on the eastern border translated into difficulties in submitting applications for international protection. With regard to the asylum procedure itself and the decisions issued in this regard, the large number of discontinuances, negative decisions, and appeals are noteworthy. Among the micro-level respondents, the long duration of the asylum procedure was underlined. They also drew attention to the problems with crossing borders in Brest-Terespol (some tried several times), the role of language and communication during the proceedings, and the importance of collecting evidence to justify their situation. Meso-level actors assessed asylum law rather positively, although there were strong criticisms, mainly in relation to the detention of foreigners, including children and other vulnerable groups. The planned changes in the Law on Protection, implementation of existing law and practices applied were rated much worse (e.g., second-line control at the border and the way of formulating questions by the Border Guard, encouraging asylum seekers to include in the application form only the main reasons for applying for refugee status, without going into detail, etc.).

## Introduction

This work is the country research report prepared within Work Package 3, focused on refugee protection and asylum policy in Poland, delivered under the H2020 project *RESPOND—Multilevel Governance of Mass Migration in Europe and Beyond*. The main aims of this report are:

- to analyse policies and practices in the field of international protection implemented by state and non-state actors;
- to analyse the experiences, actions, perceptions, and opinions of state and non-state actors and forced migrants with regard to the functioning of the national refugee system and implemented asylum policy;
- to provide empirical analysis based on the macro- (WP1 country report), meso- and micro-level (from fieldwork) analyses;
- to identify examples of good practices in the area under study;
- to evaluate the national refugee system and implemented asylum policy and provide recommendations for policy development.

The basic time frame of the analysis covers the years 2011-2017, however, where necessary we refer to previous years (e.g., to important political events or legal changes). As well, we provide an overview of the most recent developments regarding the legal and policy contexts in the field of refugee protection in 2018 and 2019.

The approaches and definitions applied in this report follow those elaborated for the project purposes and discussed within the section ‘Conceptual Framework on Asylum Procedure and Refugee Protection’ included in the RESPOND guidelines for WP3 country research reports. Consequently, the focus is on international protection from the moment that a forced migrant declares it as his/her will until the final decision (or until a durable solution). This can include all kinds of protection—formal and informal, refugee protection, temporary protection, etc.

The structure of this report includes several key parts, the first of which is this introduction outlining a framework for further consideration and embedding it in the context of the RESPOND project and its WP3. It is followed by the section discussing the methodology and sources, that is, the strategies used for gathering data (documents, literature, interviews, and other sources) and analysis of the collected material, together with the limitations encountered. The next part of the report provides a brief overview of the national legal and institutional framework in the field of asylum policy in Poland as of 2018 (and 2019 if justified) and summarises its key developments since 2011. It refers to two previous national reports prepared and published under the RESPOND project that cover the legal and policy framework of migration governance in Poland<sup>1</sup> and border management and migration control<sup>2</sup>. Particularly important for the WP3 report is the section on practices, experiences, and perceptions regarding the asylum procedure and refugee protection in Poland, which presents important insights from the meso- and micro-level semi-structured interviews as well as relevant documents and literature to explain, contextualise and complement. Particular attention is paid to the issue of the vulnerability of forced migrants in this regard.

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<sup>1</sup> For further information, see (Szulecka, et al., 2018b).

<sup>2</sup> For further information, see (Szulecka, 2019).

Extended quotations from the interviews are used to flesh out important results from the fieldwork. Then, selected best practices in the area of refugee protection and asylum policy in Poland—identified on the basis of the literature analysis and the qualitative material from the interviews conducted within the RESPOND project—are discussed. The conclusions of the WP3 report follow and are supplemented with policy recommendations in this regard.

## Methodology and Sources

This section discusses the strategies used for gathering data (documents, literature, interviews, and other sources) and analysis of the collected material. The limitations encountered are also mentioned, as well as some reflections on ethical awareness and principles stemming from the consortium code of ethics adjusted for the national context.

The methodology applied in this report is compliant with the RESPOND project guidelines for Work Package 3, focused on refugee protection. Two different methodological approaches were used in this report. The first was legal and policy analysis. It relied on a brief analysis of the legal and policy framework from 2011 to 2018 (and 2019 if justified). Along with official documents and statements, considering both the macro- and meso-levels, the reports and works published by international organisations and non-governmental organisations (NGOs) were used, as well as academic literature<sup>3</sup>. The second approach is heavily based on the qualitative research material collected from individual, in-depth semi-structured interviews conducted within the project at the micro- and meso-levels.

In this report, the meso- and micro-level perspective was included in subsequent sections and then in relation to selected issues, which allows for a smooth and consistent presentation and discussion of various topics concerning refugee protection and asylum policy, showing the approach of respondents at both levels.

In our qualitative research, the selection of meso- and micro-level respondents was purposeful, and in addition, the snowball recruitment method was applied in the case of micro-level interviews to reach forced migrants. The goal was to obtain opinions on the qualitative aspects of the functioning of asylum policy in Poland and the asylum procedure, including both law and practice. Due to the non-exhaustive nature of the sample, the presented results of qualitative research cannot be generalised, but they illustrate some trends and examples in the field.

**For micro-level interviews**, the first step was to identify sampling criteria for Poland, having in mind the general guidelines developed in this field within the RESPOND consortium, as well as the national context, including the asylum statistics in Poland for 2011–2017 and the fact that Poland is often perceived as a transit country by forced migrants<sup>4</sup>. Considering the RESPOND guidelines for micro-level sampling criteria (the inclusion of the top 2 or 3 refugee/migrant groups within the time span of 2011–2017 in each country) and the Polish context (the structure of the asylum applicants' population, as well as the beneficiaries of international protection; the presence of migrants on the territory of Poland), the research team decided to focus on three countries of origin of migrants, namely the Russian Federation, Ukraine, and Syria. The detailed justification for this selection follows in the consecutive paragraphs. As far as possible, the sub-samples of interviewees were differentiated by place of residence (cities and small towns or villages), age (keeping in mind that most probably there would not be many asylum seekers and refugees above the age of 50) and gender (keeping in mind that the inflow from Russia (and specifically from

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<sup>3</sup> For further information, see the section 'References and Sources' of this report.

<sup>4</sup> For further information, see (Szulecka, et al., 2018b) and (Szulecka, 2019).

Chechnya<sup>5</sup>) and Ukraine is dominated by families, whereas it is by men in other national groups (Szulecka, et al., 2018).

According to asylum statistics for Poland for 2011-2017, the biggest share of both applicants for international protection and foreigners with granted international protection (refugee status and subsidiary protection) were citizens of the Russian Federation, originating from Chechnya. In 2017, they constituted almost 70% of asylum applicants, whereas in previous years they constituted even 90% of all applicants for international protection. Although less than 11% of asylum applicants obtained positive first-instance decisions<sup>6</sup> annually in the analysed period of 2011-2017<sup>7</sup>, citizens of the Russian Federation originating from Chechnya were still the most numerous among the beneficiaries of international protection in Poland<sup>8</sup>. Poland's experience with the inflow of this group of asylum seekers is also quite extensive, at this point covering more than two decades. This has strongly influenced the reception and integration system for asylum seekers and refugees in Poland. Russian citizens originating from Chechnya are also subject to Dublin procedures and are apprehended at the border for attempts of unlawful border crossing. This fact additionally justified planning the sample with such a high share for Chechens or asylum seekers with Russian passports originating from other republics of the Russian Federation. Since 2014, Ukrainian citizens have become an important group of asylum seekers in Poland. Although the vast majority of decisions concluding their asylum procedures were either negative or suspended, Ukrainian citizens were an important group of beneficiaries of subsidiary protection. Interestingly, positive decisions were made in their appeal procedures, which implied taking this group of asylum seekers and refugees into account. Ukrainian citizens are also the most numerous among foreigners granted residence permits on humanitarian grounds during return procedures. Although Syrian citizens do not constitute a significant share of asylum seekers in Poland, they are one of the biggest groups with granted refugee status by the Polish authorities. Contrary to other groups' applications for asylum in Poland, the rate of positive decisions for Syrians reached more than 90% in recent years. Moreover, Syrian citizens were apprehended for unlawful border crossing or unauthorised stay in Poland, which implied taking this group into account for micro-level interviews (Szulecka, et al., 2018).

As far as **geographical distribution** is concerned, considering the number of international protection beneficiaries as well as the concentration of assistance services and offices of relevant authorities, two voivodeships (provinces)<sup>9</sup> (Mazovian and Lubelskie) were identified

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<sup>5</sup> Chechnya is a 'republic in southwestern Russia, situated on the northern flank of the Greater Caucasus range. Chechnya is bordered by Russia proper on the north, Dagestan Republic on the east and southeast, the country of Georgia on the southwest, and Ingushetiya Republic on the west. In the early 21<sup>st</sup> century, more than a decade of bitter conflict had devastated the republic, forced the mass exodus of refugees, and brought the economy to a standstill' (Encyclopaedia Britannica, n.d.).

<sup>6</sup> To learn more about first- and second-instance decisions on asylum applications, see (Szulecka, et al., 2018b, pp. 17-19, 44-50).

<sup>7</sup> Own elaboration based on data provided by the Office for Foreigners, see (Office for Foreigners, n.d.).

<sup>8</sup> One should remember that in Poland, most of the first-instance decisions concern the so-called discontinuation (discontinuance) of the refugee procedure or are left unexamined. For more information about this, see (Szulecka, et al., 2018b, pp. 17-19, 48). This is also discussed in this report, 'Section 2.2. Implementation of International Protection (Asylum) Policy'.

<sup>9</sup> According to the Central Statistical Office (2019) (Central Statistical Office, n.d.), on 1 January 2019, Poland was administratively divided into 16 voivodships (*województwo*), 380 poviats (*powiat*), and

as the locations for micro-level interviews. The Mazovian voivodeship is the biggest among the 16 in Poland and the capital city, Warsaw, is located within its administrative boundaries. Warsaw is the city with the largest number of migrant residents of different categories and statuses in Poland. The division of **early and late arrivals in Poland** was not directly linked to the so-called migration and refugee crisis that clearly affected asylum statistics in many European countries in 2015. From Poland's perspective, visible changes in the structure of the population of asylum seekers was influenced by the eruption of the 2014 military conflict between Ukraine and Russia. Nevertheless, the research group attempted to distinguish early arrivals from the late ones (Szulecka, et al., 2018).

**The final material** from the micro-level interviews includes 30 interviews carried out between July 2018 and August 2019 in Poland. The details of the micro-level sample are presented in Table 1.

**Table 1 Sample of micro-level interviews in Poland**

No.	Code	Nationality	Gender	Age group	Place of interview**	Time of arrival***
1	PLMICH01	Russian/Chechen*	Female	27-50	C	Early arrival
2	PLMICH02	Russian/Chechen*	Female	27-50	C	Late arrival
3	PLMICH03	Russian/Chechen*	Female	27-50	C	Late arrival
4	PLMICH04	Russian/Chechen*	Female	27-50	C	Late arrival
5	PLMICH05	Russian/Chechen*	Female	27-50	P	Late arrival
6	PLMICH06	Russian/Chechen*	Female	27-50	P	Late arrival
7	PLMICH07	Russian/Chechen*	Female	27-50	C	Late arrival
8	PLMICH08	Russian/Chechen*	Female	27-50	C	Late arrival
9	PLMICH09	Russian/Chechen*	Male	>50	P	Late arrival
10	PLMICH10	Russian/Chechen*	Male	27-50	P	Early arrival
11	PLMICH11	Russian/Chechen*	Male	27-50	P	Early arrival
12	PLMICH12	Russian/Chechen*	Male	18-26	P	Late arrival
13	PLMICH13	Russian/Chechen*	Male	27-50	C	Late arrival
14	PLMICH14	Russian/Chechen*	Male	27-50	C	Late arrival
15	PLMICH15	Russian/Chechen*	Male	27-50	C	Late arrival

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2.477 communes (*gmina*). The largest voivodship was Mazovian, where the capital city, Warsaw, is located.

16	PLMIUk16	Georgian/ Ossetian	Male	27-50	C	Early arrival
17	PLMIUk17	Ukrainian	Male	18-26	P	Late arrival
18	PLMIUk18	Ukrainian	Male	27-50	C	Early arrival
19	PLMIUk19	Ukrainian	Female	27-50	C	Early arrival
20	PLMIUk20	Ukrainian	Female	27-50	C	Early arrival
21	PLMISy21	Syrian	Male	27-50	C	Early arrival
22	PLMISy22	Syrian	Male	18-26	C	Late arrival
23	PLMISy23	Syrian	Male	27-50	C	Late arrival
24	PLMISy24	Syrian	Male	>50	C	Late arrival
25	PLMISy25	Syrian	Female	18-26	C	Late arrival
26	PLMIIr26	Iraqi	Male	27-50	P	Late arrival
27	PLMIIr27	Iraqi	Male	27-50	P	Late arrival
28	PLMIIr28	Iraqi	Female	>50	C	Early arrival
29	PLMIJe29	Yemeni	Male	27-50	P	Late arrival
30	PLMIKa30	Kazakh	Female	27-50	P	Late arrival
* Chechen means a Russian citizen with Chechen nationality ** C – centre; P – periphery *** Early arrival – 2011–2014; Late arrival – 2015–2017						

**Source: RESPOND team in Poland.**

Two comments have to be made at this point. First, the concept of citizenship/nationality was particularly important in the case of Chechen migrants who, even if they have Russian citizenship and/or lived in Russia, identify themselves as Chechens. This was reflected in the interviews. Second, the interviews were conducted in different languages, allowing the interviewees to feel comfortable. These were: Polish, English, Arabic, and Russian. All interviews were translated, transcribed in English, and coded with NVivo software. In addition, all micro-data were coded by the Polish team to the needs of the RESPOND Dataset to be used for further work within the project.

According to the criteria applied in the RESPOND project, the 27-50 age group definitely dominated in the sample. The respondents aged between 30 and 39 years were the main group (14 persons). The smallest group consisted of people aged 50 years and over (only 3 persons). In addition, the majority of the respondents (21 out of 30) belonged to the group of late arrivals to Poland (2015-2017) and only 9 could be assigned to the group of early

arrivals (2011-2014) (Table 1). While analysing the legal refugee protection status of the respondents, referring to the categories developed by the RESPOND consortium, and on the basis of the information provided during the interviews, the distribution was as follows (status and corresponding number of respondents): asylum seeker–13 persons, refugee status–4 persons, under subsidiary protection–11 persons, other–2 persons. Out of 30 respondents, 13 were under the asylum procedure and 15 had already received a positive decision—those granted subsidiary protection prevailed—followed by persons with refugee status in Poland. Two respondents did not declare their legal status in Poland.

**For meso-level interviews**, the first step was to identify sampling criteria for Poland, keeping in mind the general guidelines developed in this field within the RESPOND consortium. National specificity was also taken into account. One of the key decisions at the very beginning was finding a common, practical definition of ‘stakeholders’, in other words ‘actors’, to be applied among the RESPOND team. For this project, ‘stakeholders’ are understood as actors with a meaningful institutionalised practice (at the social/economic or political level) in relation to migration/integration (including border management, protection, and reception). In line with the project aims and objectives, the RESPOND team was particularly interested in local-level practices with the aim of understanding how policies are received and implemented at different localities, how different civic (social) actors fill in the gap where governmental policies have failed to deliver the needed services and how policymaking is influenced at various levels through diverse governance practices. In general, the following profiles for key informants and stakeholder interviews were deemed possible:

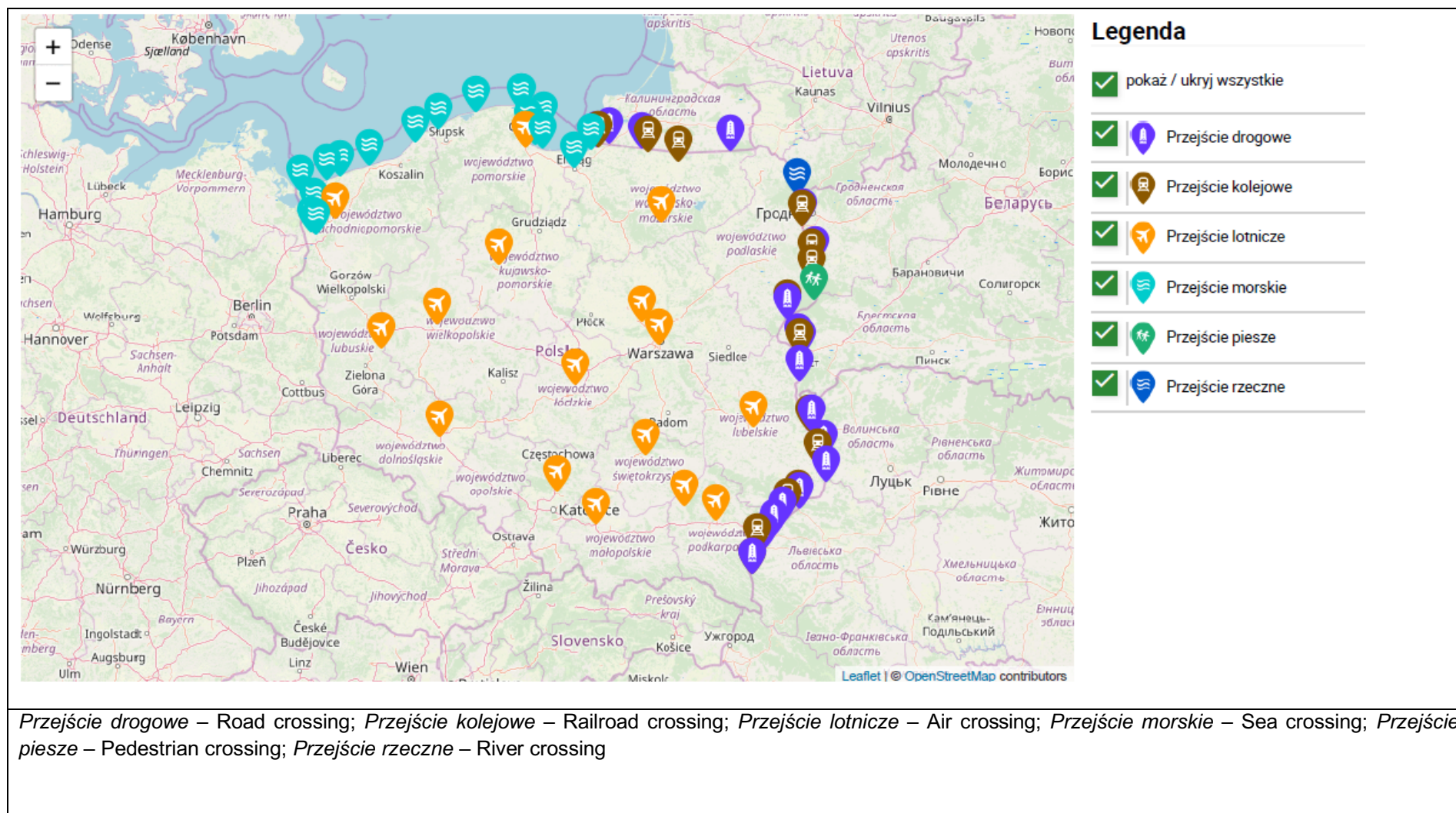
- those who deliver a service in the field of migration/integration (including border management, protection, and reception);
- those within relevant public administration areas (e.g., policy executors/implementers, meso-level administrators such as bureaucrats, governors or prefects, and the local chief of staff for policing);
- elected policymakers (only at the local level) and representatives of local governments;
- practitioners (e.g., immigration lawyers, school directors, teachers, medical staff, social workers);
- independent activists: human-rights activists (who deliver a service or produce collective action), cultural-brokers, representatives of NGOs and faith-based NGOs, immigrants and other relevant community organisations (Nagel, et al., 2018).

Poland’s experience in admitting asylum seekers and granting international protection has been strictly determined by the dominant route chosen by the most common category of asylum seekers in Poland, namely foreigners with Russian citizenship. They are mainly from Chechnya or Dagestan and come to Poland from the territory of Belarus by the land border crossing point in Brest/Terespol. Asylum applications are received by the Border Guard, which also conducts border control at Poland’s land, air, and sea borders (



Figure 1). The Border Guard also runs and supervises six detention centres for foreigners (located in Lesznowola, Kętrzyn, Białystok, Krosno Odrzańskie, Przemyśl, Biała Podlaska), where sometimes asylum seekers are placed (Figure 2). These competences implied the inclusion of the Border Guard in the sample. The Office for Foreigners, in turn, is responsible for processing the applications and delivering social assistance to asylum seekers. It also runs centres for foreigners who have submitted applications for international protection (Szulecka, et al., 2018). In 2019, the Office had 11 centres for foreigners, including four of its own centres in Podkowa Leśna-Dębak, Biała Podlaska, Czerwony Bór near Łomża, and Linin near Góra Kalwaria, and seven centres contracted with external entities through agreements concluded as part of public procurement procedures. The centres in Podkowa Leśna-Dębak, near the capital city of Warsaw, and in Biała Podlaska, 30 kilometres from the Polish-Belarusian border, and the BCP in Terespol are reception centres from which asylum seekers are transferred to other centres, called residence or stay centres, in which they can decide to live during the asylum procedure (Office for Foreigners, 2019, p. 4). These centres are mostly located in two voivodships: Mazovian and Lubelskie (Figure 3).

**Figure 1 Map of border crossings and Border Guard facilities in Poland**



**Source: (Polish Border Guard Headquarters, 2019).**

Figure 2 Location of guarded (detention) centres for foreigners in Poland (*ośrodek rodzinny* – centre for families, *ośrodek męski* – centre for men, *małoletni bez opieki* – unaccompanied minors)



Source: (Association for Legal Intervention, 2019).

**Figure 3 Centres for asylum seekers in Poland**

#### PODLASKIE VOIVODESHIP

##### **Białystok**

Zajazd „Budowlani”, ul. Bitwy Białostockiej 7,  
15-102 Białystok

tel. / fax 85 675 00 91, fax 85 662-31-61

##### **Czerwony Bór (Ośrodek UdSC)**

Czerwony Bór 24/1, 18 – 400 Łomża

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#### MASOVIAN VOIVODESHIP

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**Source: (Office for Foreigners, 2019, p. 11).**

The final material from the meso-level interviews includes 16 interviews (all of which were transcribed in Polish and coded with NVivo software) carried out between July 2018 and March 2019 in Poland. The 16 meso-level interviews (two of which were double interviews involving two representatives of an institution/organisation) included experts from public administration at the central and local levels, NGOs, and other practitioners dealing with immigration issues. This sample is presented in Table 2.

**Table 2 Sample of meso-level interviews in Poland**

No.	Code	Type of stakeholder
1.	PLMZBG1	Border Guard
2.	PLMZOF1	Office for Foreigners
3.	PLMZOF2	Office for Foreigners
4.	PLMZOF3/4	Office for Foreigners (two respondents)
5.	PLMZP1	Practitioner
6.	PLMZP2	Practitioner
7.	PLMZP3	Practitioner
8.	PLMZLG1	Local governor
9.	PLMZLG2	Local governor
10.	PLMZSO1	Social organisation
11.	PLMZSO2	Social organisation
12.	PLMZSO3	Social organisation
13.	PLMZSO4	Social organisation
14.	PLMZSO5/6	Social organisation (two respondents)

**Source: RESPOND team in Poland.**

In accordance with the policy of personal data management, anonymisation, and the code of ethics adopted by the Polish team, data on gender and place of interviews are not disclosed.

To this end, it is important to mention that the first roundtable discussion of the RESPOND Migration Governance Network in Poland was held on 10 December 10, 2018, at the Centre of Migration Research of the University of Warsaw. It was transcribed and coded manually (material codes: MGN1, MGN 2, MGN3). The meeting was attended by about 20 experts representing different institutions and organisations, including the Office of the Ombudsman, the Office for Foreigners, the Border Guard, governmental and local institutions involved in integrative programmes for persons granted refugee status or subsidiary protection, non-governmental and international organisations, local authorities, and academia.

In addition, the Polish team, including the author of this report as of late 2017, were participants—as speakers, experts, or audience members—of several thematic events (conferences, workshops, seminars, and debates) in Poland and abroad dedicated to migration issues. This allowed for numerous interactions and discussions with other experts in the field, as well as observations and access to additional materials.

The analysis conducted for the purpose of this report has a qualitative character and was supported by NVivo software. To conduct the analysis, the common-coding scheme for WP3 was used, making some country-specific revisions and additions. It began with the categories indicated in the WP3 guidelines and then focused on specific aspects of Poland, which are critical to understanding refugee protection. Then, some new categories and sub-

categories were added to adapt the common-coding scheme to the national conditions reflected in the collected interview material.

It is worth paying attention to **the limitations** for micro- and meso-level interviews and for the MGN meeting identified by the RESPOND team. They are as follows (though this list is not exhaustive):

1. Unfavourable political climate in Poland for studying forced migration in the European context, especially since the Law and Justice party took power in 2015; and, as a result, the government's conservative approach to the issue of migration through the prism of national security and socio-economic interests (important for meso-level interviews);
2. Relatively small number of non-governmental (social) organisations working for migrants and refugees, the majority of which operate in Warsaw or a few other big cities and towns in the vicinity of the reception and stay (residence) centres for foreigners. This caused doubt among NGOs that worried they could be easily identified (important for meso-level interviews);
3. Very heavy workload for some NGOs and public institutions (Office for Foreigners and Border Guard), which caused difficulties in arranging an interview with short notice (some interview dates were delayed) or some failures to respond to our invitation (important for meso-level interviews);
4. Approaching officials from the Office for Foreigners took more time than expected and required several reminders. Eventually, communication became effective after the Office's management helped facilitate the interviews by assigning responsible informants. Informants sharing their opinions regarding challenges in the asylum procedures and Dublin transfers were open and very reflexive. This enriched the data gathered through the interviews. The Office for Foreigners also assigned experts to participate in the MGN meeting. Although this decision required several reminders, eventually their presence was possible and helped diversify attendance. As far as active participation is concerned, their voices were mostly heard in response to criticisms concerning either the asylum procedure or reception conditions (important for meso-level interviews);
5. The MGN meeting participant list and the expert interviews lacked representatives from the Ministry of Interior and Administration, despite efforts to involve them. In fact, their opinions could have shed more light on the practices described by the Office for Foreigners and the Border Guard in the interviews and during the MGN meeting (important for meso-level interviews);
6. Due to various factors, it was not possible to conduct several interviews with Border Guard representatives operating in various areas. Since at most 1-2 interviews could be conducted with Border Guard representatives, the research team decided that the interviews should be at the central level, rather than border-crossing points, where the law on border controls, asylum, and migration management is implemented. Two representatives responded to the MGN meeting and interview invitation and in the end only one individual participated. The opinions shared by the Border Guard representative reflected the known stance of the Border Guard, seen in their responses to requests for intervention at the most common border-crossing point for asylum seekers in Poland (important for meso-level interviews);
7. One of the problems encountered stemmed from restricted access to the centres for asylum seekers and reception centres in Poland. In order to get permission to enter and

conduct research there, one needs to submit an official motion to the Head of the Office for Foreigners. To conduct micro-level interviews, the researchers from the Centre of Migration Research visited three centres for foreigners. Official approval was needed each time and processing the motions took about one week. In addition, the visit to one of them was delayed due to sanitary problems at the centre—also the reason for a previous rejection of entrance (important for micro-level interviews);

8. The gender of the interviewer was relevant. In the case of migrants from Chechnya; male respondents were more reluctant to talk to female interviewers (important for micro-level interviews);
9. Another challenge was recruiting asylum seekers willing to participate in the interviews. The researchers approached potential participants in the centres' common spaces, such as backyards, corridors, and kitchens. A majority of asylum seekers refused. Only in one centre were the residents given advanced notice by the manager about the researchers' visit and the possibility to talk about their experiences. Given the manager's facilitation and introduction of the project, it was easier to find respondents, and some individuals even approached the team (important for micro-level interviews);
10. Another difficulty related to the interviews conducted in the Centres for Foreigners was the possibility of compromised anonymity due to lack of privacy. A majority of the interviews were conducted in common rooms and so they were interrupted from time to time by people passing by, including centre employees. Therefore, the employees knew who gave interviews and could have passed this information to their superiors. In addition, an employee in Targówek looked through the questionnaire after asking the researcher to show it to him (important for micro-level interviews);
11. Finding respondents living outside the centres for foreigners (either asylum seekers or refugees) was particularly difficult. Without hiring gatekeepers (employees of Foundation Ocalenie, an NGO helping asylum seekers and refugees), it probably would not have been possible to find respondents from particular groups like Syrian refugees (speaking Arabic) or Chechen male refugees (who usually are not willing to talk openly about their private experiences, especially with unknown women). In order to find respondents from other groups (Chechen women and Ukrainian women and men), researchers from the Centre of Migration Research used their professional contacts. Owing to the engagement of the gatekeepers, who encouraged the forced migrants to take part in the research and to give consent to contact them, the researchers were able to successfully conduct the interviews. However, some of the migrants refused to participate in the study in the end. There were also instances of constantly postponing the meeting date. Two interviews were conducted in two parts with more than a one-month intermission due to the interviewees' time constraints. This could have disturbed the atmosphere of the interview and the comfort of the respondents, although it did not seem to impact their answers (important for micro-level interviews);
12. An additional significant limitation was related to over-exploitation of the respondents. For a majority of them, it was not the first interview they'd given for research purposes. They had talked about their experiences for the purposes of academic studies, NGOs' research, and/or journalists' investigations. Re-telling their stories brought back sad and often traumatic memories about their journey and reasons for why they fled their countries. Some cried at the reminder of traumatic experiences, which made it difficult to move on with subsequent questions.

All research activities were conducted with full awareness of the ethical guidelines common to the RESPOND consortium and were implemented in line with the project's ethical principles. This is visible in the efforts to anonymise personal and sensitive data, among other decisions. Following the consortium requirements, an ethical application was submitted by the Polish team to its institutional ethical board at the Centre of Migration Research of the University of Warsaw and ethical clearance was granted for all components of fieldwork in Poland.



# 1. Background of the National Legal and Institutional Framework

As of 2019, 30 years have passed since the beginning of Poland's systemic transformation that affected all dimensions of the state's functioning—political, social, and economic. At the same time, 2019 is the 15<sup>th</sup> anniversary of Poland's membership in the EU and 12<sup>th</sup> anniversary of joining the Schengen area. Undoubtedly, these three decades have had a major impact on Polish asylum policy and the context of European integration progress in the Central and Eastern Europe region particularly. The beginning of the 1990s meant the opening of Poland to intensified international migration and international cooperation.

The period of the Polish People's Republic (1952-1989) did not leave the country with solid foundations for national asylum policy. At that time, Poland did not participate in international and regional refugee protection systems as it was neither a party to the Geneva Convention nor part of the ongoing process of European integration in Western Europe and its structures (Florczak, 2003, p. 7). The legal framework of the refugee protection system in Poland gradually became the result of the implementation of international law, EU law, and national law. It was only in 1991 that Poland joined the Convention Relating to the Status of Refugees of 28 July 1951 adopted in Geneva<sup>10</sup> and the Protocol on the Status of Refugees, declared in New York on 31 January 1967<sup>11</sup>, thereby acknowledging and adopting the *acquis* of international refugee law along with the consequences of its provisions. This was directly influenced by a turnover in 1990 when about a thousand people coming from Sweden to Poland (but not Swedish nationals) wanted to apply for international protection. At that time, Poland did not have adequate legal tools to handle such cases on its own as it was not party to the Geneva Convention (Górny, et al., 2017, pp. 9-10) (Florczak, 2003, pp. 97-107) (Weinar, 2006, p. 79). In the following years, migrations, including forced ones, were becoming a regular rather than temporary phenomenon that required the development of permanent legal and institutional solutions. Therefore, international cooperation in this area was necessary to build an institutional framework and a legal regime from scratch (Florczak, 2003, p. 12).

Since late 1980, Poland has experienced some major turning points in the formulation and development of its asylum policy, including Poland's transition from a communist state in the Soviet bloc to a democratic state with a market economy, preparations for the EU accession in 2004 and joining the Schengen zone in 2007, subsequent EU membership, and finally, the migration and refugee crisis in Europe whose peak coincided with the presidential and parliamentary elections in Poland of 2015<sup>12</sup>.

Only the second decade of the 21<sup>st</sup> century contributed to the growing interest in refugee issues in Poland in public and political discourse and media narration. However, this did not result from key changes in the forced-migration situation in the country such as the increased number of people applying for international protection or significant reforms to the asylum system. This was particularly related to the changing migration landscape in Europe

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<sup>10</sup> For further information, see (UN General Assembly, 1951).

<sup>11</sup> For further information, see (UN General Assembly, 1967).

<sup>12</sup> For further information about the key developments after 1989 in the field of immigration to Poland and Polish migration policy, see 'Section 2.1. A brief history of immigration and migration policy development' in (Szulecka, et al., 2018b, pp. 21-23).

and its neighbourhood and the EU's response to these developments. The new decade also brought several serious terrorist attacks in EU Member States, including France (Paris in 2015 and Nice in 2016), Belgium (Brussels in 2016), Germany (Berlin in 2016) and the United Kingdom (London in 2017). At the same time, the inflow of Ukrainians to Poland grew due to the armed conflict in eastern Ukraine with Russian involvement and its unstable political and economic situation. The year 2015 was marked by an important political shift in Poland. As a result of the presidential and parliamentary elections, the Law and Justice party—considered right-wing, conservative and populist—came to power. The new government favoured (or even intentionally provoked) the politicisation of the issue of refugees in public media and strengthened its anti-immigration, anti-refugee, and even anti-European narrative. This, in turn, translated into growth of negative public attitudes towards receiving asylum seekers and refugees in Poland<sup>13</sup>. This coincidence of various external and internal factors has led to growing interest in issues concerning migration and state security in Poland. According to some opinions, it can be stated that the noticeable presence of the refugee topic in Polish media and political discourse in recent years was only to a small extent due to a real influx of people seeking protection to Poland (Górny, et al., 2017, p. 7).

The next two parts of this section of the report provide a brief overview of the national legal and institutional framework in the field of asylum policy in Poland as of 2019 and present its key developments since 2011<sup>14</sup>.

### **1.1. Overview of the National Legal and Institutional Framework<sup>15</sup>**

The legal framework in the field of asylum encompasses national, European, and international legislation. The fundamental, national legal act is the Constitution of the Republic of Poland (1997). It states only a general protection of rights and access to international protection (Article 56), indicating that the details are specified in the relevant laws. To be more precise, Paragraph 1 of Article 56 stipulates that: 'Foreigners shall have the right of asylum in the Republic of Poland in accordance with principles specified by statute' (in this provision asylum, in Polish 'azyl', is understood as a national form of protection), and is followed by Paragraph 2 stating that: 'Foreigners who seek protection from persecution in the Republic of Poland, may be granted the status of a refugee in accordance with international agreements to which the Republic of Poland is a party' (Article 56). The Constitution does not discuss the division of competences between ministries and the details of local governance, which means that the institutions involved in managing migration are not mentioned in this act. The execution of this right is regulated in the Law on Protection (Szulecka, et al., 2018b, pp. 29-30).

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<sup>13</sup> For further information, see (Górak-Sosnowska & Pachocka, 2019) (Horolets, et al., 2019) (Klaus, 2017) (Klaus, et al., 2018) (Legut & Pędziwiatr, 2018) (Mołęda-Zdziech, et al., 2020).

<sup>14</sup> They are mainly based on two previous national reports prepared and published under the RESPOND project that cover the legal and policy framework of migration governance in Poland and border management and migration control. For more, see (Szulecka, et al., 2018b) and (Szulecka, 2019). All three reports, including this one, are complementary and only together provide a full overview of the refugee situation and corresponding asylum policy in Poland.

<sup>15</sup> For further information about the legal framework in the field of asylum in Poland, see (Szulecka, et al., 2018b), 'Section: 3. The constitutional organisation of the state and constitutional principles on immigration and asylum (pp. 27-30)' and 'Section 4. The relevant legislative framework in the fields of migration and asylum' (pp. 31-38).

There are also other general provisions of the Constitution (1997) that are relevant for asylum (and migration) policy and for people of different legal statuses in Poland:

1. Article 32: '1. All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities. 2. No one shall be discriminated against in political, social or economic life for any reason whatsoever'.
2. Article 40: 'No one may be subjected to torture or cruel, inhuman, or degrading treatment or punishment. The application of corporal punishment shall be prohibited'.
3. Article 41. '1. Personal inviolability and security shall be ensured to everyone. Any deprivation or limitation of liberty may be imposed only in accordance with principles and under procedures specified by statute'.
4. Article 47: 'Everyone shall have the right to legal protection of his private and family life, of his honour and good reputation and to make decisions about his personal life'.
5. Article 68: '1. Everyone shall have the right to have his health protected. (...). 3. Public authorities shall ensure special health care to children, pregnant women, handicapped people and persons of advanced age'.
6. Article 70: '1. Everyone shall have the right to education. Education to 18 years of age shall be compulsory. The manner of fulfilment of schooling obligations shall be specified by statute. 2. Education in public schools shall be without payment. Statutes may allow for payments for certain services provided by public institutions of higher education'.

The main legal acts regarding asylum policy and related issues (e.g., reception conditions and detention) in Poland are presented in Table 5<sup>16</sup> while the main implementing decrees, administrative guidelines, and regulations are indicated in Table 6<sup>17</sup>. Due to membership in the European Union, Poland participates in the Common European Asylum System (CEAS). Therefore, as an EU Member State, Poland is obliged to transpose directives and other CEAS measures into national legislation. Those regarding the asylum policy are presented in Table 7<sup>18</sup>.

As indicated by the Office for Foreigners (Office for Foreigners, 2019), Poland is legally bound by the following international legal acts regarding migration and asylum (in chronological order of documents):

1. Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, Rome,
2. Convention Relating to the Status of Refugees, 28 July 1951, Geneva,
3. European Agreement on the Abolition of Visas for Refugees, 3 September 1960, Strasbourg,
4. Protocol Relating to the Status of Refugees, 31 January 1967, New York,
5. European Agreement on Transfer of Responsibility for Refugees, 16 October 1980, Strasbourg,
6. Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, 22 November 1984, Strasbourg,
7. Convention on the Rights of the Child, 20 November 1989, New York,

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<sup>16</sup> See 'Appendices'.

<sup>17</sup> See 'Appendices'.

<sup>18</sup> See 'Appendices'.

8. Agreement between the Swiss Confederation and the Republic of Austria regarding the establishment and functioning of the International Centre for Migration Policy Development (ICMPD), 1 June 1993, Vienna,
9. Agreement between the Minister of the Interior and Administration of the Republic of Poland and the International Organization for Migration on cooperation in the field of voluntary returns of foreigners leaving the territory of the Republic of Poland, 12 July 2005, Warsaw.

Table 3 indicates the key public authorities involved in migration and asylum governance in Poland. In addition to the above-mentioned actors, other actors involved in the asylum procedure in practice by providing different forms of assistance to migrants during the procedure also play an important role, including international organisations (e.g., UNHCR), NGOs (e.g., providing legal and psychological support or other support in the centres for foreigners such as childcare, language teaching, housing, etc.) and numerous local actors (e.g., neighbours, communities, school teachers, etc.).

**Table 3 List of public authorities involved in the migration and asylum governance**

Authority (English name and abbreviation, <i>Polish name and abbreviation</i> )	Government level (national, regional, local)	Type of organisation	Area of competence in the fields of migration and asylum
Ministry of the Interior and Administration (MIA) <i>Ministerstwo Spraw Wewnętrznych i Administracji (MSWiA)</i>	National (implementation of laws at the level of the governmental administration in regions—voivodeships)	Government	Supervision of the Border Guard; elaboration of migration policies; proposing laws linked to migration and asylum; supervising voivodeship department offices in the issuance of residence permits and work permits; issuing return orders in specific cases involving a threat to national security due to terrorism and espionage activities
Ministry of Foreign Affairs (MFA) <i>Ministerstwo Spraw Zagranicznych (MSZ)</i>	National	Government	Elaboration and implementation of visa policies; supervision of Polish consulates
Ministry of Family, Labour and Social Policy (MFLSP) <i>Ministerstwo Rodziny, Pracy i Polityki Społecznej (MRPiPS)</i>	National (implementation of laws at the local level)	Government	Elaboration and implementation of policies concerning the integration of foreigners, social assistance and employment of foreigners; supervision of regional and local labour offices responsible for issuing short-term permits for foreigners to work; coordinating the work of local

			family-support centres and local centres of social assistance
Office for Foreigners (OF) <i>Urząd do Spraw Cudzoziemców (UdSC)</i>	National with local branches	Governmental administration	Processing applications for international protection in the first instance; processing appeals to decisions on residence permits in the second instance; coordinating social assistance for asylum seekers; processing appeals to decisions on return issued by the Border Guard
Refugee Board (RF) <i>Rada do spraw Uchodźców (RdsU)</i>	National	Public administration	Processing appeals to decisions on granting international protection in the second instance
Straż Graniczna (SG) <i>Border Guard (BG)</i>	National with regional and local units	Public administration	Protection of state border; border control; control of legality of stay and employment of foreigners; receiving applications for international protection; running detention centres for foreigners; issuing return orders and (if applicable) permits for stay due to humanitarian reasons and permits for tolerated stay

Source: based on (Szulecka, et al., 2018b, pp. 70-71), updated.

Figure 4 presents the refugee procedure scheme in Poland taking into consideration the key public authorities indicated in Table 3. It refers to the procedure for granting international protection regulated by the provisions of the Law on Protection<sup>19</sup>. As stipulated in Article 3 of this law, a foreigner may be granted protection in the form of refugee status, subsidiary protection, temporary protection, and asylum. The first three forms of protection are international, while asylum (in Polish ‘azyl’) is a national form of protection. In the case of refugee status and subsidiary protection, ‘the procedure is unified, which means that a person seeking protection applies for international protection, and the proceeding regarding this application may end with granting either refugee status or subsidiary protection’ (Szulecka, et al., 2018b, p. 44). Temporary protection, as stipulated in Article 106(1) of the Law, is granted to groups of foreigners ‘arriving to the Republic of Poland in great numbers, who have left their country of origin or specific geographical area for the reason of foreign invasion, war, civil war, ethnic conflicts or serious violation of human rights, regardless of whether their arrival was spontaneous or aided by the Republic of Poland or by the international community’. So far, this legal tool has never been implemented by Polish authorities. Asylum is understood as a legal tool to grant a national form of protection in

<sup>19</sup> To learn more about the legal statuses of asylum seekers, beneficiaries of protection (international and national ones), and undocumented migrants and unaccompanied foreign minors where the issue of granting a form of protection in Poland is concerned, see (Szulecka, et al., 2018b), ‘Section 5. The legal status of foreigners’ (pp. 39-60).

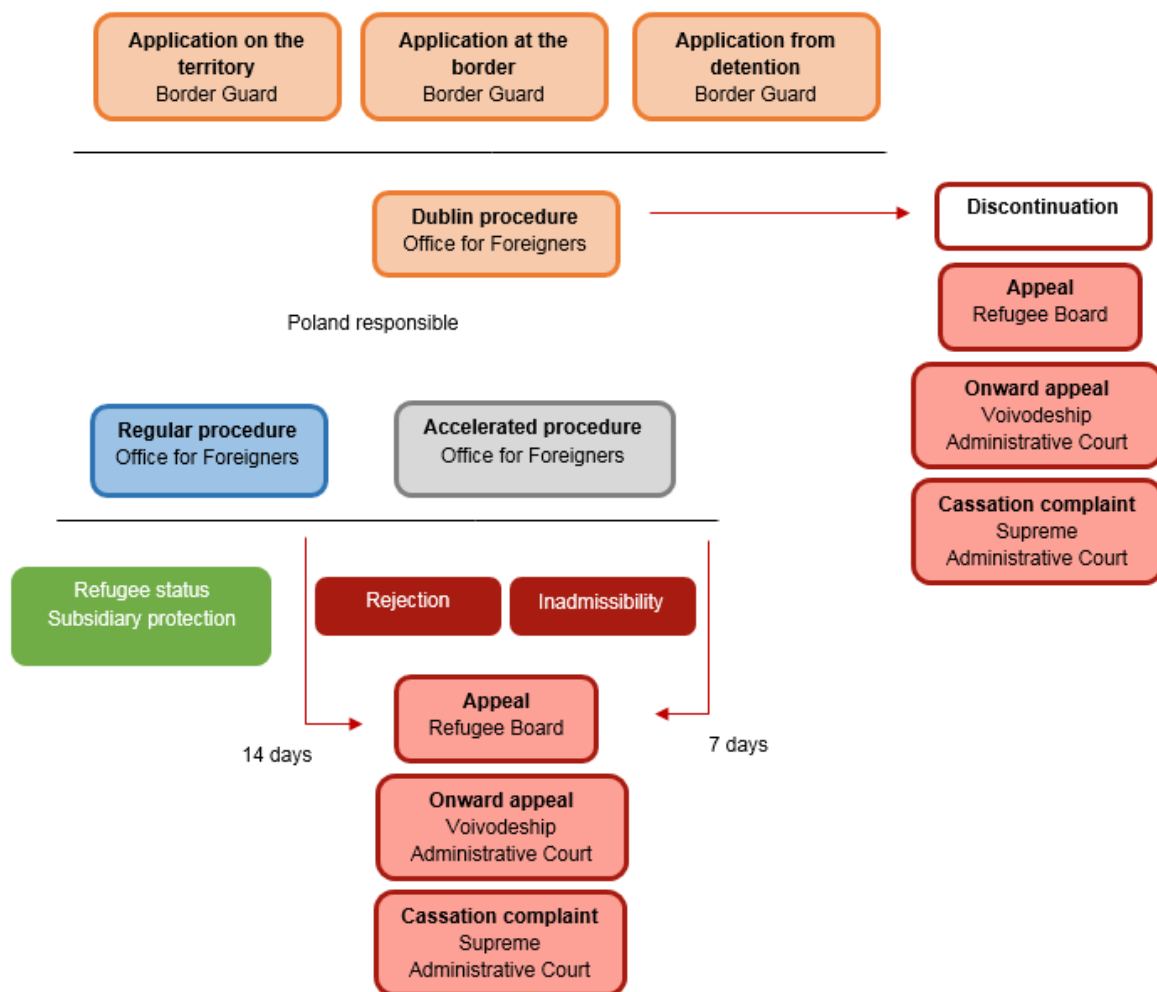
Poland, as said in Article 90 of the Law: 'Upon his/her request, a foreigner may be granted asylum in the Republic of Poland if it is necessary for providing him/her with protection and if it is in a good interest of the Republic of Poland'<sup>20</sup>. At this point, it is worth mentioning two other legal solutions—special permits stipulated in the Law on Foreigners (Articles 348-359)—allowing a foreigner to stay in Poland under specific circumstances: a permit for stay due to humanitarian reasons and a permit for tolerated stay:

If foreigners do not meet the conditions for granting international protection, but still cannot be returned to their countries of origin, they are granted special permits, which are in fact not mentioned as a form of protection in the Law on Protection, but the reason of their issuance is rooted, among others, in a previous national form of protection, namely the permit for tolerated stay. It is for this reason that the permit for stay due to humanitarian reasons or permit for tolerated stay are perceived as national forms of protection. However, they are regulated in the Law on Foreigners. These permits are issued by the Border Guard as part of the procedure for issuing return orders. Since 2014, it is obligatory for the Border Guard to check whether a person who is to be ordered to leave should be granted protection. The grounds for granting this kind of protection include situations in which a person's return would infringe either on their human rights and/or their children's rights, when return is impossible due to technical reasons, or situations in which returning to a given country of origin are such that granting this type of protection is merited (Szulecka, et al., 2018b, p. 51).

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<sup>20</sup> To learn more about the asylum procedure in Poland, see Law on Protection, (Szulecka, et al., 2018b, pp. 44-50), and (Asylum Information Database (AIDA), 2019a).

**Figure 4 Overview of asylum procedure in Poland**



Source: (Asylum Information Database (AIDA), 2019a).

## 1.2. Important Developments since 2011<sup>21</sup>

Important developments in asylum law and policy (including institutional aspects) in Poland since 2011 are summarised in Table 4.

**Table 4 Development of migration and asylum laws and policies – overview**

Year	Introduction of laws/changes in the law	Institutional and political changes
2011	Amendment to the Law on Protection, including, among others, the possibility of relocation and resettlement of foreigners to Poland; specification of conditions for providing social assistance and medical aid to asylum applicants and providing assistance in voluntary returns; specification of the conditions of apprehension and detention of asylum seekers (Journal of Laws of 2011 no 191, item 1133)	
2012	Introduction of Law on Regularisation of Stay of Particular Foreigners on the Territory of Poland (Journal of Laws of 2011 no 191, item 1133) (passed in 2011, lasted for the first half of 2012) including provisions on the possibility of obtaining a residence permit by failed asylum seekers (who received negative decisions and were ordered to leave before Jan. 1 <sup>st</sup> , 2010 yet were staying irregularly in Poland) or asylum seekers having applied for international protection several times (being in the course of a subsequent procedure after Jan. 1 <sup>st</sup> , 2010)	Polish government's acceptance of a strategic document on migration policy ('Polish migration policy—the current state and recommended activities')
2014	Introduction of the new Law on Foreigners of 2013 (Journal of Laws of 2013, item 1650), implementing, among others, the EU directive on single permits, prolonging the maximum period of stay in the territory of Poland based on the temporary residence permit from 2 to 3 years, introducing a permit for stay due to humanitarian reasons and modifying the permit for tolerated stay	Acceptance by the Polish government of the plan of implementation of the strategic document on migration policy accepted in 2012
2014	Introduction of an amendment to the Law on Protection, implementing the 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	

<sup>21</sup> The key legal changes and proposed reforms in the field of asylum law and policy are discussed in detail in (Szulecka, et al., 2018b), 'Section 6. The refugee crisis driven reforms (or reform proposals)' (pp. 61-64), and in (Szulecka, 2019), 'Section 3. Developments since 2011' (pp. 14-18).



	granted (recast)	
2015	Introduction of amendments to the Law on Protection, including, among others, provisions on the relocation to Poland of persons with international protection granted by other EU countries and the introduction of provisions of access to free of charge, legal aid for asylum seekers	A decision on relocation to Poland of asylum seekers from other countries, withdrawn after the change of government in October 2015
2016	An introduction to an amendment to the Law on Protection including reference to issues linked to state security in the context of the relocation of foreigners	Annulment of the strategic document on migration policy accepted in 2012; the beginning of work on new migration policies responding to changed migration challenges Declaration of Visegrad countries (V4) on the establishment of 'Migratory Crisis Mechanisms' for the coordination of assistance to asylum seekers in regions of origin and improvement of information exchange
2017	Announcement of a proposal for amending the Law on Protection, including the introduction of border procedures, lists of safe countries of origin and safe third countries and a change of the appeal body in asylum procedures	Establishment of Migration Crisis Response Mechanism by V4 countries; initiative aimed at providing support for EU countries experiencing the highest inflow of asylum seekers, addressing root causes in regions of origin and the improvement of information exchange between different countries and institutions
2018	Introduction of an amendment to the Law on Protection and the Law on Foreigners linked to the reform of laws on entrepreneurship and the implementation of EU directives on mobility in the framework of an intra-corporate transfer	
2019	Announcement of a revised proposal for amending the Law on Protection, including the introduction of border procedure, lists of safe countries of origin and safe third countries	

**Source: (Szulecka, et al., 2018b, pp. 34-37), shortened and updated.**

## 2. Asylum Procedure and Refugee Protection: Practices, Experiences, and Perceptions

In this section of the WP3 report, we focus on the practices, experiences, and perceptions regarding the asylum procedure and refugee protection in Poland. This part provides important insights from the meso- and micro-level semi-structured interviews, as well as relevant documents and literature to explain, contextualise, and complement these practices and experiences. Extended quotations from the interviews are used, as agreed within the RESPOND consortium, to flesh out relevant results from our fieldwork. Special attention is paid to cross-topics regarding vulnerable groups.

### 2.1. Key Actors, Cooperation among Governance-levels and Experiences

The area of refugee protection and asylum policy includes a long list of state and non-state actors at various levels. Their role may be top-down, strongly formalised and institutionalised as a result of being anchored in national, European, and international law or bottom-up, less formal, shaped by everyday practice and providing specific support to migrants themselves. Key national public authorities involved in the asylum procedure are indicated in the previous section of this report<sup>22</sup>. Here, the focus is put on the following main aspects of actor-related functioning in the area of international protection governance: the actors' identity and their role; the scope of their cooperation and its shortcomings; the migrants' experience related to contact with various actors while applying for a refugee status in Poland. As all these issues are intertwined, they ought to be discussed together. To this end, the main focus of this part of the report shall be the wealth of information gathered while conducting meso- and micro-level interviews, the aim of which was to give voice to those involved in asylum matters—representatives of different institutions and forced migrants. It is also complemented by quotations from official documents and subject literature.

Based on the respondents' input, an extensive map of actors was prepared. It contains public authorities such as the Border Guard and the Office for Foreigners supervised by the Ministry of Interior and Administration as well as UNHCR, IOM, the EU with its agencies (EASO, Frontex), several NGOs, and other EU Member States. With the scope of actors this broad, cooperation among them is a crucial factor. Knowing and developing personal relationships with people from other institutions involved in asylum policy **facilitates this cooperation, shortens administrative procedures, and reduces time-consuming bureaucracy**. The above applies not only to interinstitutional cooperation within a country but to regular international cooperation with EU agencies such as EASO and Frontex as well. An Office for Foreigners' expert commented on this:

(...) it is good to know the people you cooperate with as it makes communication easier and more efficient. Hence our business trips, study visits. Because then I call to France and say: 'Hi, I need this and that' instead of sending an official document and waiting for a reply for five weeks. The same rule applies here as well. You know there are consultation meetings with the Border Guard; whom to call on the Refugee Board when you have questions; that there are people you

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<sup>22</sup> For further information, see 'Section 1.1. Overview of National Legal and Institutional Framework'.

know in the ministry you can call to brainstorm a project or some changes in Dublin. So, we meet—the police, the Internal Security Agency, the office, the ministry. We sit at a table and discuss things. You know you can call the Central Forensic Laboratory of the Police where they conduct dactyloscopic analyses and ask about something. There was also a meeting recently with a Ministry of Foreign Affairs representative regarding the issuing of visas (PLMZOF1).

Polish public institutions **work with other Member State entities as well as EU agencies** on various occasions, such as **fieldwork abroad**. This was the case for the experts from the Polish Office for Foreigners posted to Italy in order to provide support:

In Italy, for example, they no longer need support in the so-called hotspots with receiving applications, interviewing people and so on. When it comes to the Dublin, however, they still do as they constantly receive new documents and whatever you can send it is sent (PLMZOF1).

The Dublin system and return policy consist of an important area of cooperation between EU Member States. For Poland, **Germany** is a key partner in this regard:

There are a lot of cases when they ask us what decision did, we issue in a specific [refugee] procedure so they can issue the same one because they don't have the time to initiate Dublin. (...) They let some people stay but they also return some of them. When it happens, we only help by returning the passports that we usually keep in deposit. We have a liaison officer from the German office here, so the cooperation is fairly smooth. (...) We mainly cooperate with Germany. They produce three-quarters of all the applications (...) (PLMZOF1).

**NGOs assess their role in the functioning of the asylum system** in Poland in practice as huge, because often—as they say—they, in fact, take the place of the state when it comes to implementing some activities and providing support for forced migrants.

All those conventions we signed obliging us [Poland] to do certain things need to be provided. The Office for Foreigners does not provide them during the refugee procedure and neither do the state institutions. This created a niche for specialised NGOs that do it really well. And let it be that way (PLMZSO1).

An appreciative representative of the Office for Foreigners who witnessed **the involvement of organisations** providing legal support to asylum seekers (for example, as legal representatives) in Poland remarked:

From my experience, people from the organisations [NGOs] who work there for years usually get more involved. I have representatives, legal advisers, and attorneys—professional lawyers anyway—that really take part in proceedings. You can really see that they care when you look at their work, the documents they send and the interest they show (PLMZOF2).

Despite the above, NGOs providing support to migrants in Poland **face difficulties resulting from the lack of financial resources**, which have been limited since 2016<sup>23</sup> when the new government of the Law and Justice Party changed the rules for financing

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<sup>23</sup> Although the first problems with the implementation of the AMIF in Poland began already in 2015 due to delays in their launch.

projects with the use of the Asylum, Migration, and Integration Fund (AMIF). In interviews with social organisations, the issue of the government's actions to limit the activity of NGOs supporting migrants was often raised. In recent years, this political approach/tendency has manifested itself, among others, in limiting NGOs' access to EU funding, such as AMIF, among others, for projects aimed at providing legal assistance to migrants. This problem has already been highlighted in materials prepared by the organisations themselves, as well as literature and international reports<sup>24</sup>. One of the findings reported by the UNCHR and the ECRE in their joint publication on the evaluation of the use of AMIF support at the national level between 2014 and 2018 was:

The most significant impact in this area was noted in the evaluation of Poland, where the October 2016 cancellation of their national migration policy resulted in the single AMIF Call for Proposal issued in 2015 being withdrawn, and the suspension of decisions on the outcomes of the three Calls for Proposals issued in 2016. The evaluation acknowledges how the AMIF has been the sole source of meaningful support for activities in the areas of migration, asylum and integration in Poland, and the unavailability of national AMIF funding during 2014-16 therefore has incurred significant consequences, both for the ongoing financial viability of potential beneficiary organisations and the support available for AMIF target beneficiaries in Poland during this period (United Nations High Commissioner for Refugees (UNHCR), European Council on Refugees and Exiles (ECRE), 2019, p. 43).

EU funds have been the main and often only source of funding for NGOs supporting migrants for years. The use of these funds, including those managed by public authorities like the Ministry of Interior and Administration, did not result in top-down political pressure on the beneficiaries. As one NGO expert stressed:

(...) they were EU funds, not government funds. They passed through the Ministry of Interior, but it was never a problem. We never met with a reaction along the lines of 'if you want to use this money, you'd better stop bombarding us with concerns and requests and so on'. We did our jobs. When we did not like some regulations or enforcement practices, we just hit the ministries (PLMZSO1).

The change of government in late 2015 led to changes in the way EU asylum policy funds were assigned and who the beneficiaries were. As one NGO representative stated:

Then the government changed and launched a policy that amounted to withholding the financing for non-governmental bodies from AMIF appropriations. AMIF itself functions and is used by the government for other limited projects. But this entire sector [of NGOs] was supported from these funds—the diversity of projects, target groups and activities. We had legal, integrational, and research operations, and there were numerous other integrational and educational projects (PLMZSO4).

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<sup>24</sup> To learn more, see (Klaus, 2018), (Klaus, et al., 2017), (Kosowicz, 2015), (Mołęda-Zdziech, et al., 2020), (Szałańska, 2019), (United Nations High Commissioner for Refugees (UNHCR), European Council on Refugees and Exiles (ECRE), 2019).

In 2016, in its announcement on the launch of **two new calls for project proposals** under AMIF, the Ministry of the Interior and Administration indicated that the launch of new competitions resulted from the current challenges faced by the Polish immigration policy. As explained by the Ministry, the new calls were to put more emphasis on social expectations and the needs of government and local government administration units involved in the process of adaptation and integration of foreigners. The Ministry pointed out that the migration crisis, the increase in terrorist attacks in Europe, and the growing concerns about the impact of the migration situation on internal security caused the necessity to assess the activities implemented so far. As part of this evaluation, the Ministry of the Interior and Administration, in cooperation with the Ministry of Family, Labour, and Social Policy, conducted a detailed analysis of the assumptions of the already announced call no. 3/2015 of AMIF and, as a result, decided to cancel it and start new calls. Projects within the first call were to cover widely understood pre-integration activities addressed to asylum seekers and activities related to their material support, assistance at the border, translator assistance, training, healthcare, and social assistance. In the second call, the aim was not only to introduce regular immigrants into Polish society and local communities to facilitate the adaptation of migrants to the local cultural, social, and legal environment but also to support local communities of Poles, among which migrants should find their place<sup>25</sup>. Consequently, two new calls were announced in April 2016—nos. 4/2016 and 5/2016—and they corresponded to two priorities within two different specific goals stipulated in the AMIF National Programme 2014-2020 respectively. Call no. 4/2016 referred to *Specific Goal: Asylum and its National Priority: Reception/ Asylum*, while call no. 5/2016 concerned *Specific Goal: Integration/ Legal migration and its National Priority: Integration/ Legal migration*<sup>26</sup>. Therefore, call no. 4/2016 encouraged applications for actions aimed at: 1. Providing material assistance, assistance at the border, ancillary services (translation and interpretation, education, training, including language, pre-integration activities), health and psychological care, social assistance, addressed to applicants for international protection in Poland, and 2. Information activities directed at local communities regarding persons applying for international protection in Poland<sup>27</sup>. Under this call, the applications assuming a partnership with the Office for Foreigners were to be awarded additional points. The same year in August, the Ministry published another call—no. 6/2016—focusing both on *National Priority: Reception/ Asylum* and *National Priority: Measures accompanying return procedures* (within *Specific Goal: Returns*)<sup>28</sup>. Unfortunately, all three calls from 2016 were cancelled for no official, publicly communicated reason<sup>29</sup>. In 2017-2018, no new competitions were announced, which meant no opportunity to apply for national AMIF funds for many social organisations. It was not until 2019 that three calls were issued, of which call no. 11/2019/FAMI was dedicated to the *Reception/Asylum Priority*<sup>30</sup>. The scope of activities that could be financed was similar to the one from call no. 4/2016 with the addition of activities aimed at improving access to legal advice for persons applying for international protection in Poland. Its results were made public in October 2019 on the Ministry's website. Of the 15 projects on the ranking list, only six received approval for funding, among them those

<sup>25</sup> For further information, see (Ministerstwo Spraw Wewnętrznych i Administracji (MSWiA), n.d.).

<sup>26</sup> For further information, see (Ministry of the Interior and Administration (MIA), n.d.).

<sup>27</sup> For further information, see (Ministerstwo Spraw Wewnętrznych i Administracji (MSWiA), 2016a).

<sup>28</sup> For further information, see (Ministerstwo Spraw Wewnętrznych i Administracji (MSWiA), 2016b).

<sup>29</sup> For further information, see (Ministerstwo Spraw Wewnętrznych i Administracji (MSWiA), n.d.).

<sup>30</sup> For further information, see (Ministerstwo Spraw Wewnętrznych i Administracji (MSWiA), 2019a).

submitted by well-known NGOs dealing with migration such as the Polish Migration Forum Foundation and Ocalenie Foundation<sup>31</sup>. However, it should be clearly emphasized that the Ministry did not approve financial support for some organisations specialising in legal support for asylum seekers and refugees for years, entities whose experience and expertise in this area are indisputable and of key importance during the proceedings for granting international protection. This concerned the Rule of Law Institute Foundation, Halina Nieć Legal Aid Centre, and the Helsinki Foundation for Human Rights. In summary, after a three-year break in financing AMIF projects in the field of reception/asylum, the Ministry settled the competition, but only a small number of organisations received funding. Another issue is the feeling of some NGOs that receiving these funds under any of the aforementioned calls for projects after 2015 can be used as a political tool for their elimination by public authorities:

We didn't try to get more public funding because the competitions were more or less in that atmosphere. Some of the legal organisations that we cooperate with and are friends with did not try to get public funding as well. Some people did, some did not, but we trusted the intuition that if someone wanted to destroy us then trying to get public funding would definitely make it easier (PLMZSO5).

When asked about the **main entities with whom they cooperate** in the field of forced migration, an NGO expert indicated mainly actors in Poland:

(...) it was definitely the Office for Foreigners and the Border Guard as the main stakeholders, state institutions. Even if we argued with them, and we always did on some level, on other levels we had to cooperate to be able to do what we do. (...) Other NGOs are definitely very important. We cooperate formally with some, informally with others, more closely with some, less with others. But each organisation is engaged in a slightly different thing, so our actions for the benefit of refugees complement each other. For me this (...) cooperation is very important—our actions should complement each other instead of overlapping. We should keep in mind our primary objective—to work for the refugees' benefit as well as we can. So, where our competence ends, someone else's begins (PLMZSO1).

The same social organisation described **its relationship** with **key state actors** in refugee protection—**Border Guard** and the **Office for Foreigners**—as follows:

It is a relation of, on the one hand, cooperation and, on the other, ceaseless fighting. It's not schizophrenic, against all appearances, it's simply the reality we live in. (...) when it comes to the Border Guard and the Office for Foreigners, then in the context of the challenges we face this cooperation is necessary but it's also a constant clash. It's sometimes difficult to maintain the best relations we can but on the other hand, express emphatically that we don't like something. Sometimes we have to show more restraint—having our client's best interest at heart we know we can't be too aggressive. We play a game—either we pretend we don't get something or that we don't see that something is not right and only suggest that they missed some nuance (PLMZSO1).

NGOs also develop **contacts with international organisations** present in Poland such as UNHCR and IOM. With the latter one it is usually collaboration concerning voluntary returns.

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<sup>31</sup> For further information, see (Ministerstwo Spraw Wewnętrznych i Administracji (MSWiA), 2019b).

The role of international organisations and of various NGOs could be even greater if **relocation and resettlement** were implemented in Poland:

There would be a major role to play for the UNHCR or other international organisations if a relocation or resettlement system was to be implemented. From what I understand, this is the scope for action for international organisations that operate in a region where they can identify potential refugees and make it possible to bring them here. Be it the UNHCR, the Polish Centre for International Aid, or Caritas and their humanitarian corridors (PLMZSO1).

In Poland, **different actors have different options to monitor the situation at border-crossing points** regarding foreigners' access to the asylum procedure and the submission of international protection applications. The **Border Guard** is a state body directly responsible for migration control and receiving asylum claims. The **Ombudsman** also has full access to the border due to his competences. **NGOs** have limited access, and the **UNCHR** mandate—according to a representative of one of the NGOs—seems ambiguous. This is contextualised in the example of the Polish-Belarusian border-crossing point and the problems encountered by foreigners while attempting to submit an application for international protection. Difficult access to the refugee procedure at the border in Brest-Terespol was invoked several times in interviews with NGOs in the context of the phenomenon of pushback practiced by the Border Guard<sup>32</sup>. One NGO representative reported:

There [on the border], the situation is very difficult to control, normal rules do not seem to apply, even though they should, because access to the procedure is regulated by the Code of Administrative Procedure. The duty of the [Border] Guard is only to receive the application. I would definitely call it an unlawful approach. It is 100% policy, 0% merits (PLMZSO2).

Due to the situation on the border between Poland and Belarus since 2015 and the unwritten rule of limiting the number of persons or families admitted by the Border Guard to Polish territory as official applicants for international protection, the importance of such actors as the **Commissioner for Human Rights** and lawyers and bar associations has increased. The Ombudsman ensures proper access to the refugee procedure for everyone in need of protection, and lawyers perform actions related to the free legal support they provide (preparation of documentation, preparation for the initial interview). One NGO representative described this situation at Poland's eastern border as follows:

Generally, there are a few stages to crossing a border. As an individual, you have access to a border because you are crossing it—regardless of whether you are a citizen or not. The problem is that all this border crossing is organised in a certain way. Those that have a document or are Polish citizens from the Belarus side. This is the managed movement of people—last are the people that do not

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<sup>32</sup> To learn more about push backs and the role of the Ombudsman in this regard, see 'Section 2.2.1. Access to Asylum System and Submitting an Application for International Protection' and 'Section 4. Examples of Positive/Best Practices' of this report, as well as (Szulecka, 2019, pp. 44-46, 53-58), (Helsinki Foundation for Human Rights (HFHR), 2017), (Górczyńska & Szczepanik, 2016), (Helsinki Foundation for Human Rights (HFHR), 2019), (Human Constanta (HC), 2019), (Chrzanowska, et al., 2016), (European Union Agency for Fundamental Rights (FRA), 2019), (Halina Nieć Legal Aid Center (HNLAC), 2018).

have visas. They report to the Border Guard officers and declare that they would like to apply for asylum. At this point, the officer takes such a person aside and conducts a preliminary interview. He asks where a person is going, why, and for what reasons—no one can access the interview room apart from the Commissioner for Human Rights, who can monitor all administrative procedures that take place within the Polish borders as part of his mandate. The Commissioner's employees used to go there and still do. All other bodies had no access to these procedures and they still don't but none of them went there because there was no such problem. I don't want to speak for UNHCR (...) but there was also a problem of an ambiguity related to their mandate. On the one hand, they should have access to that place to be able to observe if the procedures are conducted in accordance with the law (PLMZSO4).

Referring to cooperation between various institutions and organisations, one of the social organisations noted that in 2015, before Law and Justice came to power, that the Polish authorities and competent public institutions had been preparing to **receive asylum seekers under the relocation scheme**. This was the case for the **Office for Foreigners** as a key public entity responsible for the implementation of asylum policy in the country but also for the Ministry of Labour and Social Policy, which sent a survey to municipalities in which they asked about the possibility of accepting refugees in terms of capacities and needs. According to the NGO expert, the Office was ready for this new situation and took actions to involve various stakeholders in the preparations:

I remember there was an alert in mid-2015 and arrangements were made (...) Our government decided to admit 7,000 people. The Office for Foreigners was very ready. They had all the necessary tools at their disposal. It was a laughable amount on a country scale—with their experience it wouldn't be a problem for them. They started to organise a lot of intersectoral meetings, invited other ministries, NGOs so that they would prepare everything as best they could. (...) I know that when the conflict in Ukraine started, the Office contacted many institutions like schools—places that could provide a lot of lodgings for people in a crisis situation (PLMZSO1).

## **2.2. Implementation of International Protection (Asylum) Policy**

The issue of asylum policy implementation and related practices and experiences is very extensive and complex. The legal and institutional framework of this policy in Poland has already been indicated in the previous section<sup>33</sup> with reference to the detailed findings discussed in the report WP1<sup>34</sup>. Here, the focus is put on selected aspects regarding this policy in terms of access to the asylum procedure and its course. The considerations are based on the qualitative material from micro- and meso-level interviews. This section uses some terms interchangeably to ensure fluidity of considerations. This applies to such expressions as:

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<sup>33</sup> See 'Section 1.1. Overview of National Legal and Institutional Framework' of this report.

<sup>34</sup> See (Szulecka, et al., 2018b).



- asylum policy and international protection policy,
- asylum procedure, refugee procedure, proceedings for granting international protection, proceedings for granting refugee status,
- asylum application, refugee application, asylum claim, application for (international) protection, application for asylum, application for granting refugee status.

Below, we recall the results of interviews regarding such issues as access to the asylum system and submitting an application for international protection, the situation during the asylum procedure, decisions concerning the application for international protection, and evaluation of the asylum system and suggested changes and improvements for the future. The material has been very significantly selected because of its richness, only to indicate selected issues. Each section covers one main theme/issue and include both meso- and micro-level results.

### **2.2.1. Access to the Asylum System and Submitting an Application for International Protection**

The vast majority of people submit their applications for international protection **when crossing borders**. However, applications may also be submitted by persons in detention, as well as by persons already on the territory of the Republic of Poland (they must report to any Border Guard post). At the stage of submitting the application for protection, it is very important to remember **the division of competences between the Border Guard**, which receives the applications, **and the Office for Foreigners**, responsible for the implementation of the proceedings. According to Polish asylum law, these institutions have no influence on their decisions in this respect. Foreigners may not have full knowledge on this subject and often count on the Office's intervention in the issue of the acceptance of their application by the Border Guard at the border-crossing points. This is illustrated by the following statement by a representative of the Office for Foreigners:

Foreigners keep trying. Certainly, they frequently inform us about their situation at the border. (...) they not so much ask us for help as simply send to our attention all the documents, appeals, letters that they direct at the Border Guard, including appeal against rejection decisions. It used to happen and it still happens that they write to inform us that on such and such day they will be at the border and they would like to submit an application, so they inform us in advance and they also send a similar letter to the Border Guard to inform that on such and such day they would come to submit an application. (...) As the Office we can't interfere in another body's operations, the commanding officer of the Border Guard being such a body. We can't act on such information. All we can do is forward any letters or documents we receive to the Border Guard Headquarters' department for control, complaints, and requests. (...) regulations do not allow us to interfere, so we don't. What we can potentially do is to inform the Border Guard that such a person will appear and is going to want to submit an application, but that we got this information from that person (PLMZOF2).

During the interviews, the respondents from social organisations drew attention to cases where **forced migrants had limited access to submit their application** for international

protection on the Polish border and pointed out that the Border Guard's practices play a key role here. This is connected to the already mentioned phenomenon of **pushback** on the eastern border between Poland and Belarus (crossing point in Brest-Terespol) to which NGOs such as the Helsinki Foundation for Human Rights (HFHR) and the Association for Legal Intervention have devoted a lot of attention since 2015. They carried out monitoring of access to the procedure for granting international protection at selected border-crossing points in Poland and published thematic reports<sup>35</sup>. The situation at border crossings is difficult to monitor and prove because many practices are informal and, in addition, the list of actors that have access to the border is very short, including the Border Guard and the Ombudsman (Commissioner) for Human Rights and the Ombudsman (Commissioner) for Children's Rights. As one NGO expert stressed in this regard:

(...) people are denied entry at the border-crossing point in Brest-Terespol on a massive scale. It's another idea of the Border Guard, though they were probably acting on instructions from the top for the last two years—an idea for managing forced migrations—let's not allow people to enter. (...) I have an impression that it's another of those situations when nothing can be clearly proven. But based on our experience and these observations, we have no doubt that if a person arrives at the border and says 'I fear persecution, I'd like to have refugee status', he or she should be instantly admitted and the application processed by the Office for Foreigners (...). The Border Guard pretends they don't hear those applications for protection and (...) these people report [to NGOs] and say 'we ask for protection'. And the Guard says 'no—had they asked we would admit them, but they only told us about economic reasons for entry'. And that's what happens in the place—no one is allowed to enter. (...) That wretched Terespol serves as an example again—refugees keep being refused admission and the Border Guard keeps pretending they don't hear voices regarding protection. (...) The Ombudsman [for Human Rights] and the Ombudsman for Children are the only two bodies allowed access. And they did monitor the situation a few times and did report a number of situations in which they heard that people expressly or tacitly asked for protection and the applications were not received because the people were turned back to Brest. The Ombudsman for Human Rights conducted such observations once and the Ombudsman for Children, two times, or the other way around, I don't know (PLMZSO1).

The situation on the Polish eastern border, which is also part of the EU external border, is very complex both in legal and political terms. In 2019, the Helsinki Foundation published a detailed report analysing the legal and political conditions of access to the asylum procedure at Poland's external borders since 2015. The authors aimed to summarise 'a series of rulings delivered by national administrative courts on account of complaints concerning the entry refusal decisions lodged by foreigners claiming they had expressed the intention to seek international protection at the border' (Białas, et al., 2019, p. 1). Consequently, they

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<sup>35</sup> To learn more about pushbacks and the role of the Ombudsman in this regard, see 'Section 4. Examples of Positive/Best Practices' of this report and (Szulecka, 2019, pp. 44-46, 53-58), (Helsinki Foundation for Human Rights (HFHR), 2017), (Górczyńska & Szczepanik, 2016), (Helsinki Foundation for Human Rights (HFHR), 2019), (Białas, et al., 2019), (Human Constanta (HC), 2019), (Chrzanowska, et al., 2016), (European Union Agency for Fundamental Rights (FRA), 2019), (Halina Nieć Legal Aid Center (HNLAC), 2018).

studied, among others, 25 judgments of the Supreme Administrative Court concerning the refusal of entry of potential asylum seekers in 2015-2018 and refusal of entry cases pending before the ECtHR, as well as planned amendments to the asylum law in Poland. As a result, they came to conclusions that show that:

1. Polish asylum provisions do not implement Article 6(1) of the Asylum Procedures Directive correctly, because 'the foreigner enjoys rights established in EU and national asylum law only from the moment of formal submission of an application for international protection on the official form to the Border Guard' (Białas, et al., 2019, p. 15);
2. Some foreigners were deprived of the right to apply for asylum at the eastern border and the Border Guard's practices were systemic, which violates the provisions of the Asylum Procedures Directive in the field of access to asylum (Białas, et al., 2019, p. 15);
3. Polish authorities did not implement several interim measures issued by the ECtHR, and foreigners refused entry were sent back to Belarus, which meant a violation of the European Convention on Human Rights (ECHR) (Białas, et al., 2019, p. 15);
4. 'All of the decisions on refusal of entry challenged before the administrative courts were overruled and a violation of national law was found in those cases.' At the same time, in most cases, these courts discontinued administrative proceedings and, as a consequence, the foreigners could not have their cases re-examined (Białas, et al., 2019, p. 16).
5. 'The Administrative Supreme Court indicated in numerous cases that interviews conducted at the border must be recorded in the form of protocols signed by both Border Guard officers and foreigners.' In addition, foreigners have the right to be assisted by their lawyers, if they appeared at the border at the time of the border control. To this end, the Ministry of the Interior and Administration, 'refused to introduce amendments to national law to ensure its compliance with the established case-law of administrative courts' (Białas, et al., 2019, p. 16).

**Another informal practice** reported by the social organisations during the RESPOND interviews is the way in which **the questions are formulated** by the Border Guard officers during border control. In this regard, an NGO expert claimed:

(...) it should be added that people are being asked tricky questions. For example, they are asked, 'are you going to work here?' People answer, 'yes, I am going to work here'. Then, 'aha, you came here to work, see you, you're not a refugee'. Every normal person, apart from wanting protection, also wants to work and earn a living for his/her family. There are many more examples. The whole process is designed to turn back as many people as possible. Of course, there's also the separate matter of the method of documentation, that people don't receive any document saying that they were denied entry to Poland based on this and that (PLMZSO2).

Equally important is the practice regarding **the way of receiving applications for international protection by Border Guard officers**, which were observed by employees of the Helsinki Foundation during the submission of applications by foreigners at the Warsaw-Okęcie Border Guard Post and Border Guard Post in Warsaw (both of these posts accept the largest number of applications submitted on the territory of Poland). Foundation employees observed irregularities in preventing foreigners from providing full explanations regarding the reasons for applying for international protection in Poland. BG officers

encouraged applicants to include in the application form only the main reasons for applying for refugee status, without going into detail. However, as stressed by the Helsinki Foundation in its official letter to the Commander-in-Chief of the Border Guard from August 2019, too general and short explanations at the stage of submitting the application may lead to questioning the credibility of the foreigner by the administrative authorities that will handle the foreigner's case in the first and second instance. Therefore, it is in the interest of the foreigner to indicate the fullest reasons for applying for international protection and, if necessary, to attach additional materials/evidence. According to the HFHR, it is necessary to adapt the practice of the Border Guard to applicable law (Helsińska Fundacja Praw Człowieka (HFPC), 2019).

In light of the above findings, one should note the importance of proper documentation of the interview held by the Border Guard at the second line check with a foreigner appearing at the border. This is crucial in cases when decisions to refuse entry were issued by the Border Guard. That is why an official memo from the interview, drafted and signed only by the officer is not enough and should be replaced by proper protocol in accordance with standards derived from Article 67 (1) of the Administrative Proceedings Code. Audio-video monitoring of the interview should be introduced, as well as the presence of the foreigner's legal representative, if available, should be ensured (Białas, et al., 2019).

Different problems while crossing the border were also reported by foreigners **during micro-level interviews**. One of the frequently mentioned cases was **the large number of attempts to cross the border**. Some of asylum seekers tried to cross the border several times and eventually succeeded. This is illustrated by the experiences of two Chechens from the Brest-Terespol border crossing:

**R**<sup>36</sup>: I came to the border 8 times. 7 times I came to the border (...) and on the eighth attempt they let me go inside. **I**: What were they usually saying? Why they don't let people go to Poland? **R**: I mean, you quickly explain your reason. Well everybody goes into the hall. You stand there and wait. Specific time 1 or 2 hours. If they decided to let you in, all others expelled. They leave you in the country, take fingerprints, as if they decided to prohibit the entrance, they bring your passport. Such and that with your belongings and family on the way out. You quickly get on the train and back to Brest. Also, the third day you do the same, you storm the border (PLMICH13).

**R**: I was crossing the border several times. As I mentioned, firstly I went from Ingushetia to Moscow, then by train to Brest. In Brest I met a lot of Chechens like me who were crossing the border with their own reasons. **I**: How many times did you attempt to cross the border? **R**: I guess maybe around 7 times. **I**: And what did they tell you? Why didn't they want to let you enter to the country? Did they tell you the reasons? **R**: They didn't say nothing. They were just listening to your version and were asking me to move somewhere temporarily until a decision will be made. How they were doing it and what was the criteria I don't know. They were just asking and writing down on paper your reasons and that's it by telling

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<sup>36</sup> In quotes from micro-level interviews, the bold 'R' is the 'Respondent' and bold 'I' the 'Interviewer'. Abbreviations made by the authors of this report in quotations are marked with the symbol '(...)'. The information in square brackets '['...']' introduced by the authors means editorial notes intended to facilitate readers' understanding of the respondents' statements.

we have to wait. After asking all people in the crowd, they were telling go on left or on right sides. In the top inside of the building were two glass places like rooms. If they say go up on right side, that meant your entry was declined. If they tell you go up on left side, this meant you have a green light to enter the country. It was clear from where they going to send you. 6 times they told me to stay from the right side and I was realizing I was declined to enter. And whole this time I had to wait when all crowd will be passed somewhere. (...) **I:** How do you think, what specifically had an impact why they let you enter the country? **R:** Frankly speaking, I don't know because it's happens very randomly. **I:** So, you would like to say that the procedures are unclear. **R:** Yes, I think it's unclear. Even they didn't want this guy who had very serious issues to enter the country. Maybe they have their own criteria which is unknown for us. (...) I knew people who were trying to cross the border around 90 times. Some people were putting in front of the border tents because all their money was finished, some of them were working in the forest nearby to earn some money (PLMICH15).

People who made unsuccessful attempts to cross the Brest-Terespol border were turned back to Belarus. Subsequent attempts entailed not only increasing financial costs but also logistical challenges, e.g., regarding accommodation before the next attempt. In the opinion of an NGO expert:

It's a bit of a lottery, because people are generally turned back 20, 30, 40 times. If they aren't discouraged and cross that magic number of 20 times—being turned back means they have to stay in Brest for a night and pay for a ticket again. This goes on and on. It's a large expense too (PLMZSO2).

As noted by the Chechen asylum seeker cited above, some people returned to Brest were putting in front of the border tents, because all their money was finished, some of them were working in the forest nearby to earn some money' (PLMICH15).

One of the meso-level interviewees from the NGOs described the situation on the eastern border as if access to the procedure is regulated by **unofficial quotas**:

About 3 weeks ago they told me that there's much less people now. It's best to simply wait for your turn. This means you have to keep coming until you are admitted. Now you can really count on being allowed to enter on the 10-12<sup>th</sup> time. There are still such cases, but the scale of the phenomenon is much less. What's more, it seems like there are orders to admit 1-2 families per day and you have to wait your turn, from what my colleagues tell me, there is no other logic to it, that sometimes there are people who came on the first day and they were admitted across the border in stride. And sometimes they are allowed to cross on the 10<sup>th</sup> attempt. However, due to the fact that it's not a closed-door policy, but one of creating a choke-point—they know that they might eventually be allowed to cross. They do cross this way. (...) I think that it's a stable practice within the Border Guard, it's always the same—we admit 1-2 families and maintain a manageable level of these applications. (...) We don't have a quota system here, but it sure seems like it (PLMZSO4).

Another issue that appeared in interviews with representatives of social organisations, and is rather an **unofficial practice**, concerns **differences in access to the Polish territory**

**between people who are from a Muslim culture and those from non-Muslim countries.**

This is very important as most of the asylum seekers come from post-Soviet areas, and among them are Chechen and Tajik people who practice Islam and who belong to the main nationalities applying for international protection in Poland in recent years:

I think this makes their access to protection more difficult, when it comes to accessing Polish territory really. The political narration that we hear is that we protect Poland from an invasion of Islamic terrorists, so I think that even if it wasn't an official part of the policy or some Border Guard instructions, there is an unambiguous, subliminal pressure to pay attention to our country's security and deny admission to people from the Muslim cultural or religious circle (PLMZSO3).

The above-mentioned problems regarding crossing the border and submitting the application for international protection, seem not to concern, to such an extent, applications lodged **on the territory of Poland**. According to experience and the knowledge of one of the meso-level practitioners involved in forced-migration governance in Poland, foreigners do not experience major obstacles in accessing any formal procedures, including submitting an application for international protection or legalisation of stay under the procedure of refugee family reunification, **if they follow the guidelines and information provided**:

The cases when someone arrived in [the name of the city] and tried to apply for refugee status at a Border Guard post or for access to the asylum procedure for children of protected foreigners that were born on the territory of the Republic of Poland—from my experience, if someone goes to or declares their will to submit an application to the Border Guard—all these cases, if someone asks me for help and we set up a meeting with the competent person at a Border Guard post, that kind of access was always concluded in a positive way. Of course, not everyone comes to us for help, but there have been such cases (PLMZP2).

One of the seemingly trivial, but in practice the key issue when applying for international protection, is **effective communication** between a Border Guard and a foreigner, that is, **knowledge of the language**. It is a matter of any possibility of communication between both parties, and if communication is possible—the precision of the questions asked by the guard and answers given by the foreigner affect mutual understanding. This applies also to the documents to be filled in and signed while submitting an application. Usually, applicants do not know Polish, and sometimes they speak languages whose knowledge in Poland is negligible (e.g., Arabic, Chechen, Tajik). The situation is simpler when both parties can communicate in English or Russian. It leads to the conclusion that interpretation support is crucial while attempting to submit an application. One of the interviewees from the social organisation sector referred to this:

I'm sure the people who receive the applications undergo some kind of training, they probably know a language to some extent—probably not remarkably well though—and you have to remember that people who come from Chechnya for example, are asked questions in Russian—it's not their mother tongue. They hear a question in a language that's not their first language, they answer in a language that's not their first language. And the person who hears it, who usually isn't a trained translator but only a foreign-language speaker with some level of fluency, writes down in Polish what their interlocutor said in Russian. And then a

person has to sign something he doesn't really understand. The procedure itself is defective, because this kind of interpretation is not that simple even for a trained simultaneous interpreter who's able to convert it to another language in his head, even for such a specialist it's difficult and exhausting. And here we're not dealing with simultaneous interpreters, or interpreters of any kind for that matter. Interpreters are only called for cases of some exotic languages. I don't know the details though or the level at which this happens (PLMZSO2).

In the opinion of one of our Chechen respondents, an interpreter is not always needed, because, sometimes, one can **communicate in Russian**. He described his experience submitting an application for international protection at the border:

I didn't have a translator. There were Poles who were understanding Russian. They were not understanding fully but in general they were understanding. The interview, they run [it] in Russian (PLMICH15).

Another interviewee from Iraq (PLMIr28) confirmed the presence of an interpreter in the interview he had at the airport in Poland. In the case of an asylum seeker from Syria, also interviewed at the airport, even though he spoke English, he was informed that an Arabic interpreter would be brought in order to follow the procedures:

Then, when I reached the stairs at the Chopin Airport, they took me downstairs. (...) And they asked me, 'what is your name?' So, I said what was my name. 'Blah blah, from where you came' ... And then one person came and said, 'do you know that you are illegal?' I said, 'Yes'. But I straight away told them that I want to apply for refugee status here in Poland. When he heard the situation, he told me, 'okay, I understand the situation now, so please wait. We will bring you an Arabic translator'. I told them, 'look guys, it's okay, I can speak in English, I can do everything in English, no problem, I don't need it.' They told me, 'no, no, no, it's okay, these are the procedures.' More or less something like that they told me. We need someone who can speak your language. I was like, 'okay'. I didn't want to argue because I was not in a position where I could argue anyway, so I said, 'okay, sure no problem' (PLMISy21).

A related problem can concern the **language of documents** to be signed by an applicant while submitting his/her asylum claim. A foreigner may simply not understand the content of the documents if they are in Polish. This was described by a Russian-speaking applicant from Ukraine:

**I:** But then there is the protocol that you must sign. **R:** From what I remember, a few words were in Russian, most in Polish, the protocol is at my home, it was standard, one A4 sheet. And the rest, the papers that were written, said that there is no English. **I:** Was the form in Russian? **R:** Nah, just in Polish. **I:** And you didn't understand it, how did you do it? **R:** There was no choice, either to sign or not. **I:** But the form, first name, last name. **R:** I filled in with Cyrillic. But from what I remember, it was in Polish. And already in Biała Podlaska, where the camp is, it was an additional interview in Russian. It was written in Polish but also in Russian, the papers to be signed were mixed in Russian and Polish. And on the border, everything was in Polish, I didn't understand anything (PLMIUK16).

**Our micro-level respondents** applied for refugee status **at the land border, at the airport or within the territory** of the country. Chechens and Ukrainians often submit their applications at the land border where Border Guard officers receive them. This was the case of two foreigners cited below, who described this situation as follows:

**I:** (...) and what did you say on the border? **R:** That we're going for international protection and I spoke English, somehow incorrectly. I don't remember if also in Polish. But there was a gentleman who understood Russian and Ukrainian well and said that he already knew, because several people were from Ukraine on his shift, that he knew what to do. He signed some papers, gave something back, two guys from the Border Guard in uniform came. There was a lot of surprise, they took these suitcases, and the weight was such that they did not know how we came as two people. **I:** How long it took? **R:** Probably 12 hours, we came at seven o'clock, eight o'clock on Thursday, and the Ukrainian border quickly let us through, and we were in Poland at four o'clock in the afternoon, I do not remember exactly. And we probably finished at two o'clock in the morning, because when we were in the queue, there were a lot of people who wanted a visa illegally. **I:** Was there such an interview? **R:** Yes, yes, but in Polish, which I didn't understand at all at the time. The lady only spoke Polish. **I:** Well, but there you have to say at the border why you want international protection. **R:** She understood Russian, spoke Polish to me (PLMIUk18).

**I:** Ok, they permitted you to cross the border. And then? How did the procedure look like? **R:** Procedure? They brought me to the second floor and were questioning around 15 or 30 minutes about my reasons why I came here. I explained them everything. **I:** Which language were they speaking? **R:** In Russian. **I:** Do you know who was speaking with you in Russian? Border Guard [officers]? **R:** I don't know, one man. **I:** And what were they asking you to do there? **R:** They explained me the law procedure. They told me Poland is the first country, so you have to stay here, don't move anywhere else, stay here. I say, 'ok, no problem' (PLMICH14).

The Yemeni respondent who applied for international protection at the airport said:

**I:** So, talking about the airport, they conducted a primary interview with you at the airport? **R:** Yes, like, 'what do you want'? Then I said, 'asylum. I want to apply for asylum'. And they tested me to check if I'm from Yemen or not, and thank God I answered all (PLMIJe29).

In turn, one of the Chechen respondents submitted his asylum claim in Warsaw, at what he called 'Taborowa Street', which probably refers to the Border Guard Post in Warsaw, at 33 Taborowa Street:

**I:** How did it happen? Did you say you wanted to become an asylum seeker? **R:** We go to Taborowa Street, to window 5, as far as I remember. We say we would like to apply for asylum. They give us a date for the interview. We tell them about our problem: why we left our country, why we are applying for asylum. It lasted from 9.00 a.m. till the evening. Questions, taking fingerprints (PLMICH05).



### 2.2.2. Situation During the Asylum Procedure

During the proceedings, **foreigners participate in numerous interviews** during which they present their personal story, describe their situation and physical and mental condition (e.g., with the Border Guard while submitting their application, with officials from the Office for Foreigners for the refugee interview, with psychologists to assess their potential vulnerability, etc.). One of the crucial issues evoked in some micro-level interviews, especially with Chechens, **was the need to provide evidence confirming the words of the foreigners**. As the respondents emphasized, they could not always collect evidence in the country of origin or did not plan to escape and did not prepare any evidence. **Chechen applicants** referred to this issue in the following words:

**R:** They need evidence, but when you escape from the country away from your pursuer, you do not collect evidence. When I had the first procedure, I had an interview together with my husband, we didn't have evidence. Now, I will have an interview alone. I don't have evidence, but there is a person who can confirm that I was persecuted (PLMICH02).

**R:** When people plan to go abroad, they collect evidence, they take pictures. I was in such a situation that I couldn't do that. I even didn't take my things. I took the passports and some necessary things for me and my child. I took a taxi and came to the border. My mother helped me with the money. She sent me the money and some of my and [name]'s things secretly, so that I could go away as soon as possible. My relatives still don't know what country I am in. They only know I am abroad. I talked to my sister and she told me that me and my daughter's data and pictures were filed on the wanted list. They are asking me here, 'have you got evidence that you were persecuted?' I say, 'how can I have evidence if I ran away from there suddenly?' If I had been planning this trip peacefully or had decided to go abroad to look for a better life, then I would have had time to collect evidence. I ran away from there and it was a sudden decision. Before I left, I had been hiding from my husband's relatives. I stayed at my friend's flat. I was afraid, that they would find me. Then the taxi driver told me how much it would cost, and I agreed immediately, as I had no way out. I am explaining that to the Border Guard [officers] all the time, but they wouldn't listen, they can't understand me, I don't know why (PLMICH03).

**R:** I understand these people [authorities in Poland]. They were asking me to give them evidence of my persecution: some documents, photos, or video films. I didn't have such evidence. If I had stayed in Chechnya for longer, I would have prepared evidence, but I didn't collect it, when I was in Chechnya. I haven't got such documents (PLMICH12).

An important aspect of the asylum procedure is **its duration**. Although this issue is regulated by law, in practice the proceedings are often extended due to various factors. The Law on Protection (Article 34 (1)) specifies that an issuance of a first-instance decision by the Head of the Office for Foreigners regarding an application for international protection should be completed within 6 months following the day when the application was lodged. This time limit may be extended to 15 months when the case is particularly complicated; when applications for international protection are made in short intervals by a large number of foreigners and

this makes it impossible to examine the application for international protection within 6 months; or when the applicant does not fulfil the obligations arising from the Law on Protection (Article 34 (2)) and asylum procedure. An employee of the Office for Foreigners referred to the duration of the proceedings in Poland and its circumstances in the following words:

(...) we are extending proceedings, and this still happens despite the fact that the inflow of [applications] is smaller. But it depends individually on the specific case and also on the time, moment or year. If there was a large influx [of applications], of course, it happened quite often that we prolonged the proceedings. Despite the increased recruitment and staff [of the Office], after all, we were unable to do certain things quickly enough to fit on time. The more so because not always everything depends on us as officials. It is often a matter of the fact that foreigners strongly prolong this procedure and we do not necessarily have influence on it. We have cases where it is difficult to make a decision because foreigners provide us with evidence—not of a page, two, but several dozen pages of evidence for translation. These are also materials on electronic media, where there are sometimes several dozen, several hundred pages placed. These are further requests for hearings. (...) Well, we also would not like to prolong these proceedings. We would like to do everything efficiently, but sometimes it can't be done. There are less and more complicated cases and those that require more time to explain everything or even look for some information (PLMZOF2).

In the opinion of the Office's employees we interviewed, the average duration of proceedings is less than 6 months. Of course, there were longer procedures, even up to 1.5-2 years, but these were exceptional situations and quite complicated. According to the report of the Polish Supreme Audit Office, 34% of cases in the years 2012-2014 (the first half) were completed after exceeding the six-month deadline, and the decisions on a new deadline set for completing the proceedings had no factual justification in 41% of cases (Najwyższa Izba Kontroli (NIK), 2016a, pp. 20-21) (Najwyższa Izba Kontroli (NIK), 2016b).

**The duration of the procedure primarily affects the applicants' situation.** Their reactions are different: for some applicants, it is not a problem when the procedure is prolonged (especially if the extension is not their fault<sup>37</sup>), for others it is a cause for concern about their legal status and future. As an employee of the Office for Foreigners noted:

It should probably also be treated individually, because there are people who do not mind that this procedure is prolonged, quite the opposite. (...) they can take up employment legally. (...). However, there are also a lot of people, but it seems to me that in the event that this procedure is significantly prolonged, who are

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<sup>37</sup> This reaction can be partially explained by the fact that if a decision has not been issued within the time limit of 6 months from the date of submission of an application, and the proceedings extended for a reason beyond the applicant's control, the Head of the Office for Foreigners, upon an applicant's request, shall issue a certificate (statement), which, accompanied by the temporary certificate of identity of a foreigner, entitles this person to work within the territory of the Republic of Poland according to the Law on the promotion of employment and labour market institutions (2004). This certificate (statement) is valid until the date by which the decision on granting international protection becomes final. Foreigners who apply for international protection are exempt from the obligation to have a work permit, provided they have the abovementioned certificate.

starting to lose patience (...) because they live in such uncertainty as to what the decision will be. (...) They've probably got used to it here [in Poland], and they still don't really know what awaits them, because they don't know whether the decision will be positive or negative, or whether it will not be necessary to leave Poland after a dozen or so months. And we know there is still an appeal procedure, which also lasts in case of negative decisions. (...) Some people probably decide to leave, rather rarely return. (...) What is the percentage—it's hard to say, but I suppose there are such people (PLMZOF2).

The duration of proceedings varies widely. For our respondents, the waiting period varied between 6 months and a few years. At the time of the interview, they did not always have the final decision on their case. Based on materials from micro-level interviews, we also observed that Syrian or Iraqi respondents received their decision within 6 months, while Chechens and Ukrainians even after 1-2 years. Most interviewees indicated at least one year of waiting for the decision. However, one has to remember that our respondents may have been involved in different types of asylum procedures, and their procedure may have been at different stages at the time of the interview (first instance, second instance, new application, order to leave Poland). This is confirmed by the statements of the Chechen applicants:

**R:** I think I will have been waiting [for the reply] for about a year. I've been waiting for 6 months so far. Some people have been waiting for a year, for two years. You need strong nerves to survive this (PLMICH02).

**R:** I was waiting for the reply for 6 months. They told me, that after 2 month there would be a decision if I would be left for more time or would be deported to Russia. After 2 months I was left there for 4 more months and in the end, I received a positive decision. (...) I had nowhere to go anyway, so I waited (PLMICH07).

**R:** I stayed in Targówek for one year without having an interview. (...) The first country, where I went was Norway and they wanted to send me to Norway from Poland. After a year the decision came, that my case would be considered by the authorities of Poland. On the [the exact date] of 2017 I had an interview in Taborowa Street and after a year and a half I received a tolerated stay. We didn't have any negative decisions, nothing. The document from Norway confirming that we had stayed in the crisis centre in Norway, describing what had happened there, helped us a lot. Some people received the decision faster after three or four months, [but] we received it after one year and a half (PLMICH08).

**I:** Generally, could you tell me, how long after applying for asylum you had to wait for the eventual decision? **R:** I think around 3 years (PLMICH10).

**I:** How long are you in an asylum procedure? **R:** Already 4 years. **I:** What was going on this time being in an asylum procedure? **R:** After several months I received a letter from the authorities with information that they appointed meeting for the second interview. I was waiting this time I went there. I had to give answers for the same questions but with more details and explanations. I was describing when I was crossing the border, what is my story and so on. The interview ran around 2 hours. They told me I have to wait for a positive or

negative decision, or it will be a prolongation of the decision-making. I started to wait this decision. I didn't know what could have an impact on the decision-making. All proof I had like photos with beatings, the information from local authorities with claim to visit them at police station, I gave them. I realised such tendency in Poland you know than people wait for 5 or 7 years in their asylum procedures and also sometimes got rejected even (PLMICh15)

**R:** The procedure from the moment of applying to the moment I received the status was 6 months (PLMISy23).

**I:** So, when was the first answer? **R:** I can't tell you exactly. It was 18 months? I don't want to lie to you. (...). It was a slow process (PLMIUk16).

During the refugee procedure, it is useful for an applicant for international protection to have **basic knowledge of national asylum law**, including the stages of the procedure, one's rights and obligations, and key deadlines (e.g., for document submissions) but also to be able **to write formal letters** and **be prepared for interviews**. In practice, this is very difficult for asylum seekers, who often do not speak Polish and do not have sufficient knowledge about the legal and institutional framework in Poland.

The Office for Foreigners is to ensure that **applicants have access to reliable information regarding the course of the proceedings for international protection**. This applies if they are already in Poland. At the same time, applicants often obtain **information from additional sources**, including other foreigners or their legal representatives. For example, one of the Syrian respondents had 'a general idea' about the asylum procedure from some friends—'refugees' who already lived in Poland (PLMISy23). At the same time, one of the Office for Foreigners' employees said:

They [applicants] come having some knowledge for certain. It's a knowledge passed by other foreigners. Sometimes they involve legal representatives—I think the knowledge is a bit broader, deeper then, but only if there's a legal representative involved. In general, it's a knowledge passed by other people. Though there is a basis there, there's also sometimes a bit of gossip, speculation or some popular opinions and that sometimes results in various situations—sometimes funny, sometimes not so much, however, when they come for information, I think so much time is spent explaining everything to them that I don't believe the awareness to be very low. You can see it in the way they sometimes—frankly speaking—scheme, because they know what the hearing entails, what the next step is going to be. When they fall under paragraph 10 of the Administrative Procedure Code, they know exactly how it works and what to do with it. If they don't, they come and ask for an explanation. Situations happen when we have received an application from a married couple, they want to separate the procedure—they know they are entitled to do so and what it will entail. It's only the matter of, we even had a situation like that recently, being brought up to speed, getting more detailed information, but I think they have a basic general knowledge (PLMZOF2).

In light of the above considerations, reliable knowledge about proceedings and its legal aspects is crucial and, as a consequence, **access to good legal assistance, preferably free and professional**. There are various actors who provide free or paid legal support to

foreigners. These are the officials from the Office for Foreigners, lawyers from NGOs, private solicitors (legal advisers) and attorneys, even other foreigners with refugee experience. Law on Protection distinguishes free legal information from free legal assistance (support). According to the Law on Protection, both an applicant for international protection and a foreigner who is undergoing proceedings for depriving him/her of refugee status or subsidiary protection are entitled to **free legal information** in the proceedings at first instance (Article 69c). Free legal information means informing the above-mentioned persons about the applicable legal provisions on granting international protection, depriving of refugee status or subsidiary protection and provisions regulating proceedings before public administration bodies in matters falling within the competence of these bodies, considering the specific situation of these persons. Free legal information is provided by the Office's employees (Article 69c). An applicant for international protection and a foreigner who has been issued with a decision depriving him/her of refugee status or subsidiary protection, who acts without a lawyer (solicitor or attorney), is entitled to **free legal assistance** (Article 69d). This legal support is not available to a foreigner who has been issued with a decision depriving him/her of refugee status or subsidiary protection or if his/her income exceeds 100% of the income criteria set out in the Law on social assistance<sup>38</sup>. As stipulated in the Law (Article 69e), free legal assistance is provided under precisely indicated circumstances. First, it concerns preparation of an appeal against the specific types of decisions, that is, on the refusal to grant refugee status or subsidiary protection, discontinuation of the proceedings on granting international protection, transfer of the applicant to the Member State responsible for examining the application for international protection and discontinuation of the proceedings, recognition of an application for international protection to be inadmissible, refusal to take into account the applicant's statement about his/her intention to continue applying for international protection, and withdrawal of refugee status or subsidiary protection. Second, it encompasses legal representation in the appeal proceedings on granting of international protection, transferring the applicant to the Member State responsible for examining an application for international protection, and withdrawing refugee status or subsidiary protection.

This abovementioned free legal assistance can be provided by legal adviser or attorney or a person employed by an NGO authorised to provide this kind of support based on this person's level of higher education and professional experience (Law on Protection, Article 69f). In this regard, the Head of the Office for Foreigners concludes agreements with the district bar councils and regional chambers of legal advisers regarding the provision of free legal assistance and maintains a list of NGOs conducting public benefit activities and entitled to provide free legal assistance (Law on Protection, Articles 69(i)(j)). Those authorised to provide free legal assistance for foreigners, as mentioned above, receive remuneration and reimbursement of incurred costs from the Head of the Office (Article 69l). As indicated on the Office's website, currently, there are three NGOs entitled to provide such assistance: the Rule of Law Institute Foundation, the Halina Nieć Legal Aid Centre, and the Association for Legal Intervention<sup>39</sup>, as well as many attorneys and legal advisers. An applicant or a foreigner to whom legal assistance is provided transfers power of attorney to the legal

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<sup>38</sup> See *Ustawa z dnia 12 marca 2004 r. o pomocy społecznej* (t.j. Dz.U. z 2019 r. poz. 1507 z późn. zm.)—Law of 12 March 2004 on social assistance (consolidated text, Journal of Laws 2019, item 1507 with amendments).

<sup>39</sup> See (Urząd do Spraw Cudzoziemców (UdSC), n.d.).

adviser, attorney or NGO representative (Article 69h). As one NGO expert specialising in asylum law points out, a foreigner does not receive a full list of NGOs and lawyers who can provide legal assistance along with a negative decision but only gets information about the website where to look for such an NGO or a lawyer.

Recently, the number of legal representatives in refugee proceedings has increased in Poland, which is related to the entry into force of the abovementioned provisions on the provision of free legal assistance in specific cases. In the opinion of the Office for Foreigners' employee, the level of involvement of the legal representatives in the proceedings is varied: there are those who are very committed to their clients' cases but also those who do not even appear at the hearings of the foreigners. In addition, it seems that representatives from NGOs dealing with asylum law for years have been showing greater involvement. At the same time, the Office's employee in the following words commented on the role of the Office in terms of information and legal advice for foreigners:

Sometimes they have a lot of legal questions. Of course, we provide information on these regarding the procedure. There are some issues in which they turn to us, where due to the fact that we are the Office for Foreigners, we cannot help them that much. I can provide information, but I will not write a letter for a foreigner. So we have a list of institutions, organisations that provide assistance, including legal assistance to foreigners. We never send them to a specific one, usually we give a list, a choice, and we say that this is an example list, and that they can find more on the internet or anywhere (PLMZOF2).

One of the micro-level interviewees mentioned his negative experience of working with a lawyer on his complex case. In the foreigner's opinion, the lawyer was difficult to access, reacted late to the client's requests or there was no contact at all:

And I came to him several times, he was not in this office, or he is on vacation, and if I wrote to him, he responded after one, two, three weeks. And in the second [instance] court, I didn't get information by mail or phone (PLMIUK18).

NGOs, however, **pay attention to problems regarding the provision of legal assistance to foreigners**, regardless of the provisions of the Law on Protection, which limits assistance only to specific cases at the appeal stage. Also, only some NGOs may receive remuneration and a refund from the Office for Foreigners for this assistance. Despite that, the NGOs provide legal support on a regular basis whose scope exceeds that stipulated in the Law on Protection, which means that they use their own human, financial and time resources. According to meso-level interviewees from social organisations, if these NGOs had more funds for their activities, they could employ more lawyers who could support foreigners in emergencies, e.g., visit them in guarded centres located across the country or represent them in the courts. In their opinion, legal support, in particular provided by the representatives of NGOs, is of great importance for the course of proceedings and issued decisions. It may be crucial to the success of the asylum procedure. It is illustrated by the statement of an NGO expert:

It seems to me that the most important thing is information about what these procedures look like, what to expect, what their rights and obligations are. I know that one conversation is not enough for a person to understand that Europe is not a Europe without borders and that it is not all the same whether they will go

from the border [after crossing the border] to Warsaw or Berlin. So such access to reliable and repeated information is needed.(...) It seems to me that where there is no legal representative, and generally there is no legal representative at the stage of the proceedings concerning the refugee interview, because there are fewer and fewer legal organisations, fewer and fewer lawyers [from NGOs], because there are financial problems after AMIF was cancelled, so at this first, most important stage, when a person should get information on how to prepare for this interview, what is important in his/her story, what is worth telling, and what does not matter for the issue of obtaining international protection. Then, the lack of a proxy's participation in this refugee interview, plus perhaps the not entirely open and friendly attitude of the responsible person [from the Office], and not always good quality of the interpretation, all this makes these interviews poor, and that it is very easy to issue a negative decision based on them (PLMZSO1).

Another NGO representative added:

(...) we don't have a legal counselling system in place at the stage of applying for protection and the proceedings before the Head of the Office for Foreigners, because at this stage, when all motions for evidence could be presented in the first instance, there is no legal counselling because the government blocked the funds for legal counselling for NGOs by not settling a certain competition for legal counselling for NGOs. That would mean a lot, because the number of lawyers that provide such help decreased drastically. The ones that still do it, do it as a part of their duties, because they have to earn a living, so it's not easy to get help (PLMZSO3).

In the abovementioned statements, both meso-level interviewees referred to the difficult financial situation of Polish NGOs related to calls for projects announced by the Ministry of the Interior and Administration financed from the AMIF funds, which were cancelled in 2016. As EU funds have played an important role in co-financing NGO activities, this situation influenced their everyday operations. This reduced, among others, the number of NGOs employees and the scope of their tasks<sup>40</sup>.

### 2.2.3. Decisions on the Application for International Protection

In Poland, most of the first-instance decisions concern the so-called **discontinuation** of the refugee procedure or are left unexamined (Szulecka, et al., 2018, pp. 17-19). The Head of the Office for Foreigners may decide to discontinue it, if it is not contrary to the social interest, and the applicant announced the withdrawal of his/her application or it is implied that he/she withdrew his application. The latter case concerns situations when the foreigner is under the asylum procedure (Law on Protection, Article 40(1)(2))<sup>41</sup>:

1. did not appear at the reception centre within 2 days from the date of submitting the application and did not provide another address of his/her stay, or within 2 days after the

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<sup>40</sup> The issue of the AMIF calls is discussed in 'Section 2.1. Key Actors, Cooperation among Governance-levels and Experiences'.

<sup>41</sup> See also (Szulecka, et al., 2018b, p. 48).

release from the guarded (detention) centre for foreigners or arrest for foreigners in case of a lack of an order of the Head of the Office for Foreigners to stay in a specific place he/she did not indicate another address of his/her stay;

2. left the reception centre without returning to it for more than 7 days without a justification;
3. left the place of his/her stay without the consent of the Head of the Office where he or she was obliged to stay after being released from the guarded (detention) centre or arrest for foreigners or did not report to the body indicated in the Head's decision on specific dates;
4. left the territory of the Republic of Poland,
5. did not appear to be heard in the proceedings for granting international protection; and did not prove within 7 days from the date set for the hearing that failure to comply with this obligation was caused by circumstances for which he or she was not responsible.

As Article 40(3) stipulates the refugee procedure may be also discontinued in the part relating to the person in whose name the application for international protection was submitted, if 1. the spouse has withdrawn his/her consent to submit this application on his/her behalf and on behalf of his/her children, or 2. the child concerned by the application has reached the age of majority and does not agree to be under the proceedings initiated on the basis of an application submitted on his/her behalf. With the exception of these specific cases, other persons remain covered by the asylum procedure. The way it looked in practice in recent years was described by an Office for Foreigners' employee:

It changes over the years. A lot depends on the group of foreigners, on the nationality that reaches us to a large extent. (...) There were times when we discontinued 70-80% of cases. A bit later, when the large influx of people from Ukraine started, the situation changed radically, because people did reach us, they stayed within the procedure and here the percentage of discontinued cases—it reversed completely, it was very small. Very many people stayed within the procedure. (...) Now, in turn, the people who submit their applications at the border mostly come to Biała Podlaska; there are literally isolated cases of discontinuation because someone didn't reach the centre. There is a small number of discontinued cases when a given family or person stays in the centre for some time, is within the procedure. Sometimes even the hearings are over and they decide to leave, probably to Western Europe. Then we discontinue the proceedings. The proceedings are discontinued quite quickly, because when we are dealing with a foreigner's escape—that's what we colloquially call it in the Office, that when a foreigner escapes from the centre or he doesn't come to the centre after submitting an application—we have all the information straight away. (...) It's really a period of a week, two at the maximum, from wilfully leaving the centre or not coming at all. When it comes to not coming to the centre from the border, we actually discontinue the proceedings within a few days, up to a week, quite quickly (PLMZOF2).

As already mentioned, the decision to discontinue the proceedings often results from the fact that the foreigner did not appear in the reception centre within 2 days of submitting the application to the Border Guard, which is regulated by the provisions of the Law on Protection. The Border Guard as the Polish authority competent to receive the application for international protection shall provide the applicant in writing in a language he/she



understands with the address of the reception centre in which he/she is to appear within 2 days of submitting the application—unless the applicant indicated another address in the application form under which he/she will stay, or is not in a guarded centre or detention centre for foreigners. This means that the foreigner, e.g., after crossing the border, must reach the centre on his/her own. An employee from the Office commented on this issue:

In some [Border Guard] facilities, a map was provided with directions to [the reception centre]. If transport from the border to the centre was provided, I suppose that there would be no discontinuation cases for failure to appear. (...) However, it is difficult to imagine it logistically, because in fact this car would have to drive every day from the border to the centre. It would be possible to organise, except that it would probably involve high costs and I suppose that it is the issue that largely determines that this transport is not provided from the border to the centre (PLMZOF2).

Another important issue to be mentioned in this report is the **large number of negative decisions** on the applications for international protection submitted in Poland. There are **critical voices from NGOs** regarding the arguments used by the Office for Foreigners to justify these negative decisions. One of the NGO referred to the justifications in cases of Chechen applicants:

There's also the problem—it's not the matter of asylum institution practice, because it's what happens in those decisions. It's a matter of the large scale of negative decisions on the application for international protection and all manner of absurd, in our opinion, argumentation that appears in the explanatory statement for the negative decision. This mostly concerns Chechnya—there is a large discrepancy between the information provided by the reports of international organisations, media, and independent institutions, what is happening in Chechnya for the last 2 years and the scale of threat to a significant part of the population. It's practically a situation of terror in an authoritarian regime, and what our Office for Foreigners states as an explanatory statement for the negative decisions, is that the armed conflict is over. In short, war's over, you can go back. (...). There are also cases of women who say there's domestic violence against women—well, she should call an NGO in Russia and talk to them there, perhaps try to get legal advice remotely—that kind of utter nonsense (PLMZSO4).

Several international reports have already been issued about the worrying situation in the area of human rights in Chechnya<sup>42</sup>. In Poland, one such current publication is the report 'Republic of fear. Human rights in modern Chechnya', prepared by the Helsinki Foundation for Human Rights in 2019 (Szczepanik, 2019). The report addresses the issue of the most serious human rights violations in this republic, such as killings, torture, and enforced disappearances, with a particular focus on 2016-2018. It also discusses groups at particular risk of human rights violations, which include journalists, opposition activists, and human-rights defenders, women, sexual minorities, and followers of non-traditional Islam. In the context of EU return policy, the report also focuses on the situation of people who had been

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<sup>42</sup> See more in (Szczepanik, 2019, p. 5) .

denied international protection and were forcibly returned to Chechnya. The difficult situation of Chechen women is reflected in the words of an expert from the social organisation sector:

If a woman comes from Chechnya and invokes domestic violence, it is something more than domestic violence, it is related to their cultural, moral, and political situation in Chechnya, that it is not just a matter within the family but that this woman is not able to get protection from the authorities at any level. On the contrary, if you ask for such help, her situation will often get worse (PLMZSO1).

One Polish NGO expert specialising in asylum law stressed that the Polish authorities generally recognise that the situation in Chechnya is bad, but it is assumed that the persecution or threat of harm does not apply to the entire civil population but to individual groups. The main argument for refusing to grant international protection to Chechen applicants in Poland is the statement that the person presented an unbelievable story (with discrepancies, generalities, etc.). Sometimes there were decisions in which the foreigner's statements concerning experienced torture were considered credible, but the authorities decided that this was not persecution but 'ordinary' police action.

Continuing the above considerations, one can notice **the regularity regarding the country of origin / nationality of the applicant and the decision** received in the proceedings for international protection. One NGO expert observed a positive tendency concerning Syrian applicants:

Of Syrians who come [to Poland], everyone gets protection. I have never checked what their religion is. Syrians come to us very rarely for help, because they do not need it at the stage of the refugee procedure, because if there is no doubt as to whether they are certainly Syrians or stateless persons from Syria, they get quite quickly protection and then they enter the integration programme (...) (PLMZSO1).

The same expert paid attention to differences in the situation regarding Chechen and Ukrainian applicants:

It seems to me that the fact that fewer Chechens get protection can also be related to the fact that they are Muslims. And for example, many more Ukrainians [get protection] who have never received it before ... again I see the difference in 2016. While earlier Ukrainians from the eastern part [of the country] or Crimea either did not receive or in very exceptional situations they received protection, now they began to receive it more massively, the proportions reversed. The situation in Ukraine is not getting so bad right now. I think that they should have been protected from the beginning, that they deserved it here. However, I have the impression that now they have started to receive this protection so that we [Poland] can reach some quota (...) (PLMZSO1).

The group of micro-level respondents included people **at various stages of the proceedings** for international protection (first instance, second instance, new application, etc.) and with different experiences. There were those already granted international protection, rejected, ordered to leave the country as well as those waiting for their decision. As we have already mentioned in the methodology section of this report, on the basis of the information provided during the micro-level interviews, we identified the four main groups among our respondents in terms of their legal status: 13 asylum seekers, 4 refugees, 11

persons under subsidiary protection and 2 person that did not declare their legal status in Poland at the time of interview. To sum up, out of 30 respondents, 13 were under the asylum procedure and 15 had already received a positive decision. An overview of their stories is below:

**I:** How long have you been waiting? **R:** We have been waiting for one year and four months. **I:** For the first decision or for the second one? **R:** The first decision was negative. We will have been waiting for the second decision for 6 months soon. During these 6 months we do not have the right to work. We just take food, we are like plants, which are watered and they grow. **I:** So, what are you waiting for now? **R:** Now we are waiting for the reply. They told us, that we would receive the decision in our case from the court by [exact date] (PLMICH05).

**I:** What is the status of your asylum application right now? **R:** I have gone through the first and the second procedure. Now, I am waiting for the decision of the court (PLMIUK17).

**R:** The first refusal came after five months. **I:** All right. So, there was the first decision—a negative one. And then you wrote an appeal, together with the lawyer, right? **R:** Yes. But I can't tell you exactly how long did it last until the second negative decision. **I:** It was also negative one, right? **R:** Yes, also negative one. Yes, they were many negative ones—three times (PLMIUK19).

**I:** All right, so how long did you stay in the centre in [name of the place]? **R:** A half of a year. It was long. We couldn't work. (...) **R:** No, not at all. The situation looks like that—if there is no rejection of your application after six months one can apply for a work permit. But, if there is a negative decision, there is a rejection. In our case, I started to write to Taborowa, there was a negative decision. **I:** After what time? **R:** After a half of a year. Then I wrote an appeal. **I:** Did you write it by yourself? **R:** Yes, I wrote it by myself. **I:** So, there was a rejection and you wrote the appeal by yourself. But how did you know how to write it? **R:** I read a lot. **I:** On the internet? **R:** On the internet, the brochures in the office, I asked people who wrote appeals before. So, I read, asked, and from a word to a word, I had already a lot of information. So I wrote it by myself. Then lawyers from [the name of the city] started to come to the centre. **I:** From [the name of the institution]? **R:** Yes. They came from Lublin. And I called to Cracow, there was also a legal centre, I cooperated with Cracow. They told me at once that I would not get anything, that I should go back to Ukraine, to apply for a visa and come back to Poland. So, the lawyers that I cooperated with, they all told me that I should not apply for anything. I had a tactic that I called all the lawyers I knew, I asked questions, and then, using their answers, I wrote. So, I did it myself. There were lawyers who helped me to improve the motion, to improve the language so it could be grammatically correct and could sound legal. There were lawyers like that. So, there were negative answers and negative answers. I submitted a motion for a fourth time, it was in the same year. And we were taken by the decision of deportation. **I:** So, it was a decision of deportation, right? (...) **I:** But did you already have a decision of deportation or not? **R:** Not yet. **I:** And, as far as I understand, every time you get a rejection you wrote an appeal, right? And you collected new information? **R:** Yes, yes. I collected new information. I

didn't sit in a place. I collected new data, added them to the case. I talked with everyone, with lawyers in [the name of the city], I asked everyone what to do. Not even ask, I did things. When we came to Warsaw, we lived a year here, there was the third negative decision. We went with my daughter, I didn't tell it to anyone, because it was the fourth time. It turned out that when we lived here in Warsaw, there was a letter of deportation which was sent to our address in [the name of the city]. I didn't see the letter. But in the database, we were marked as 'for deportation' (PLMIUk20).

I: What is the status of your procedure at the moment? R: Now we received the order to leave the country, but it was written in the documents, that we have the right to appeal it. Our lawyer sent an appeal and we are waiting for the reply at the moment. I: Was it the first decision, which you received? R: No, we have already received three negative decisions. It was the third. Now we are waiting for the reply. I: Did you file an appeal to court? R: Yes (PLMICh06).

I: Did you get your asylum request declined while waiting for positive decision? R: Nope. I: So you mean you got your status without writing any appeal, right? Did you know that in case of negative decision you could appeal? R: Yes, I knew I could appeal my negative decision because my friends were doing it. I was observing them, how they are dealing with it (PLMICh09).

As evidenced by the above-cited stories of our micro-level respondents, many of them appealed against negative decisions on their applications for international protection. In general, in light of Polish law, appeals may be pending before the Refugee Board (appeal against a first-instance decision) or administrative courts (appeal against a second-instance decision). It is important to remember that, according to the Law on Protection (Article 89p), the Refugee Board (second instance) is a public administration body that examines appeals against decisions issued by the Head of the Office for Foreigners (first instance) in matters concerning granting protection to foreigners within the territory of the Republic of Poland. The Board is also the competent authority in matters of resumption of proceedings, as well as repeal, a change, or annulment of its decisions or orders (Article 89p). The decisions of the Board are final in the administrative course of the instance. If a party finds the decision of the Board unlawful, it may lodge a complaint with the Provincial Administrative Court. Cassation complaints regarding the verdicts of the Provincial Administrative Court are lodged with the Supreme Administrative Court (Rada do Spraw Uchodźców, n.d.). One NGO expert specialising in asylum law noted that the main problem is that usually these appeals do not affect much and the level of annulment of the previous decision or change of negative decisions is low.

#### **2.2.4. Evaluation of the Asylum System and Suggested Changes**

The opinions presented in this section of the report are not exhaustive but show selected assessments regarding the Polish asylum system and its components based on interviews. Some of them are of a general character regarding an evaluation of the whole system and others relate to aspects of it, such as procedures or law. In some cases, respondents provided their recommendations for specific practical solutions. It should be emphasized that

the assessments are also included in other sections of the report when discussing various specific issues.

Recent years have brought important changes in the migration and asylum situation in Europe, including Poland. One of the NGOs drew attention to the **threat of terrorism**, which affected asylum law, practices, and policies. All this has contributed to the intensification of actions implemented under the **Dublin system and EU return policy**:

I think it has something to do with the year 2015. Not only with limiting migration, but also with the fact that after the terrorist attacks of 2015 and 2016, many European countries tightened their counterterrorist legislation. A lot of things appeared there, guarantee for returning persons was limited. It's a lot easier to deport them. It's not only Dublin but returning [people] outside European Union. I see it as a multidimensional phenomenon. The countries from which we accept Dublin returns are primarily Germany, France, Austria, Sweden, I think. As a result of there being an emphasis on return policy (...). I can't recall the statistics right now, **but the increase in Dublin returns is visible in the Border Guard statistics**. (...) The latest well-known case connected with the problems of the fight against terrorism and the cost of it was the case of [Azamat] Bajdujev. It was widely discussed in the media. It was a Dublin case too, because he was transferred from Belgium by the Belgian authorities. From the available information, they had no grounds to pass a final judgement. They got rid of the problem by transferring him to Poland because he received protection in Poland earlier, so from that moment Poland was responsible for his stay in the European Union. There will be more cases connected with terrorism. That's what many experts say (PLMZSO4).

NGOs pay attention to **who receives the applications** at the border, recommending that this task be performed by civil officials, not Border Guard officers in uniform. This is especially important for foreigners who may have difficult experiences and traumas associated with people in uniforms from countries of origin and transit (e.g., police, army):

When it comes to receiving itself (...) from my perspective, the standards are very low. (...) It's not a large number. We believe the application should be received by a civil servant, not by a Border Guard officer, not in a uniform, because there are no reasons why this should be done by a frontier guard. Border Guard [officers] are not particularly well trained for it, that's not their purpose. They should protect, preserve and guard, not go into the details of whether or not someone was persecuted or not (PLMZSO2).

One of the NGOs generally positively **assessed the asylum system** in Poland, identifying as a key area for improvement the **lack of officials** and skills, leading to a tendency to issue negative decisions. Additionally, what matters, is **good cooperation with NGOs**:

And I think that the system we have is, theoretically, sound. It's only a matter of there being more officials on every level, because that's what we keep hearing about—that competent institutions are short-handed so the proceedings drag on, because there are not enough people to conduct them and they are conducted perfunctorily. Because there's an expectation they will be carried out fast as well. Well, if there's not enough people and the proceedings have to be concluded

fast, then it's easiest to not get into the heart of the matter and issue a negative decision as soon as possible. So strengthening the existing system through the personnel, by increasing these people's competence—including soft competence, like the matter of psychological and intercultural sensitivity plus good cooperation with specialised non-governmental organizations. The procedures are OK. If only they were better implemented (PLMZSO1).

In this regard, another meso-level actor evaluated the **national provisions in the area of international protection**:

When it comes to system coherence, we certainly don't have judicial control over the process of granting or extending international protection. Two-stage administrative proceedings are long, judicial control is ineffective because courts only examine them *de jure*, not on their merits. Because of this, it can happen that the foreigners' rights are forgotten somewhere along the way. I think that our procedure and actions—maybe it's not the law, but the practice of authorities dealing with forced migrants is focused on speed and efficiency. The procedure is supposed to be quick, especially for detained people and aimed at achieving an effective return. It's visible in some actions of the Head of the Office, the [Refugee] Board. Some appointees of the Refugee Board probably take only a cursory glance at the refugee law. Finally, the Border Guard seeks to carry out the return decision as efficiently as possible. To such a degree, that I remember that one year we maintained the percentage of carried-out return obligation decision at the level of 90% for an extended period of time, while the European average was around 50%. Out return policy is devilishly efficient, it's very hard to avoid the carrying-out of a return decision once it's issued (PLMZSO3).

At the same time, some meso-level actors raised doubts concerning **the changes planned in national regulations** in the Law on Protection, including the introduction of **lists of safe countries of origin and safe third countries**. These changes could affect the refugee procedure and perception of the situation of asylum seekers coming from, among others, Russia or Belarus, then considered safe countries of origin or transit. One NGO expert explained:

It also appears that, for example, Russia or Belarus will be considered safe countries of origin or third countries, which in turn would cause all the people coming from Russia or transiting through Belarus, so 90% of people, who apply for protection in Poland, to be considered, by definition, people coming from safe countries or transiting through a safe country. That's very alarming. What's also alarming in these changes is the fact that the list would be verified once every two years. Some processes, changes happen a lot faster across the world and this kind of automaticity in deciding on a time when you can decide which country is safe and which isn't, makes it would not or could not have much to do with reality (PLMZSO1).

A kind of answer to the abovementioned **concerns expressed by the third sector** is included in the opinion of the representative of the Office for Foreigners that they [Office] will rather continue to monitor the situation in the countries of origin of the applicants even if the lists is to be updated every 2 years so to react properly if there is a need:

(...) if the situation in a country changed in the meantime, we would of course react at once. We would not wait another two years for another update of the list. Thought the country would be on the list—I don't know how it will be resolved and if there will be a possibility to strike a country out from the list. I suspect yes, because it would not stand to logic if there was no possibility to remove a country earlier with some kind of regulation or simply due to a changing situation. Although the list would be updated every 2 years, I think that examining the situation in the country of origin will be maintained and current situation will be taken into consideration. I can't picture it working any other way (PLMZOF2).

According to one NGO expert commenting on the refugee system in Poland, there is **no need to introduce legal changes**, but rather to apply the existing body of law properly—if national law does not regulate something, there is an **international law** to be taken into account (PLMZSO4). Also, another NGO representative assessed rather positively the current asylum law in Poland, but criticised the planned changes regarding, among others, **placing foreigners, including those applying for international protection, in guarded centres run by the Border Guard**:

As of now I think they're [the regulations] fine because there's a significant risk they will be made much worse. For over a year now there are ongoing works on changing the act on granting protection to foreigners and the project of changes (...) is terrifying on various levels. (...) If the act is passed in its proposed form, the definition of persons that cannot be placed in detention centres would be very narrow. It would be narrowed to include only victims of torture. It's not the same and it's very difficult to identify a victim of violence, not to mention a victim of torture (...) It's problematic for the Border Guard even today and I doubt that problem will disappear and they'll suddenly start identifying victims of torture with ease and not place them there; besides they will be able to lawfully place victims of other kinds of violence in detention centres which will be devastating for their psyche and more. (...) It's also a matter of the situation at the border—every person who crosses the border and submits a protection application will be up for placement in a detention centre as a matter of course. The matter of determining their state will be very discretionary. The paragraphs that allow a person to be placed in a detention centre are so imprecise that it will be entirely up to the person making the decision. (...) This will lead to the automatic detention of almost every person who applies for protection. Such persons will be guaranteed a scant few rights when it comes to legal counselling at the first, crucial stage of applying for protection (PLMZSO1).

In terms of comparing **Polish asylum law with European and international standards**, there are some inconsistencies. One of them concerns appeals—according to the model envisioned in EU directives, appeals should be considered by a court that will weigh the legal and factual circumstances (i.e., it would also be entitled to conduct evidentiary proceedings, interview witnesses, etc.) and possibly issue a decision on the merits of the case. However, at present, the Voivodship Administrative Court/Supreme Administrative Court only considers whether the Office for Foreigners/Refugee Board complied with the law during the asylum procedure and if it finds a lack of compliance, then the given case will be sent back for re-examination. In addition, these courts do not conduct evidence proceedings,

meaning they do not hear witnesses, do not assess new documents, and cannot appoint an expert. There is also a problem regarding proceedings in which the issue of a threat to security arises. In those cases, the foreigner has no access to the evidence or any information used to determine that he/she is a security threat and, thus, why a negative decision was issued. This is significant non-compliance with EU law, which requires that the foreigner be acquainted with at least the basic reasons for which he/she is considered a security risk.

Another area for improvement is the understanding at which point a person should be considered an asylum seeker, in other words, an applicant for international protection. According to EU law, every person who declares the will to apply for an application is to be considered an applicant, while Polish law considers a person an applicant only after that person submits an application for protection. As one NGO expert said:

It's a huge gap, (...) these people [foreigners] (...) say that they wish to submit a protection application and the Border Guard says that they haven't declared the will to apply for protection. (...) the Border Guard says that 'they aren't applicants because they will only become applicants when we allow them to submit an application'. (...) If we wanted to fully implement this directive, I think it's a procedural directive, (...), then the wording of this point in the Polish act on granting protection to foreigners should be different, so that it would leave no doubt that a person who can be considered as applying for international protection is not a person who the Border Guard graciously allows to go from one counter to the next where they receive applications, a person who at the first counter says 'I'm afraid, I can't go back, I'm in danger' should be considered an applicant. It's not so in Poland. (...) I think that if we amended the current regulation, taking into account the recommendations made by NGOs or UNHCR for years, they would be OK (PLMZSO1).

An important change would concern the procedure for **receiving a permit for humanitarian stay** in Poland and modification of the role of the Border Guard, which is responsible for issuing these permits in light of the current regulations (Law on Foreigners). In the opinion of one NGO:

(...) The Office for Foreigners, while collecting materials related to whether to grant someone international protection or not, also gathers all the materials necessary to make a decision on whether to grant someone national protection in the form of humanitarian stay or not. Shifting this responsibility to the Border Guard causes, among others, unnecessary costs—checking the proceedings is conducted a second time. Besides, the Border Guard itself says it's a formation that's supposed to handle returns, not granting protection of any kind (PLMZSO1).

Also, an employee of the Office for Foreigners pointed out that a positive change in the provisions on international protection in Poland would be to return to the Office the competence of proceedings regarding granting the permits for stay due to humanitarian reasons or tolerated stay:

I'm keeping my fingers crossed for it to return to the competence of the Head [of the Office] because we often missed it. I know from my colleagues from other



departments that they missed such a solution too because there are people who cannot be granted refugee status or subsidiary protection, but we see that we could with clean conscience and much pleasure grant the permit for humanitarian stay. We have even collected evidence in this case to a large extent but, unfortunately, we do not have such a possibility legally, so we have to end the proceedings with a negative decision and count on these circumstances coming to light and being taken into consideration in the proceedings of the Border Guard for the obligation to return and that person will be granted consent for humanitarian stay. But it's completely beyond us, it's another body that examines it and decides (PLMZOF2).

**The critical voice** regarding the implementation of Polish asylum system comes from another meso-level actor who commented:

It works really bad. Unlawfully to a large extent. It's aimed at scaring people away and not allowing them to apply for protection. It's heavily politicised. (...) The Border Guard is entangled in politics. They have to enforce state policy. It should be reformed from the ground up. But the crucial matter is a political decision whether Poland should be a country that wants to help people, admit them (PLMZSO2).

Another problem often raised by NGOs is **detention of asylum seekers**, including vulnerable groups such as victims of torture or children:

Speaking of regulations, what is really bad about our legislature is that it allows children to be detained. That should be removed. Because when it comes to the detention of victims of violence, our regulations are sound, they don't allow it, it's the practice that's lacking. When it comes to detention of children, the law allows it (PLMZSO1).

In recent years, Polish NGOs have devoted much attention to the issue of the detention of foreigners, including children. The Association for Legal Intervention runs a thematic website (in Polish) that explains all key aspects of this topic (Stowarzyszenie Interwencji Prawnej, n.d.). The Rule of Law Institute Foundation published 'The use of alternatives to detention of foreigners in Poland in the years 2014-2015. Monitoring report' in 2016 (Sieniow, 2016) and the Helsinki Foundation of Human Rights prepared the report 'Research on the applicability of the best-interests-of-the-child principle as the primary consideration in detention decisions, as well as the alternatives to detention' published by the United Nations High Commissioner for Refugees (Górczyńska & Witko, 2019). Most of the pending cases against Poland in the ECtHR regarding migration are related to the detention of children and other vulnerable people. One of the best-known cases is *Bistieva and others v. Poland* (CASE OF BISTIEVA AND OTHERS v. POLAND (Application no. 75157/14), ECLI:CE:ECHR:2018:0410JUD007515714, Council of Europe: European Court of Human Rights, 10 April 2018, n.d.). The case concerned a family from Chechnya that in 2013 submitted an application for international protection to the Polish authorities and received a negative decision. In January 2014, the mother and children were placed in the guarded centre for foreigners in Kętrzyn, where they spent almost six months. During the stay in the centre, the family again submitted applications for refugee status. On 10 April 2018, the

ECtHR issued a verdict in this case<sup>43</sup>. At present, detention mainly applies to applicants removed to Poland on the basis of the Dublin system while alternatives to detention are applied to people who have submitted applications at the border (and in practice, they are widely used in Poland).

### **2.3. Vulnerability**

In Polish legislation, vulnerable groups among applicants for international protection are mentioned in Article 68(1) of Law on Protection. In legal terms, they are referred to as persons that may require special treatment and they include:

1. minors,
2. disabled persons,
3. elderly persons,
4. pregnant women,
5. single parents,
6. victims of human trafficking,
7. seriously ill persons,
8. mentally disordered persons,
9. victims of torture,
10. victims of psychological, physical and sexual violence, as well as violence due to gender, sexual orientation and gender identity.

Concerning vulnerability, as emphasized by one meso-level actor from the social organisation sector, despite the fact that according to the Law there are different groups of vulnerable people, 'they are thrown into one bag. It's not the case that they are proposed with some kind of individual solutions depending on a specific need they have'. (PLMZSO1)

As stipulated in Article 68(2) the applicant or the person on behalf of which the applicant is acting shall be considered as a person requiring special treatment in the field of social assistance, where there may be a need of:

1. accommodation in the centre for foreigners:
  - a. adapted to the needs of the disabled,
  - b. providing a single room,
  - c. intended exclusively for women or women with children;
2. placing them in a treatment institution, a nursing care institution or hospice;
3. placing them in foster care corresponding to their psychophysical condition;
4. adapting their diet to their health.

To assess whether a given person applying for international protection requires special treatment, the Head of the Office for Foreigners may order medical or psychological examinations. The cost is covered by the portion of the state budget managed by the minister competent for internal affairs (and more specifically at the disposal of the Head of the Office) (Article 68(3)). If the Head of the Office does not order the abovementioned medical or psychological examination, he/she informs the person who may require special treatment that he/she may undergo such examination at his/her own initiative and expense

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<sup>43</sup> For further information see (European Database of Asylum Law (EDAL), 2018) (Helsińska Fundacja Praw Człowieka, n.d.).

(Article 68(4)). A person who has not consented to medical or psychological examination is considered a person who does not require special treatment (Article 68(5)). The Head of the Office shall assess the special needs of a given person immediately after his/her submission of the application for international protection and at any time until the end of the proceedings, if new circumstances arise regarding the applicant or the person on whose behalf the applicant is acting (Article 68(6)).

The provisions of the Law on Protection also state that in the case of a foreigner requiring special treatment, any actions under the proceedings for granting international protection shall be carried out (Article 69):

1. in conditions ensuring his/her freedom of expression, in a manner adapted to his/her psychophysical condition;
2. within a period adapted to his/her mental and physical condition, taking into account the dates health services are used by the foreigner;
3. in the place of stay of the foreigner, if it is justified by his/her health condition;
4. if necessary, with the involvement of a psychologist, doctor or interpreter.

At the request of a foreigner from vulnerable groups, in justified situations, the proceedings may be conducted by a person of the same sex and/or with the participation of a psychologist, doctor or interpreter of a sex indicated by the foreigner (Article 69). Also, the Office ensures that the interview in the proceedings on granting international protection is conducted by a person trained in interviewing and listening techniques, including cases requiring special treatment, and in using information on countries of origin (Article 44(4)(1)).

While social assistance is provided for a foreigner requiring special treatment, the needs of such a person in terms of accommodation and meals are also taken into account. It is especially crucial in the case of a minor whose best interests shall be secured, with particular attention paid to the possibility of family reunification, including the minor's and social development, safety and security, particularly when there is a risk that the minor is a victim of human trafficking, and his/her opinion according to age and maturity (Article 69(a-b)). Articles 61-67 of the Law on Protection are devoted specifically to the issue of proceedings involving unaccompanied minors. It is also worth mentioning Article 32 of the Law on Protection, which talks about medical examination to determine the actual age of the applicant—this is important in order to identify whether the person is actually a minor and thus falls into the group requiring special treatment.

As it results from Polish law, vulnerable groups indicated for proceedings granting refugee status are quite broad and diverse. There is not a separate act in asylum law that applies more specifically to this group as a whole during the asylum procedure.

The Helsinki Foundation for Human Rights (HFHR), which on a regular basis provides the Asylum Information Database (AIDA) managed by the European Council on Refugees and Exiles (ECRE)<sup>44</sup> with overviews of the asylum situation in Poland, also reports the practices of dealing with vulnerable groups during the asylum procedure at its different stages. An example of its observations and conclusions concerning the screening of vulnerability in Poland is presented in Box 1. In recent years, one of the frequently highlighted problems

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<sup>44</sup> For further information, see (European Council on Refugees and Exiles (ECRE), n.d.).

confirmed by HFHR is the malfunctioning identification mechanism in general as well as the issue of placing vulnerable groups in detention centres.

In practice, it is difficult to assess **the scale of vulnerability among applicants** for international protection in Poland. As one social organisation notes:

There are no research results, no screenings, but in my opinion, there are many [vulnerable people]. Especially since about half of the applicants are typically children. They are with various pasts. (...) Women are a large group because a typical refugee family in Poland is a woman who is alone with children. (...) The screening should be done rather quickly. There were ideas to train the Border Guard, to have some charts they could use to check off from. But again, this is not their competence and they are not meant for this (PLMZSO2).

According to interviewees from the Office for Foreigners and NGOs, among the vulnerable groups identified in Poland, **the largest group** is people who have been **subjected to physical and/or psychological violence**. As one expert from NGOs commented:

Pregnant women, single parents raising young children, because here they are women. It is a large group. And the most numerous are individuals who have experienced violence, because it is about 80-90%. By me saying people who have experienced violence, I'm not saying the violence that is the premise for granting international protection, and also the law does not mention this. For granting international protection, it needs to be a specific kind of violence resulting from regulations and falling under the Geneva Convention. Yet, however, the majority of these individuals experienced this violence because they are people fleeing countries where the statehood is often very weak, or is totalitarian, or even if it is not totalitarian, it is weak, so there is quite a lot of crime, there is a lot of condoning of violence. As well as violence in the family, not only towards women but also towards children. Men resolve their disputes also often in a violent way, so a majority of these individuals have experienced violence. A large portion of them, I think more than half, have experienced violence that is a premise for granting international protection, so systemic violence—some kind of torture, beatings, also psychological violence, which is very difficult to prove, [or] invading families, bullying, threatening families by authorities after which there are no traces (PLMZSO5).

Another social actor describes these reasons in the following words:

(...) in two groups, which are the largest groups of applicants, so Chechens and Tajiks, there is a relatively large population of torture victims. Of course, this is not the only feature that characterises people from vulnerable groups, but quite often (PLMZSO4).

These cases are reflected in the story of a Chechen interviewee:

I was afraid mostly of Kadyrov's people, who jailed me two times, tortured me and wanted me to cooperate with them to betray militant guerrillas I was aiding. When I refused to cooperate with them as a militant who could possibly know about plans or the localisation of guerrillas, they wanted to jail me for a third time.

I was afraid of this. Last year, they came to my parent's home 4 times asking about me, 4 times! (PLMICH14).

Representatives from NGOs also pay attention to the group of people whose premises of vulnerability (as understood in the Polish law) overlap and co-exist. Often, this is the intersection of being a victim of torture and a single mother. This is illustrated by examples from two Chechen women:

I came with the children. My husband couldn't leave the country then. He joined us only one month ago. I was very stressed, when I went to Germany and when we came to Poland later as well. I was in depression. I was taking antidepressants (PLMICH06).

Now I live in fear. I am afraid that my husband will find us and take away the child from me. I would like to be with my baby, until my heart is still beating. I gave birth to him late. I was 40 then. When I was in the third month of pregnancy for the first time, my husband beat me so hard that doctors had to make an abortion, as the foetus inside of me was already dead. My son is a long-awaited child. I don't know, what will happen to me if they take him away from me (PLMICH08).

As indicated by an OF representative, the Polish authorities are taking steps to **assess if an applicant** for international protection can be considered a person requiring special treatment, as stipulated in the Law on Protection. For those persons at the stage of identification, **the psychologist's opinion** is often crucial for the Office.

Of course, we have unaccompanied minors, however there are not a lot of cases. There are disabled individuals who really also need constant care; however, this also is not that large of a group of people. The largest group are individuals who were subjected to physical or psychological violence or one kind or another and were identified by psychologists as individuals belonging to those vulnerable groups and requiring specific treatment in the context of the proceedings. This is generally done on this basis, when we receive the documents from the Border Guard—(...) applicants [for international protection]—then after document analysis, the individual conducting the proceedings decides in that moment whether at this stage to make a psychological identification of said individual. Typically, if we have it in the application—there are of course relevant fields—if we have it marked that someone was subjected to physical violence and speaks about it, that he/she was beaten hard, tortured, etc.—then for me it is evidently a premise for that individual to immediately be directed for psychological evaluation. A conversation with a psychologist occurs. Unless the foreigner does not consent to such a conversation—then that is a completely different situation because if he/she does not consent then we proceed normally. This is in accordance with the provisions of the Law [on Protection]. If a foreigner rejects being subject to a psychological identification, then we proceed in the regular mode without this special treatment, speaking legally. At the time when an identification occurs, a conversation with a psychologist, the psychologist issues an opinion and recommends that we refer to the case in either ordinary or special mode. If we

have the recommendation for special treatment, then later these activities actually take place in the presence of a psychologist. Additionally, it happens, and also not infrequently, that in the application the information is incomplete, unclear, so we call that person for questioning and at the time of the questioning, if circumstances arise where we believe that there should be a psychological evaluation, then we speak with the foreigner, the questioning is stopped and we schedule only a date for the evaluation, and later on the route is similar (PLMZOF2).

NGOs, however, draw attention to **problems in the identification mechanism** of vulnerable people and **limited psychologist support**.

If you asked the government about this, then they would brag that they introduced the procedures regarding specifically vulnerable individuals, that they are ensuring the presence of a psychologist, etc. Only so what of such a psychologist if he makes an initial identification but there is no description—it is only checked off that the given individual can participate in questioning or not, if a psychologist's presence is needed or not. Also, we sometimes have the impression that this is done on the surface. Because when our psychologist—ours—speaks with a person then a lot of problems and indications come out to treat this specially, because he has serious, past experiences. And this does not come out at all from initial identifications conducted frequently by government psychologists. So certain procedures were introduced, however, quite often they act fictitiously, and I have the impression that they are a type of fig leaf. On the basis of 'we introduced it, so its super, don't pick on it because everything is there'. But *de facto* it does not fix the situation of individuals seeking protection here (PLMZSO1).

Other NGOs claim that the situation has worsened in this respect recently and that the **placing of traumatised people in closed centres** is a serious problem.

(...) I see that groups requiring special attention are not at all identified at the border. They are not at all identified by doctors at the border, traumatised individuals are placed in guarded centres without any consideration. This breaks all kinds of standards of the Rome Convention, the European Convention on Human Rights and Union standards, and Polish law, because Polish law also forbids placing individuals who have been victims of torture in guarded centres. It is definitely wrong in this respect (PLMZSO3).

Violence can be a premise to **postpone the hearing** in the asylum proceedings and so the opinion of the psychologist who diagnoses the **applicant's psychophysical condition** **plays an important role**:

Actually, it's happened for me that among these proceedings we conduct, a majority of foreigners declare being victims of violence and a majority from this group are identified as individuals belonging to a vulnerable group, that indeed they were subject to this violence. Regardless of the final result of the proceedings, there is the pressure to treat them within this special group in the proceedings. In fact, they are directed to the vulnerable group. Although there

are not many individuals who are diagnosed by psychologists as individuals who have post-traumatic stress disorder or there is any other kind of serious condition. There are not many, and situations in which postponement is requested, possibly a hearing in some time, are already very sporadic. Actually, in these instances I trust this opinion because I know that these actually are individuals who in fact do require this time to recover a little bit mentally, so they are able to tell their story. Situations like these do occur, but not often (PLMZOF2).

Additionally, NGOs emphasize the key role of involving a **specialised psychologist** when conducting refugee interviews, especially with people affected by various traumas.

I think there are many of these situations where it would be necessary to back away from a refugee status interview being conducted by an official. Terribly traumatised people with such horrible experiences are encountered, where they should not be exposed to re-traumatisation at all by forcing someone to chronologically, sensibly, logically open all this up and prove that he/she is credible. It should only be entrusted to specialised psychologists where these sessions would be recorded, then this would already be a technical matter, or on the basis of therapy where this type of psychologist would issue a testimony or would write down the given individual's story and on this basis the government would recognise that these are sufficient premises for recognising this someone as a refugee. Except, I have the impression that this is more a matter of technicalities and some practice (PLMZSO1).

Evidently, sometimes asylum seekers do not reveal their psychological and emotional condition, even to a psychologist. As informed by an NGO expert (PLMZSO1), people react differently to difficult experiences and traumas. For example, there are some people who have an easier time keeping it together and even a psychologist may not notice their condition, which can delay or completely exclude them from being classified as vulnerable.

Psychologists are of key importance when identifying vulnerable people, such as victims of different forms of violence, as soon as possible and being able to provide them with adequate support. Unfortunately, in Poland, there is a shortage of well-prepared, trained psychologists providing regular support for vulnerable groups, even those working in NGOs specialised in psychological assistance for asylum seekers<sup>45</sup>. Recommendations on how to partly fill deficiencies in this respect came from the project 'I notice, I help—integration and development of activities and procedures of the Office for Foreigners and Border Guard in the field of comprehensive identification of vulnerable groups among persons seeking protection on the territory of the Republic of Poland'. The project was coordinated by the Różnosfera Foundation, an important NGO specialising in psychological support for various groups with special needs, with the involvement of two key state actors dealing with asylum policy in Poland, the Border Guard and the Office for Foreigners. It was co-funded by the AMIF National Programme in 2016-2017<sup>46</sup>. The final publication summarising the results and providing a detailed set of recommendations was titled 'An integrated system of

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<sup>45</sup> See (European Council on Refugees and Exiles (ECRE), n.d.).

<sup>46</sup> For more details about this project, considered an example of best practice in the field of asylum, see 'Section 4. Examples of Positive/Best Practices'.

comprehensive identification and protection of the needs of vulnerable groups among applicants for international protection in Poland' (Fundacja Różnosfera, 2017). In its introduction, the background of the functioning of vulnerable groups was discussed in detail, including legal and psychological contexts.

According to the Office for Foreigners' representative, even if there is a legal requirement for special treatment of vulnerable applicants for international protection, the **whole proceeding is the same for all**.

A group treated specially—of course it is different but indifferently treated because simply it requires that presence of a psychologist or medical assistance—this is ensured. But in reality, the procedure alone looks basically the same in all instances and we approach it the same way (PLMZOF2).

Some organisations point out particular problems in regard to vulnerable people's situations under the asylum procedure in Poland. One of them—reflected in statements by different meso-level actors—is the already mentioned **detention of vulnerable groups, including families and children**.

(...) in the guarded centres, people are locked up who, according to the law, should not be because they are victims of violence. It was always like this so it would be difficult to fight this, for the law to be respected. It seems to me that recently this is even more difficult (...) by way of regulations then definitely what is hopeless in our legislation is that we allow the detention of children. This should completely disappear. Because when it is about detention of victims of violence than we have good regulations, they do not allow this, this practice is horrible. However, when it is about the detention of children, these regulations allow this to happen (PLMZSO1).

There is also the matter of child detention because in Poland right now, not children without care, but children who are members of families [and] up to 15 years old are subject to detention. The problem is, it's not all children in Poland, but yet there is this problem that in Poland children sit in detention centres. (...) there is a group of children, who according to Polish law can be detained in guarded centres—this is a problem. Children, there is law. However, victims of torture and that they are in centres is a practice because the law does not allow for them to be in detention (PLMZSO4).

There are vulnerable groups that should not be found in guarded centres. Here the law clearly states: individuals for whom the presumption of subjection to violence has been legitimised and individuals for whom being placed in the centre could be a threat to their life or health. The difficulty is firstly that, the Border Guard considers these two circumstances as one circumstance, so that the threat to life and health is imperative and the presumption of submission to violence is only then a circumstance for not being placed, when it is a threat to life or health. Yet, it is not an independent circumstance, even though in the law it is not written 'either, or'. I can be healthy today, but in the instance I find myself in detention than my health status can very quickly worsen, which is actually a classic example when it comes to individuals with traumatic experiences



because the limiting of freedom, looking at people in uniforms, looking at bars, because even when we do not have them in the windows, they are between hallways, stairwells, basically it traumatises people. Someone could even handle their trauma very well and not have any symptoms of PTSD now, or to a very moderate degree, but after being placed in a centre it is a matter of time for it to come out. I have seen these types of cases where people were getting psychotic symptoms, were trying to commit suicide, were beginning to have symptoms of clinical depression, self-inflicted injuries (PLMZSO5).

The challenge—and basically the gap in the asylum system—is also the issue of the **lack of transport provided for vulnerable asylum seekers** from the border-crossing point where the application is submitted to the centre for foreigners, which can be seen as a considerable distance within the legally required period.

The first difficulty is that someone else accepts the application and someone else then is responsible for its consideration. At the moment an individual is allowed into Poland, so when the application is submitted, he/she is in a state of void for a bit because after the border (...) there are maybe 2-3 days to appear at a reception centre. However, no one assists in this, in appearing at this centre. Here we have the first problem with vulnerable groups, with people with disabilities. Specifically the kind of disabilities that make it difficult to move, with chronically ill individuals, with their identification, with individuals who might be endangered even by their own diaspora that is here (...) This moment between crossing the border and the reception centre is a kind of moment where we do not have an eye on these individuals, we do not know what is going on with them, we do not provide them with any support, and also because of this we do not provide any protection really. It is also not known who crosses the borders after or before them (...) An individual, a family, at their own cost and within their own abilities must get to the reception centre, so we already have a gap where in no way are, we helping individuals who may have specific needs. These needs only, if they begin to be identified, are identified at the level of the reception centre, so the system was a little considerate, that an individual begins to have specific needs only in the moment when they arrive at the reception centre (PLMZSO5).

Another important problem is comprised of **limiting factors in the initial identification of a vulnerable person** and their needs for special treatment at the stage of first contact with the Polish authorities at the border, which is when the application for protection is submitted to the Border Guard officers. This is due to a combination of objective, systemic barriers (e.g., an application form of more than 20 pages, language deficits in communication between the guard and applicant, a large number of applicants at the same time) and subjective obstacles on the part of the individual submitting an application, be they emotional, cognitive, or anxiety-driven (e.g., the applicant may be traumatised, tired, afraid). Thus, the circumstances regarding crossing the border and submitting the application are stressful for the foreigner and very difficult psychologically. This means that a foreigner does not always want or is unable to fully present the reasons that may indicate belonging to a vulnerable group (excluding obviously being a minor or pregnant). Identification of a vulnerable person is also hampered by the lack of availability of a psychologist and, often, an interpreter at the

submission stage. Added to this is the way in which questions are formulated on the application for international protection.

(...) in the application there no questions that directly ask about specific needs at all, but a portion of the questions can indirectly testify to these specific needs or at least instigate among us such a suspicion or presumption that someone might belong to a vulnerable group and have some specific needs which we, the country accepting and considering the application, should somehow secure. *De facto* on the border, despite some details being gathered that could already activate the system of further identification or already secure the needs that are visible, there is no such thing. Firstly, the details that are gathered are not gathered directly, they do not directly relate to needs, only indirectly. Secondly, they are burdened with a very big mistake, above all the mistake of concealment, on the side of the individual who is submitting the application, and the mistake of misunderstanding, on the side of the individual accepting the application with regard to a language barrier—also what is repeatedly raised by individuals crossing the border, specifically at Terespol, by land where the train arrives, and it is like that over the entire day, like at Okęcie, that there may be one individual, or two individuals per month, but that suddenly 40 or 60 or 100 individuals need to be served and a certain number of these applications needs to be accepted. The conditions for submitting an application are absolutely not favourable to and do not guarantee identification. Other than that, there is no mechanism at the border that would ensure this identification in some way (PLMZSO5).

The problem of people requiring special treatment is relevant in the **Dublin procedure** and **Dublin transfers**. In this regard, the Polish authorities—but also those from other countries participating in the Dublin system—may not possess the necessary knowledge of a given person's situation in the context of their vulnerability as the Dublin system does not require passing this kind of information between the national authorities of involved countries. Vulnerability is mentioned, per se, only once in the Dublin Regulation, in the context of children, not in any article but in the introductory part (preamble)<sup>47</sup>.

When asked about Polish authorities' knowledge about the special needs of people returned to Poland within **Dublin**, one of the meso-level interviewees from the Office replied:

But in Dublin there is this notation that you do not have the responsibility of forwarding this information. If the foreigner does not provide consent, then simply you do not forward it. The unwritten agreement between states is like this, when they know that a man has HIV then they will notify to be careful, because this poses a threat even to the officials who are accepting. It happens that the German side brings someone who, for example, needs dialysis that day and we

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<sup>47</sup> Point 13 stipulates: 'In accordance with the 1989 United Nations Convention on the Rights of the Child and with the Charter of Fundamental Rights of the European Union, the best interests of the child should be a primary consideration of Member States when applying this Regulation. In assessing the best interests of the child, Member States should, in particular, take due account of the minor's wellbeing and social development, safety and security considerations, and the views of the minor in accordance with his/her age and maturity, including his/her background. In addition, specific procedural guarantees for unaccompanied minors should be laid down on account of their particular vulnerability'.

do not know, or they bring a woman with an IV, drop her off at this border crossing and we also do not know. It is difficult in fact that there is no obligation of forwarding and indeed some do not even try because they are using gateway and do not pass it on. But as of my time, there were consultative meetings with the Guard plus us, plus a German liaison officer and certain problems were solved on an *ad hoc* basis (PLMZOF1).

### 3. Examples of Positive/Best Practices

This part provides an overview of best practices regarding the area of refugee protection and asylum policy in Poland in recent years. They were identified on the basis of the analysis of both the literature and additional sources developed by, among others, the EU or NGOs, as well as the qualitative material from the interviews conducted within the RESPOND project. The selected practices are only examples and do not constitute a final and exhaustive list.

The concept of good practices, also called best or positive practices, is used in many contexts. The way they are defined may differ between countries, international organisations, NGOs, etc., and also between areas of activity (public administration, business, specific policies). Good practices have not been defined top-down and operationalised in the RESPOND project as it is assumed that all practices are, to a large extent, context- and country-dependent and not directly applicable in other countries. However, they may still function as a model or establish a benchmark in specific policy areas, e.g., good practices in refugee protection in Poland may be used in other EU Member States.

In general, **good (best, positive) practices** can be considered as examples of specific projects, programmes, initiatives, undertakings, activities, actions, tools, or solutions that have been implemented in a given (policy) area by different entities for various groups of recipients/beneficiaries and have resulted in effects usually assessed as favourable and desirable. Good practices often set a certain standard and become a model that is imitated bottom-up by other entities or recommended top-down for use. Good practices can be initiated by various entities, including international organisations (EU, UN) along with their bodies and agencies, national public administration institutions (ministries, immigration offices, foreigners' offices, local government units), or NGOs and civil society (associations, foundations, charities). Often, good practices are the domain of NGOs, less-formal cooperation networks, or international organisations.

Analysis of existing sources regarding good practices in the area of migration, with particular emphasis on those provided by the European Union, is the basis for the statement that there is no single, commonly used definition of this concept. However, its understanding is often based on some common elements. In this context, it is worth recalling the approach applied to develop the European Commission's good practice database on **the European Web Site on Integration (EWSI)**. The definition used for the needs of EWSI is formalised and focused on projects and effects. According to it:

'Good practices' can be defined in multiple ways. However, a thread common to most definitions implies strategies, approaches, and/or activities that have been shown through research and evaluation to be effective, efficient, sustainable, and/or transferable, and to reliably lead to a desired result. Good practices on the EWSI are collected through a template, which has been developed specifically to that effect and comprises all the information needed to judge whether the practice is adaptable to other contexts (European Web Site on Integration (EWSI), n.d.).

As of late October 2019, the database of good practices in the EU (plus Norway and Iceland) contained only 26 records for Poland registered between 2010 and 2019. The analysis of these practices allows the observation that they are mostly targeted at generally defined

foreigners and concern different aspects of integration (language and culture training, housing support, building relations with the community and institutional support in contacts with public service officers). There are also practices focused on cooperation between various institutions dealing with foreigners, e.g., public administration and NGOs. No practice directly related to refugee protection during the asylum procedure has been identified. The description of only a few projects explicitly indicates forced migrants or refugees as the target group (European Web Site on Integration, n.d.).

Good practices related to the implementation of refugee protection and the asylum procedure can be **identified at several levels**:

1. **macro level** – implemented by international organisations (e.g., UNHCR, EU) and public administration institutions at the central level (e.g., government);
2. **meso level** – implemented by local-level actors such as public administration institutions at the local level (e.g., municipalities, public schools, social assistance units) and NGOs; local communities;
3. **micro level** – implemented by individuals and small informal support groups (e.g., families, neighbours).

Examples of **macro-level good practices at the UNHCR level** in the field of refugee protection and asylum policy in Poland concern the implementation of projects focused on quality assurance and the evaluation of the asylum system in countries that are state parties to the 1951 Convention relating to the Status of Refugees (UN General Assembly, 1951). In this regard, three projects have to be discussed:

1. Asylum Systems Quality Assurance and Evaluation Mechanism (ASQAEM) – a multi-country, quality project in the area of asylum systems implemented by the UNHCR between 2008 and 2010 in Central European countries (Austria, Bulgaria, Germany, Hungary, Poland, Romania, Slovakia, and Slovenia). It was co-funded by the European Refugee Fund (ERF) (United Nations High Commissioner for Refugees (UNHCR), 2010).
2. Further Developing Quality Project (FDQ) – a follow-up to the successful ASQAEM project, implemented in 2010-2011. Among its participants were the countries involved in ASQAEM and new ones. It was co-funded by the European Refugee Fund (United Nations High Commissioner for Refugees (UNHCR), 2011).
3. Response to Vulnerability in Asylum Project (RVA) – conducted in 2012-2013 in Bulgaria, Hungary, Poland, Romania, Slovakia, and the United Kingdom and aimed to promote an understanding of the difficulties and challenges faced by vulnerable persons among asylum seekers in order to improve their identification and response. It was co-funded by the European Refugee Fund (United Nations High Commissioner for Refugees (UNHCR), 2013)<sup>48</sup>.

An important example of a **macro-level good practice at the national level** in the field of refugee protection and asylum policy can be the active involvement of the Polish Commissioner for Human Rights (Ombudsman) in the protection of the rights and freedoms of foreigners in Poland, including asylum seekers. In recent years, protection has been primarily associated with the difficulties encountered by foreigners at Poland's eastern

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<sup>48</sup> As we were informed by the UNHCR Poland representative, the RVA project contributed to enhancement of the identification of vulnerable persons in asylum procedures in Poland.

border who expressed their will to submit an asylum application several times but were refused entry by the Polish Border Guard due to the lack of a valid visa. Many of them have experienced the phenomenon of 'pushbacks' at the Polish-Belarusian railway border crossing point in Brest-Terespol. This situation of restricted access to the territory of the Republic of Poland for asylum seekers, especially observed since 2016, resulted in increasing interest and involvement of the Commissioner for Human Rights, NGOs providing legal assistance to migrants, and attorneys<sup>49</sup>. Consequently, the representative of the Commissioner conducted inspections on the border crossing in Terespol (Polish-Belarusian border) twice, in August 2016 and May 2018, of which memos were made publicly available on the Office's website<sup>50</sup>. In addition, an unannounced border-crossing inspection was conducted in October 2016 in Medyka (Polish-Ukrainian border)<sup>51</sup>. The Commissioner also requested specific inquiries into the Border Guard (in April 2018, to clarify what actions had been taken so far and what was planned to improve the situation at the border) and the Ministry of Interior and Administration (in February 2017, June 2017, and September 2018)<sup>52</sup>. In the inquiry to the Ministry from September 2018, the Commissioner emphasized the need to create legal guarantees of effective access to procedures examining applications for international protection for foreigners and also asked for the legislative initiative necessary to introduce regulations into the existing legal order, which would establish the principle of recording interviews with foreigners under the second line check (Commissioner for Human Rights (CHR), 2018b).

**Meso-level interviews** are an important source of information on good practices, especially at the meso and macro levels. The meso-level common codebook for the RESPOND project regarding the policy area of refugee protection contains the category: 'Best practices and solutions', which is a first-level code and covers two sub-categories defined as: 'Those initiated by the state actors (including intergovernmental or supranational organisations such as UNHCR, IOM, EU)' and 'those initiated by the NGOs-INGOs or informal networks'<sup>53</sup>. These second-level codes were used to extract and analyse the material from meso-level interviews with the support of NVivo software. The considerations that follow are based both on the literature and other available sources, such as the interviews.

Examples of **meso-level good practices implemented by NGOs and other non-state actors** in the field of refugee protection and asylum policy in Poland are as follows:

1. Free legal assistance for foreigners, including asylum seekers and refugees at border crossings, living in centres for foreigners and outside of them, provided by NGOs (such

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<sup>49</sup> For further information about pushbacks, see (Szulecka, 2019, pp. 44-46, 53-58), (Helsinki Foundation for Human Rights (HFHR), 2017), (Górczyńska & Szczepanik, 2016), (Helsinki Foundation for Human Rights (HFHR), 2019), (Human Constanta (HC), 2019), (Chrzanowska, et al., 2016), (European Union Agency for Fundamental Rights (FRA), 2019), (Halina Nieć Legal Aid Center (HNLAC), 2018).

<sup>50</sup> For further information, see (Commissioner for Human Rights (CHR), 2016a), (Commissioner for Human Rights (CHR), 2018a).

<sup>51</sup> For further information, see (Commissioner for Human Rights (CHR), 2016b).

<sup>52</sup> For further information, see (Commissioner for Human Rights (CHR), 2017), (Commissioner for Human Rights (CHR), 2018b).

<sup>53</sup> This category also includes the sub-category 'Suggestions and ideas of key informants about the improvement of the protection system (nationally and internationally)', which does not correspond directly to best practices and was used to elaborate on other issues in this report.

- as Association for Legal Intervention, Halina Nieć Legal Aid Centre, Rule of Law Institute Foundation), Ocalenie Foundation, Foundation for Somalia;
2. Monitoring the application of international, EU and Polish law by NGOs, which manifests itself in, e.g., organising interventions and actions at border crossings, often followed by preparing and providing free online access to resulting reports, expert opinions, evaluations and recommendations. Among the recent, well-known examples worth mentioning are:
    - a) Rule of Law Institute Foundation (2016): 'The use of alternatives to detention of foreigners in Poland in the years 2014-2015. Monitoring report' (Sieniow, 2016);
    - b) Association for Legal Intervention (2016): 'At the border: Report on monitoring of access to the procedure for granting international protection at border crossing in Terespol, Medyka, and Warszawa Okęcie Airport' (Chrzanowska, et al., 2016);
    - c) Helsinki Foundation for Human Rights (2016): 'A road to nowhere. The account of a monitoring visit at the Brześć-Terespol border crossing between Poland and Belarus' (Górczyńska & Szczepanik, 2016);
    - d) District Bar Council in Warsaw, Association for Legal Intervention and Helsinki Foundation for Human Rights (2017): lawyers and representatives of NGOs at the Polish-Belarusian border crossing in Brest-Terespol action aiming to provide legal assistance to persons applying for international protection in Poland;
    - e) Helsinki Foundation for Human Rights (2019): 'Access to asylum procedure at Poland's external borders – current situation and challenges for the future' (Białas, et al., 2019);
    - f) Helsinki Foundation for Human Rights (2019): 'Research on the applicability of the best interests of the child principle as the primary consideration in detention decisions as well as the alternatives to detention' (Górczyńska & Witko, 2019).
  3. Implementation of projects in cooperation with state actors—one of the recent and important examples being the project: 'I notice, I help—integration and development of activities and procedures of the Office for Foreigners and the Border Guard in the field of comprehensive identification of vulnerable groups among persons seeking protection on the territory of the Republic of Poland'. The project was implemented by the Różnosfera Foundation with the involvement of two, key state actors dealing with the asylum policy in Poland—the Border Guard (responsible for receiving the asylum applications) and the Office for Foreigners (responsible for implementing the asylum procedure and providing reception conditions during the procedure). It was co-funded by the AMIF National Programme in 2016-2017. Its aim was to develop a model for identifying and securing the needs of vulnerable groups among asylum seekers in Poland. The project results—the proposal of the abovementioned model and the final publication, 'An integrated system of comprehensive identification and protection of the needs of vulnerable groups among applicants for international protection in Poland' (Fundacja Różnosfera, 2017), are a non-binding recommendation that as of today has not been formally implemented (Fundacja Różnosfera, n.d.).

At this point, it is worth referring to selected statements of respondents from the meso-level interviews to see what they directly indicated as good practices or what can be interpreted in this way. In the opinion of an official from the Office for Foreigners, one good practice is related to the fact that the Office's branch (and more precisely, of one of its departments) is located closer to the eastern border and some centres for foreigners, which not only allows

foreigners (mostly asylum seekers) to have easier access to the Office's employees but also has a practical and institutional dimension as it can speed up document flow and procedures with the Border Guard. In this case, this is a macro-level practice initiated by the state-level actor.

In fact, we believe, that all activities in the interest of persons **with special needs (vulnerable groups)** involved in proceedings for international protection can be considered good practices, even if they arise directly from legal provisions. The intention and motivation of the person/institution applying the given practice is important. This can apply to persons who, in light of the Law on Protection, are defined as persons who may require special treatment (p. Article 68), but also to other persons whose situation is not covered by law but results from other unfavourable conditions (e.g., a mother from a large family who cannot leave children alone). In this regard, the official from the Office for Foreigner said:

For example, if we are dealing with disabled people, interviews also often occur at their place of residence. The law also regulates this (...). These are elderly people and occasionally single mothers with children and disabled people or people who are ill—then yes, of course. Also in a situation where we are dealing with people who are ill, from whom we have a doctor's note, because of course we require those doctor's notes nevertheless, or we have very exceptional situations where we do not yet even have the doctor's note but we have information from the centre itself, from the centre's management, that it will not be possible for the given individual to arrive or even participate in the interview at all, then we are also able to reschedule the interview for a later time—sure we really had different situations (PLMZOF2).

An important practice on the part of the Office for Foreigners is a situation in which the Office tries to **provide psychological support** for a given asylum seeker with the same psychologist at various stages of the proceedings, so that the person has a sense of security and does not have to discuss his/her situation several times (this is essential for people from the vulnerable groups):

It often happens to us—because we also have permanent contact with a psychologist—(...) that the psychologist who is on duty at the centre simultaneously carries out identification for further proceedings, which means this is the same person. It often happens that those people who come to the psychologist for consultation are also later identified by him, so it is not just a one-time short meeting, but he already knows that person. (...) It also often happens that this is a person identified as belonging to this special [vulnerable] group (PLMZOF2).

The mental condition factor is also important for the duration of the proceedings as confirmed by the interviewee from the Office:

We also have such psychologists' opinions to postpone the interview. This is one of those situations when the proceedings are prolonged, not because of the official's fault, but because we have a psychologist's recommendation to postpone the interview by, for example, 4-6 months; we had such cases, where we had six months to interview and it was recommended to postpone this interview for six months (PLMZOF2).



Some good practices initiated by NGOs in recent years have already been mentioned and summarised in this section. Generally, in their statements, our meso-level respondents from social organisations drew attention to the situation on the eastern border of Poland and the restricted access to the asylum procedure since 2016. NGOs, but also other institutions—Commissioner for Human Rights and lawyers—played a key role in monitoring the situation on the eastern border and in informing public opinion in Poland and abroad about it (they published reports and memos, often both in Polish and English). This can be illustrated by the following statements:

And then in 2017, there was such an action organised (...) by lawyers from the District Bar Council in Warsaw , who went to the border with powers of attorney from the people who had been contacted by the organisation Human Constanta earlier and tried to represent them before the Border Guard, on behalf of their given authority, asking them to accept their applications for refugee status. While those affairs also have not ended, they were not able to help anyone (PLMZSO4).

NGOs also drew attention to the unfavourable political situation for NGOs involved in supporting asylum seekers, refugees, and other migrants in Poland, especially since 2015 when the Law and Justice Party won the elections. One can even speak of a feeling of threat from state actors. This has encouraged closer cooperation between some NGOs in the form of regular meetings and trainings, an exchange of knowledge and competencies (e.g. how to secure data and encrypt messages).

## Conclusions

The purpose of this report was to present, analyse, and evaluate refugee protection and asylum policy in Poland after 2011, with special attention to 2015 and subsequent years in the context of the migration and refugee crisis. As previously found within the RESPOND project, ‘since 2015, new intensive debates about possible solutions to the so-called “refugee crisis” have prompted Polish policymakers to introduce reforms to both international protection and immigration law’ and ‘the direction of changes in law reflects the emphasis placed on internal state security, whereas the practice observed since late 2015 raises concerns about respect for human rights, particularly in cases of arbitrarily denied or restricted access to the asylum procedure and pushback of potential applicants’ (Szulecka, et al., 2018b, pp. 65-66). In 2017, a proposal for amending the Law on Protection was announced and followed by its revised version in 2019. The proposed amendment concerned, among others, the introduction of a border procedure and lists of safe countries and safe third countries. The planned changes were criticised by many NGOs in Poland. In recent years, however, it was rather the implementation of the law, government policy, and unofficial practices (e.g., of the Border Guard) that raised more doubts than the changes in the law and planned amendments.

The most important public institutions in Polish asylum policy remain the Border Guard and the Office for Foreigners, and thus, the Ministry of the Interior and Administration (which supervises them). Other significant actors are the Refugee Board and administrative courts. A special role is played by NGOs providing legal support to forced migrants, both in Poland and abroad (e.g., in cases before the ECtHR). The interviews also raised issues of cooperation with international organisations such as the UNHCR and the EU, and other EU Member States, including Germany and the Visegrad Group countries, e.g., in the context of Dublin transfers, the Dublin system and its reform or relocation scheme. In many meso-level interviews, attention was drawn to the tensions and difficult relations between public-administration institutions and NGOs and the unfavourable political climate.

The analysis clearly shows that in the years 2015 and 2016 there was a breakthrough in the asylum system in Poland in terms of implementation because the new government formed by the Law and Justice Party after the parliamentary elections in 2015 referred to the migration and refugee crisis in Europe to justify policy and legal changes. The change of power has influenced the politicisation of migration and asylum issues in the country. Poland withdrew from relocation and resettlement schemes and eventually did not implement them. The Ministry of the Interior and Administration significantly changed the rules for financing projects from EU money through AMIF, which limited the activities of many NGOs providing legal support for asylum seekers and refugees. Since 2015-2016, the situation on the eastern border of Poland was difficult—the limited access to Polish territory for asylum seekers was observed, multiple pushbacks at the Brest-Terespol railway border crossing were recorded, and different unofficial practices of the Border Guard were reported. At the same time, the Ombudsman for Human Rights, NGOs and lawyers became involved in the situation at the border in different ways, such as monitoring visits, interventions, and actions at border crossings, publications of reports, etc. The situation on the eastern border translated into difficulties in submitting applications for international protection. With regard to the asylum procedure itself and the decisions issued in this regard, the large number of discontinuances, negative decisions, and appeals are noteworthy. Among the micro-level

respondents, the long duration of the asylum procedure was underlined. They also drew attention to the problems with crossing borders in Brest-Terespol (some tried several times), the role of language and communication during the proceedings, and the importance of collecting evidence to justify their situation. Meso-level actors assessed asylum law rather positively, although there were strong criticisms, mainly in relation to the detention of foreigners, including children and other vulnerable groups. The planned changes in the Law on Protection, implementation of existing law and practices applied were rated much worse (e.g., second-line control at the border and the way of formulating questions by the Border Guard, encouraging asylum seekers to include in the application form only the main reasons for applying for refugee status, without going into detail, etc.).

## Policy Recommendations

Based on the collected material and the analysis carried out, several recommendations can be proposed, including those submitted by respondents:

1. Informal practices restricting forced migrants' access to Poland and the submission of an application for international protection should be eliminated. The government should take into account the results of monitoring and visits by the Ombudsman for Human Rights and his recommendations.
2. The activities of the Border Guard at the border should be more transparent and better monitored, including the interview held by Border Guard officers at the second-line check with a foreigner appearing at the border.
3. With reference to the asylum procedure, applications for international protection should be received by civil servants, not by Border Guard officers in official uniforms, as the latter's competences do not concern international protection but border control. In addition, it is recommended to return to the Office for Foreigners the competence of proceedings regarding granting a permit for stay due to humanitarian reasons or a permit for tolerated stay.
4. Another challenge is the mechanism for identifying vulnerable groups, which needs to be improved because it currently does not completely fulfil its functions. The model for identifying and securing the needs of vulnerable groups among asylum seekers in Poland that was recently developed by the Różnosfera Foundation can be helpful in this regard.
5. Provisions on the detention of foreigners must be revised and those allowing the detention of children removed. The Polish state should fully execute the ECtHR's judgments in this regard.
6. Any inconsistencies between Polish asylum law and European and international law should be removed. Poland should fully implement EU law when it is compulsory and follow international standards of refugee and human rights law (e.g., relocation scheme).
7. Public administration institutions at the central level should pay more attention to the importance of NGOs in the functioning of the asylum system in Poland, including the multidimensional support provided to forced migrants. For these organisations to function properly, the government should provide them with adequate funding, at least through AMIF.

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## Appendices

**Table 5 Main legislative acts relevant to asylum procedures, reception conditions and detention in Poland**

The original title in Polish with full references ( <i>in italics</i> )	The simplified title in English (translation)	Abbreviation in English
<i>Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. uchwalona przez Zgromadzenie Narodowe w dniu 2 kwietnia 1997 r., przyjęta przez Naród w referendum konstytucyjnym w dniu 25 maja 1997 r., podpisana przez Prezydenta Rzeczypospolitej Polskiej w dniu 16 lipca 1997 r. (Dz.U. 1997 Nr 78, poz. 483 z późn. zm.)</i>	Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997 No. 78, item 483 with amendments)	Constitution
<i>Ustawa z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej (t.j. Dz.U. z 2019 r. poz. 1666 z późn. zm.)</i>	Law of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland (consolidated text, Journal of Laws 2019, item 1666 with amendments)	Law on Protection
<i>Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach (t.j. Dz.U. z 2018 r. poz. 2094 z późn. zm.)</i>	Law of 12 December 2013 on foreigners (consolidated text, Journal of Laws 2018, item 2094 with amendments)	Law on Foreigners
<i>Ustawa z dnia 14 czerwca 1960 r. Kodeks postępowania administracyjnego (t.j. Dz.U. z 2018 r. poz. 2096 z późn. zm.)</i>	Law of 14 June 1960 Code of administrative procedure (consolidated text, Journal of Laws 2018, item 2096 with amendments)	Code of Administrative Procedure
<i>Ustawa z dnia 6 czerwca 1997 r. Kodeks postępowania karnego (t.j. Dz.U. z 2018 r. poz. 1987 z późn. zm.)</i>	Law of 6 June 1997 Code of Criminal Procedure (consolidated text, Journal of Laws 2018, item 1987 with amendments)	Code of Criminal Procedure
<i>Ustawa z dnia 30 sierpnia 2002 r. Prawo o postępowaniu przed sądami administracyjnymi (t.j. Dz.U. z 2019 r. poz. 2325)</i>	Law of 30 August 2002 Law on proceedings before administrative courts (consolidated text, Journal of Laws 2019, item 2325)	Law on Proceedings Before Administrative Courts

Source: own elaboration based on (Asylum Information Database (AIDA), 2019b); (Szulecka, et al., 2018b, pp. 67-69); (C.H.Beck, 2020); (Sejm RP, 2020).

**Table 6 Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions and detention in Poland**

Original title in Polish with full references ( <i>in italics</i> )	Simplified title in English (translation)	Abbreviation in English
<i>Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 19 lutego 2016 r. w sprawie wysokości pomocy dla cudzoziemców ubiegających się o udzielenie ochrony międzynarodowej (Dz.U. 2016 poz. 311)</i>	Ordinance of the Minister of Interior and Administration of 19 February 2016 on the amount of assistance for foreigners seeking international protection (Journal of Laws 2016, item 311)	Regulation on Amount of Assistance for Asylum Seekers
<i>Rozporządzenie Ministra Spraw Wewnętrznych z dnia 23 października 2015 r. w sprawie regulaminu pobytu w ośrodku dla cudzoziemców (Dz. U. 2015 poz. 1828)</i>	Ordinance of the Ministry of Interior of 23 October 2015 on the rules of stay in the centre for foreigners (Journal of Laws 2015, item 1828)	Regulation on Rules of Stay in the Centre for Asylum Seekers
<i>Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 24 kwietnia 2015 r. w sprawie strzeżonych ośrodków i aresztów dla cudzoziemców (Dz.U. 2015 poz. 596)</i>	Ordinance of the Ministry of Interior and Administration of 24 April 2015 on the guarded centres and detention centres for foreigners (Journal of Laws 2015, item 596)	Regulation on Detention Centres
<i>Rozporządzenie Ministra Spraw Wewnętrznych z dnia 4 listopada 2015 r. w sprawie wzoru formularza wniosku o udzielenie ochrony międzynarodowej (Dz.U. z 2015 r. poz. 1859)</i>	Ordinance of the Ministry of Interior of 4 November 2015 on the form of application for international protection (Journal of Laws 2015, item 1859)	Regulation on the Application Form

Source: own elaboration based on (Asylum Information Database (AIDA), 2019b); (Szulecka, et al., 2018b, pp. 67-69); (C.H.Beck, 2020); (Sejm RP, 2020).

**Table 7 Directives and other CEAS measures transposed into national legislation in Poland**

Title of the Directive/ Regulation at the EU level (English name)	Abbreviation	Deadline for transposition	Date of transposition	Title of the corresponding legal act at the national level (English name, Polish name <i>in italics</i> )
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 (OJ L 337, 20.12.2011)	Recast Qualification Directive	21 December 2013	30 August 2014	<p>Law of 26 June 2014 amending the law on granting protection to foreigners within the territory of the Republic of Poland and some other laws (Journal of Laws 2014, item 1004)</p> <p><i>Ustawa z dnia 26 czerwca 2014 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw (Dz.U. 2014, poz. 1004)</i></p>
Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ L 180, 29.6.2013)	Recast Asylum Procedures Directive	20 July 2015; Article 31(3)-(5) to be transposed by 20 July 2018	13 November 2015	<p>Law of 10 September 2015 amending the law on granting protection to foreigners within the territory of the Republic of Poland and some other laws (Journal of Laws 2015, item 1607)</p> <p><i>Ustawa z dnia 10 września 2015 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw (Dz.U. z 2015 r. poz. 1607)</i></p>

Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ L 180, 29.6.2013)	Recast Reception Conditions Directive	20 July 2015	13 November 2015	Law of 10 September 2015 amending the law on granting protection to foreigners within the territory of the Republic of Poland and some other laws (Journal of Laws 2015, item 1607)  <i>Ustawa z dnia 10 września 2015 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw (Dz.U. z 2015 r. poz. 1607)</i>
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 (OJ L 180, 29.6.2013)	Dublin Regulation III	Directly applicable 20 July 2013	13 November 2015	Law of 10 September 2015 amending the law on granting protection to foreigners within the territory of the Republic of Poland and some other laws (Journal of Laws 2015, item 1607)  <i>Ustawa z dnia 10 września 2015 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw (Dz.U. z 2015 r. poz. 1607)</i>

Source: own elaboration based on (Asylum Information Database (AIDA), 2019b); (Szulecka, et al., 2018b, pp. 67-69); (C.H.Beck, 2020); (Sejm RP, 2020); (Asylum Information Database (AIDA), 2019b); (EUR-lex, n.d.).

### Box 1 Screening of vulnerable groups in Poland

Under the current asylum application form (5), apart from the self-identification mechanism including questions concerning medical conditions, disability, pregnancy, an SG [Polish *Straż Graniczna* – Border Guard] officer registering the application assesses whether an applicant (or any person covered by the application) may belong to one of these two groups: victims of trafficking in human beings or persons subject to torture. The SG Headquarters applies an algorithm prepared in 2014 on how to handle vulnerable applicants. It defines aims, ways, and rules for the SG's actions in case of identifying a vulnerable person. The objective is to ensure optimal conditions guaranteeing the assistance of medical personnel and psychologists whenever needed (6). NGOs point out that this preliminary identification is conducted at the time of lodging the asylum application, so often at the border, where the conditions are difficult. Some are of the opinion that the questions from the application for international protection cannot be considered early identification at all (7). Clear evidence that vulnerable persons are not identified correctly is the fact that victims of violence are still placed in detention, while the law prohibits their detention. NGOs generally confirm that the system of identification envisaged in the law does not work in practice.

In September 2017, the Commissioner for Human Rights published a report within the National Mechanism for the Prevention of Torture, in which it is clearly confirmed that there is an ongoing problem with the system of identification of vulnerable groups in Poland. The Commissioner for Human Rights notes that psychologists employed in detention centres are charged with many tasks relating to the recruitment, psychological support, and training of Border Guard officers, and care provided to migrants is merely one of them (8). Moreover, pursuant to the Border Guard internal document cited in the report, psychologists may render psychological aid in the case of traumatic events at the written request of the doctor examining the applicant. Thus, the applicant themselves may not initiate a psychological evaluation that could result in an official psychological opinion. According to the report, this restriction impedes identification of potential victims of torture.

Furthermore, during inspections undertaken in 2016, the Commissioner for Human Rights representatives discovered individual cases of persons whose detention in the centres, according to the report, attest to the ineffective functioning of the system for identifying victims of torture and violence, which should protect these persons from placement in closed centres (9). Details of the cases, identified in three out of four visited detention centres, were further elaborated in the letter to the Chief Commander of the Border Guard dated 30 June 2017 (10). In this letter, the Commissioner for Human Rights notes that persons seeking international protection can be left in a less favourable situation than the returnees, according to the Border Guard internal guidelines concerning vulnerable persons.

In 2018, the Commissioner for Human Rights visited another 3 detention centres and in the reports the Commissioner reminds that the internal algorithm, on the basis of which the identification is performed, does not clearly state, that vulnerable persons, once identified, should be immediately released from detention. The Commissioner observes that the lack of accessible treatment and therapy in the detention centres is rather deepening the trauma (11). Torture survivors are present in detention centres and even if they are identified at a later stage, they are not released from detention. There is a lack of expertise among medical staff and psychologists in the detention centres (poor knowledge of Istanbul Protocol) (12).

The Office for Foreigners does not collect statistics on the number of asylum seekers identified as vulnerable (13). According to the Office for Foreigners, identification of vulnerable applicants takes



place also during regular psychological counselling, available in every reception centre and at the Office for Foreigners. Psychologists have a minimum 4 duty hours a week per 120 foreigners (see Health Care) (14).

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- (6) Information provided by the Border Guard, 24 August 2015.
- (7) Information provided by LIA, November 2016.
- (8) Commissioner for Human Rights, Report on the activities of the National Mechanism for the Prevention of Torture in 2016, 2017, available at: <http://bit.ly/2sBpmvy>, 76.
- (9) Ibid, 82.
- (10) Commissioner for Human Rights, Letter to the Chief Commander of the Border Guard, 30 June 2017, available in Polish at: <http://bit.ly/2Cy89Tu>.
- (11) Commissioner for Human Rights, Raport Krajowego Mechanizmu Prewencji Tortur z wizytacji Strzeżonego Ośrodka dla Cudzoziemców w Lesznowoli (wyciąg), 18 December 2018, available in Polish at <http://bit.ly/2SO3DgP>; Raport Krajowego Mechanizmu Prewencji Tortur z wizytacji Strzeżonego Ośrodka dla Cudzoziemców w Białej Podlaskiej, 7 January 2019, available in Polish at: <http://bit.ly/2BU7ej5>.
- (12) Conference presentation of the representative of the National Mechanism for the Prevention of Torture, 3 December 2018, Mediolan, information available in Polish at: <http://bit.ly/2T5YvE7>.
- (13) Information provided by the Office for Foreigners, 1 August 2017.

**Source: (Asylum Information Database (AIDA), n.d.)**