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Poland – Country Report

Legal & Policy Framework of Migration Governance

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Abstract

The history of immigration to and emigration from contemporary Poland as a social phenomenon dates back to 1989. Geopolitical changes in the region brought the 'opening' of Poland's borders, which in turn contributed to the growing scale of mobility both from and to Poland. Moreover, Poland, as a country on the way from the East to the West also became a transit country both for migrants travelling due to economic reasons and also to asylum seekers. This report presents the socio-economic, political, legal, institutional and policy context of migration governance in Poland.

By analysing legal acts, official documents and available statistical data, we try to analyse macro level factors determining migration management in Poland. The report is divided into seven parts. In the first part, on the basis of statistical data, we conclude that the population of asylum seekers and refugees in Poland is strictly determined by the region of origin of foreigners seeking protection. For more than two decades, refugees have mostly originated from the Caucasus region (formally part of the Soviet Union). Moreover, the available statistics show that the number of asylum seekers is stable and not influenced by the so-called 'migration crisis'. Rather than a 'migration crisis', military conflicts and political and economic disturbances in countries along Poland's Eastern borders have largely shaped the structure of immigration to Poland and the population of persons seeking protection. The distinctive feature of migration control instruments in the context of Polish asylum policies is a relatively high number of refusals of entry, which raises concerns about access to asylum procedures.

In the analysis of the legal, socio-economic, political and cultural context, which is described in parts two and four, we can observe that during the past 25 years the situation has improved. Therefore, Poland became more and more attractive for foreigners, especially in terms of its labour market. The attractiveness of Poland as a country of destination increased along with its accession to the European Union and joining the Schengen area. Simultaneously, EU accession also contributed significantly to the outflow of Polish nationals to EU labour markets. The growing frequency of immigration to Poland and Polish labour migration within the EU precipitated the formulation of new migration policies and legislation aimed at managing these migration flows in ways most profitable for the Polish state and its economy.

In part three, we focus on the constitutional organisation of the state and the constitutional entrenchment of the principle of asylum. We argue that the ongoing constitutional and judiciary crisis mentioned in this part may constitute threats to the rule of law and protection of human rights. Since 2015, the Polish government has been refusing to implement relocation and resettlement schemes proposed by the European Commission within the framework of the European Agenda on Migration. Nonetheless, the Constitution refers to the protection of refugees, and the execution of this right is regulated by the Law on Protection of 2003, which is the main act regulating access to the asylum procedure and the proceedings and form of protection granted to foreigners. Part five of this report describes the details of various statuses, ranging from asylum seekers (with a focus on the reception system), beneficiaries of international protection to regular migrants and undocumented migrants. This part describes the conditions for gaining certain statuses, rights and obligations linked to certain statuses as well as the circumstances in which a given status may be revoked. The last, seventh part, of the report discusses the planned amendments to the law driven by the refugee crisis. We argue that in the case of Poland the changes or

reform proposals are rather linked to challenges observed in the context of inflow from the Caucasus than in the context of inflow from the Middle East or Africa, associated with the 'refugee crisis'. This part also provides supplemental information on the development of migration and asylum policies presented in part four.

1. Statistics and data overview

1.1. Introductory remarks

At the national level, statistical data in the field of migration and international protection¹ are gathered by two institutions that are also involved in procedures linked to processing applications for international protection. The first institution is the Office for Foreigners (OF), a governmental institution. Its work is supervised by the Ministry of the Interior. The second institution is the Border Guard (BG), a uniformed service responsible for border protection and control of legality of stay and work of foreigners on the territory of Poland. The BG collects information on applications submitted for international protection, since it is the institution responsible for reception of applications both at the border and also within Polish territory. The applications received are directly transferred to the Office for Foreigners, which is responsible for processing applications and for the issuance of decisions. Therefore, the Office for Foreigners collects data on decisions issued. This office also gathers information on all residence cards issued to foreigners, regardless of the type of permit possessed by the foreigner. Since the Office is responsible for providing asylum seekers with social assistance, it also collects data on the beneficiaries of this assistance and the types of assistance provided. Thus, data collected and published by the Office for Foreigners allow one to distinguish voluntary migratory movements (i.e. for work or study purposes) from those that could be considered forced (i.e. those related to foreigners seeking international or national protection in Poland and granted one of the forms of protection).

Data on refusals of entry and on the issuing of return orders (related to both voluntary and forced returns) are collected by the BG, however they are also aggregated by the Office for Foreigners. This stems from the fact that the BG is responsible for the issuing of these decisions and also uses the intelligence maintained by the Office for Foreigners, including a database of all administrative decisions issued². In practice, there are sometimes discrepancies between the numbers presented by BG and OF, especially if it regards data on activities performed by the BG, such as refusals of entry. If not every decision of this kind is entered into the database coordinated by OF (electronic database and system of information called POBYT), then the number of activities performed by BG is higher than the numbers presented by OF in the regular statistics that are published on their website. Also, it can happen that there are different units in the presented statistics. Whereas the Office for Foreigners counts decisions issued towards foreigners and thus counts foreigners, the Border Guard often refers to actions performed, such as border crossings or refusals issued.

¹ Data described in this report come mostly from two institutions responsible for migration management, i.e. the Office for Foreigners and the Border Guard. However, one must remember that data on migration and asylum are also gathered by other institutions. The Ministry of Family, Labour and Social Policy collects data on work permits and other documents authorising foreigners to work. It also collects information on integration programmes for refugees and foreigners granted international protection. Also, unemployment and social assistance provided to foreigners is reflected in data gathered by this Ministry. In turn, the Ministry of Foreign Affairs collects data on the issuing of visas or Polish Cards (special document accessible for persons with Polish origin or involved in activities for the Polish community; facilitating obtaining visas or permanent residence permits).

² Data processed by the Office for Foreigners are available on the interactive website, www.migracje.gov.pl, aimed at providing data on residence permits and other administrative decisions issued to foreigners. Data available on this website are up-to-date and can be presented in the form of tables or maps for the whole country or for selected voivodeships.

The data collected by these two institutions and presented in tables 1-10 below, are publicly accessible on their respective institutional websites.

On national level, the publicly available data do not include information on age or sex. Data on migration are also collected and processed by the Central Statistical Office and international statistical bodies, such as EUROSTAT, UNHCR and IOM.

1.2. Main statistics

1.2.1. Arrivals of non-EU citizens

Since Poland is part of the Schengen zone (since December 2007) and there are no regular border controls at Poland's land borders with Slovakia, the Czech Republic, Germany, and Lithuania, arrivals through these internal borders are not registered. This means that both the number and structure of foreigners crossing internal borders is unknown. In turn, this raises questions as to the extent of mobility across internal borders linked to asylum migration along the Balkan route heading for Germany or Austria since 2015.

Taking into account the above-mentioned reservation, *Table* presents the absolute number of arrivals of non-EU citizens to Poland in the years 2011–2017. On the basis of the statistics provided by the Border Guard, it is impossible to determine age groups and the sex of incoming foreigners. Importantly, the available data include only information on arrivals through Poland's external border.

Table 1. Arrivals of non-EU citizens to Poland

	2011	2012	2013	2014	2015	2016	2017
Non-EU nationals	na	na	na	na	14.675.742	15.362.243	16.426.324
All foreigners	10.763.870	12.442.607	14.123.357	14.863.012	15.890.352	16.942.100	18.202.450
na – not available							

Source: own elaboration based on Border Guard statistics (2011-2017).

The available data show the direction of border crossing (entry or exit). They do not show for how long foreigners come to Poland, which means that they do not allow us to distinguish short-term visitors from migrants. Data presented with reference to particular parts of the external border, depending on the neighbouring country, allow one to determine from which countries foreigners arrive and their citizenship. As in the case of other statistics on foreigners in Poland, Ukrainian citizens take the lead, and they are followed by the citizens of other neighbouring countries – Belarus and Russia as well as more distant ex-USSR republics, such as Moldova, Georgia and Armenia. Citizens of neighbouring countries usually enter through Poland's land border. At the border with Ukraine, about 10 million entry-direction border crossings are recorded annually, with roughly 4 million more entering through the border with Belarus and about one million via the border with Russia (the

Kaliningrad Oblast). Most of these foreigners come to Poland to work or to join their families. As far as the Polish and Ukrainian border is concerned, a significant share of these border crossings is performed within the so called local (small) border traffic regime³, with the purpose of shopping or running a business in border areas. Among the Russian and Tajik citizens arriving in Poland, there are those who are potential applicants for international protection in Poland. Among the top 10 nationalities of non-EU citizens arriving to Poland, there are also citizens of the U.S., Israel, Canada, China, Japan and Australia. Citizens from these countries usually come to Poland by planes, through the air border.

1.2.2. Refusals of entry

The available statistics on refusals of entry reflect not only the scale of cases when foreigners appear at the border without valid documents, such as visas or documents confirming the reasons of their entry and stay in Poland. In particular, since 2015, they also reflect the situation of potential asylum applicants at the Belarusian and Polish border (see *Table 2*). They come to Poland with no valid documents authorising them to enter the country, with the intent to apply for international protection, but in the majority of cases they are sent back to Belarus or, less often, to Ukraine. Those turned away at the border with Belarus concern in particular citizens of Russia and Tajikistan (see also Chrzanowska et al., 2016). In 2015, citizens of Russia constituted almost 26% of foreigners who were refused entry. Their share grew to 62% in 2016 before decreasing again in 2017 to 42%. Importantly the absolute number of foreigners refused entry was also visibly lower in comparison to 2016. Potential asylum applicants are allowed to enter Poland and to submit applications for international protection only after many attempts at crossing the border (Helsinki Foundation for Human Rights – HFHR, 2018: 14). Therefore, the push-backs observed contribute to a certain extent to the increase in the number of refusals, especially in 2016 and 2017.

The domination of Ukrainian citizens among foreigners who were not allowed to enter Poland remained stable over time. The number of Ukrainians stem from their intensive cross border mobility as they mostly come to Poland for work or study purposes. In a majority of cases, they are refused entry due to possessing improper documents or lacking required documents confirming the purpose of their entry and stay in Poland.

³ Local border traffic between Poland and Ukraine is based on the bilateral agreement between these countries and it assumes that inhabitants of the border areas (30 kilometres from border line) may obtain permits for border crossings within the local border traffic and do not need visas (or since 2017 also biometric passports) to cross the border. However, the permitted period of stay within the local border traffic scheme is limited to 90 days and restricted to border areas. The agreement has been implemented since 2009. In summer 2016 the local border traffic was suspended for a month due to NATO summit in Poland. Whereas the local border traffic with Ukraine has been continued, the suspended local border traffic between Poland and the Kaliningrad Oblast (part of the Russian Federation), implemented since 2012, was not re-established after the NATO summit. Crossing the border and staying in Poland (in border areas) based on obtaining a permit for local border traffic is regulated in part III, chapter 2 of the Law on Foreigners of 2013.

Table 2. Number of non-EU citizens refused entry at the external borders

Year	2011	2012	2013	2014	2015	2016	2017
Total	21.657	32.138	33.887	24.519	41.580	103.986	72.140
Women	7.472	10.383	13.142	8.986	15.509	45.481	26.661
Men	14.185	21.755	20.745	15.533	26.071	58.505	45.479
Top 5 countries	Ukraine	Ukraine	Ukraine	Ukraine	Ukraine	Russia	Russia
	Belarus	Georgia	Russia	Russia	Russia	Ukraine	Ukraine
	Russia	Russia	Georgia	Belarus	Belarus	Tajikistan	Belarus
	Georgia	Belarus	Belarus	Georgia	Georgia	Belarus	Moldova
	Armenia	Armenia	Armenia	Armenia	Tajikistan	Armenia	Armenia / Tajikistan

Source: own elaboration based on yearly statistics published by the Office for Foreigners (2018d).

1.2.3. Migratory balance

In 2016, for the first time in Poland's post-war history, the migratory balance was positive (see *Table 3*), which contributed to a decrease in the negative population balance observed in Poland in the second decade of the 21st century. Importantly, the Central Statistical Office (CSO) in Poland bases their data on persons who registered their stay in Poland (immigrants) and those who deregistered from permanent residence in Poland (emigrants)⁴. However, the number of emigrants (i.e. persons who deregistered from permanent residence) is rather underestimated. In the framework of freedom of movement within the EU, Polish people do not need any permits to leave Poland or to enter other EU states, which leads to omission of the formal requirement of deregistering from permanent residence. Also, the statistics for migratory balance do not include immigrants, whose stay is short-term or temporary.

Table 3. Migratory balance in Poland

Year	2011	2012	2013	2014	2015	2016	2017
Difference between number of emigrants and immigrants	-4.334	-6.617	-19.904	-15.750	-15.750	1.500	1.400

Source: Central Statistical Office 2011-2017⁵.

The transformation of Poland into an immigration country became visible not only in the statistical data. It could also be observed in the labour market (with a growing number of

⁴ See definition of migration for permanent residence at CSO's website (CSO, 2018).

⁵ Information included in the table comes from Demographic Yearbooks of Poland for 2011-2017, (CSO, 2011; CSO, 2012; CSO, 2013; CSO, 2014; CSO, 2015a; CSO, 2016; CSO, 2017).

employers dependent on foreign labour), at Polish universities and schools as well as in public spaces. However, the growing visibility of immigrants in Poland is mostly linked to the presence of foreigners in the Polish economy, not to asylum seekers and refugees.

1.2.4. Presence of non-EU citizens in Poland⁶

It is not possible to fully present the number of non-EU citizens in the territory of Poland. First, the available data only account for those foreigners with valid residence cards living in Poland. These cards constitute ID documents for foreigners and confirm the foreigner's permits or refugee status and the subsidiary protection they have obtained⁷. To fully reflect the presence of non-EU citizens in Poland also visa holders should be considered. For instance, in 2017 Polish consulates issued almost 800 thousand Schengen visas, which was a lower number than in 2016 (approx. 1 million) (Schengen Visa Info, 2018). In 2016, the number of all visas (both Schengen and national) issued by Polish consulates amounted to approximately 1.8 million (MFA, 2017a: 18). This means that more than 1.5 million visa holders come to Poland each year, but the duration of their stay might be relatively short. One should take into account the fact that the majority of visas are issued in source countries for economic migrants to Poland, mostly Ukrainian, and that foreigners from neighbouring countries keep coming to Poland with visas for a couple of years before they apply for long-term residence permits. This means that visa holders are not only short-term visitors in the Polish context. They are rather temporary immigrants, who either choose the strategy of staying and working in Poland with visas, because they consider this solution cheaper and more available, or they do not fulfil the necessary requirements to apply for residence permits (more in Szulecka, 2017). Visa holders constitute a much larger group than holders of valid residence cards in Poland, which means that any discussion of the presence of non-EU nationals in the territory of Poland must also include at least foreigners coming to Poland with national visas (valid for at most 12 months)⁸. There are also foreigners who come to Poland within the visa free regime, especially from Ukraine, whose citizens began benefitting from this opportunity (if they have biometric passports) since June 2017.

Apart from valid residence card holders and holders of visas or foreigners enjoying the visa free regime, one must also consider the presence of two other groups. The first are those non-EU nationals who are travelling across Poland to another destination who enter the country clandestinely and stay for some time. The second group is those who possess permits for local border traffic (between Poland and Ukraine). Both of these groups' presences are rather short-term, which means that they are not seen as residents (even temporary residents) of Poland and are not addressed with any special policies.

⁶ To complete the picture of foreigners' presence in Poland one should also consider also foreigners having EU citizenship or members of their families. On 1st January 2018 there were eighty thousand such foreigners with valid residence cards in Poland, which constituted one fourth of all valid residence cards possessed by foreigners in Poland. However, data presented in this report refer to non-EU nationals.

⁷ The forms of international and national protection foreigners may obtain in Poland are described in part 5.

⁸ E.g. Eurostat counts national visas issued by Poland as first residence permits, see e.g. European Migration Network for methodological comment (EMN, n.d.), or the European Commission briefing regarding first time residence permits issued in the EU (Juchno, 2017).

1.2.5. Non-EU citizens with valid residence permits in Poland

As far as holders of valid residence cards are concerned, the citizens of neighbouring countries are the most numerous, with Ukrainian citizens taking the lead. Other important countries of origin of residence-card holders are: Vietnam, China, Armenia, India, Turkey.

Table 4. Non-EU citizens with valid residence cards in Poland

Year	Dec 31 st , 2011	Dec. 31 st , 2012	Dec. 9 th , 2013	Jan. 1 st , 2015	Jan. 1 st , 2016	Jan. 1 st , 2017	Jan. 1 st , 2018
Total number	100.298	111.971	121.218	112.159	140.630	187.316	244.876
with refugee status	1.170	849	888	1.408	1.359	1.306	1.351
% of all resident cards	1.17%	0.76%	0.73%	1.26%	0.97%	0.7%	0.55%
with subsidiary protection	3.012	2.369	2.446	3.160	2.058	1.911	2.042
% of all resident cards	3%	2.12%	2.02%	2.82%	1.46%	1.02%	0.83%
with permit for tolerated stay	738	620	1.838	384	334	308	303
% of all resident cards	0.74%	0.55%	1.52%	0.34%	0.24%	0.16%	0.12%
with permit for stay due to humanitarian reasons	- ⁹	-	-	445	1.798	1.837	1.949
% of all resident cards	-	-	-	0.4%	1.28%	0.98%	0.8%
with permit for temporary stay	41.647	54.503	57.529	49.649	77.623	120.148	166.907
% of all resident cards	41.52%	48.68%	47.46%	44.27%	55.20%	64.14%	68.16%
with permit for permanent residence	47.999	47.908	51.027	48.186	47.989	51.208	60.360
% of all resident cards	47.86%	42.79%	42.10%	42.96%	34.12%	27.34%	24.65%
with long-term resident's EU residence permit	7.732	5.722	7.490	8.927	9.469	10.598	11.964
% of all resident cards	7.71%	5.11%	6.18%	7.96%	6.73%	5.66%	4.89%

Source: own elaboration based on yearly statistics published by the Office for Foreigners (2018d).

According to available statistics (*Table 4*), the majority of holders of residence cards are either non-EU citizens with temporary residence permits (68% at the beginning of 2018) or foreigners with a permit for permanent stay (almost 25% in at the beginning of 2018). Foreigners who obtained international protection constitute only a marginal part of holders of residence cards issued by Polish authorities (nearly 1,4% of all resident cards at the beginning of 2018). More detailed data on the citizenship of holders of temporary or permanent residence permits in Poland show that immigrants from Ukraine, Belarus and Russia predominate (see *Table 5*).

⁹ Permit for stay due to humanitarian reasons has been granted since 2014. Its aim was similar to the permit for tolerated stay before 2014.

Table 5 presents those national groups that were the most numerous (more than one thousand cards) among holders of valid documents as of January 1st, 2018. Persons with a form of international protection (refugee status or subsidiary protection) or national protection (permit for tolerated stay or permit for stay due to humanitarian reasons) are the citizens of non-EU neighbouring countries, with Russia (as a country of citizenship; and Chechnya as a region of origin) predominating. Syrian citizens constitute a significant share of the total number of foreigners granted refugee status. Although Iraqi citizens make up a smaller number in this group, their proportion is still sizeable relative to the overall refugee population structure in Poland.

Table 5. Non-EU citizens with valid residence cards in Poland by type of permit and main countries of origin (as of January 1st, 2018)

Country of origin	Permit for permanent stay	Long-term resident's EU residence permit	Temporary residence permit	Refugee status	Subsidiary protection	Permit for tolerated stay	Permit for stay due to humanitarian reasons	Total
Ukraine	29.969	3.712	110.626	88	277	8	380	145.060
Belarus	10.746	528	3.864	108	5	2	46	15.299
Vietnam	2.405	2.484	6.518	2	1	217	82	11.709
Russia	3.851	543	4.276	446	1.484	3	712	11.315
China	632	1.106	7.025	14	-	3	4	8.784
India	478	539	5.876	-	-	-	9	6.902
Turkey	622	574	2.653	4	2	1	10	3.866
Armenia	857	565	1.733	3	4	12	293	3.467
USA	797	132	1.434	-	-	-	3	2.366
South Korea	79	317	1.554	-	-	-	-	1.950
Uzbekistan	202	43	1.488	6	4	1	14	1.758
Georgia	147	52	1.190	-	7	2	151	1.549
Pakistan	132	38	1.110	12	2	6	10	1.310
Kazakhstan	651	44	563	17	22	-	10	1.307
Egypt	384	39	780	40	2	-	5	1.250
Moldova	242	83	849	-	-	-	6	1.180
Nepal	47	236	871	2	1	2	5	1.164
Iraq	108	13	820	55	61	-	4	1.061
Syria	162	54	501	286	40	-	4	1.047
Japan	213	34	772	-	-	-	1	1.020

Source: own elaboration based on yearly statistics published by the Office for Foreigners (2018d).

1.2.6. Number of applications for international protection

According to Eurostat data (*Table 7*), Poland is characterised by a significant share of minors (at least one third of all applicants) coming with their parents to seek international

protection. As the data on sex indicate, women constitute at least 40% of all applicants (see *Table 6*).

Table 6. Number of applicants for international protection

Year		2011	2012	2013	2014	2015	2016	2017	Total (2011-2017)
Total number		6.887	10.753	15.253	8.193	12.325	12.319	5.078	70.808
Incl. women		3.233	4.849	7.407	3.922	6.088	5.948	2.335	33.782
TOP countries of origin	Russia	4.305	6.084	12.849	4.112	7.989	8.992	3.550	47.881
	Georgia	1.735	3.234	1.245	726	394	124	70	7.528
	Ukraine	67	72	46	2.318	2.305	1.306	671	6.785
	Tajikistan	0	9	5	107	541	882	154	1.698
	Armenia	216	413	206	135	195	344	85	1.594
	Syria	12	107	255	114	295	47	44	874
	Kirgizstan	43	41	67	125	147	72	51	546
	Kazakhstan	26	121	95	83	31	46	8	410
	Vietnam	31	57	41	56	56	84	30	355
	Belarus	81	69	41	26	25	46	41	329
	Afghanistan	36	103	50	37	19	22	25	292
	Iraq	28	25	29	27	62	42	41	254
	Pakistan	20	43	36	49	26	28	28	230
	Turkey	17	9	16	3	15	65	56	181

Source: own elaboration based on yearly statistics published by the Office for Foreigners (2018d).

Between 2011-2017, the highest number of applications were submitted in 2013 when 15.253 were received. In the peak years of the refugee crisis in Europe (2015-2016), the numbers were lower and amounted to about 13.000. The lowest number of applications (about 5.000) were recorded in Poland in 2017. In each year analysed, Russia was the main country of origin for asylum applicants, in particular, Chechens. Georgians constituted the most important group of applicants in 2011-2013 (they submitted at least 1.2 thousand applications yearly) with more than 3.2. thousand in 2012. In 2017, they submitted only 70 applications. In turn, the number of Ukrainian applicants jumped up sharply since 2014 (from 46 applications in 2013 to 2.318 in 2014), which was directly linked to the military conflict in Eastern Ukraine. Syrians submitted the most applications in 2015 with a total number of 295 applications.

Table 7. Applicants for international protection by age group

Year		2011	2012	2013	2014	2015	2016	2017
Under 18 years old – total		1.955	3.550	6.975	2.145	4.780	4.810	1.385
Under 18 years old	Under 14	1.745	3.160	6.405	1.885	4.325	4.385	1.230
	14-17	210	390	565	255	455	425	150
18-64 years old	18-34	1.925	3.705	4.595	1.930	3.370	3.175	1.010
	35-64	1.050	1.850	2.330	1.470	2.015	1.740	590
65 and more years old		55	70	70	65	90	55	20

Source: Eurostat database, n.d.

1.2.7. Decisions on applications for international protection

Decisions to grant protection are made by the Office for Foreigners in the first instance and by the Refugee Board in the second instance. The Refugee Board is a separate institution from the Office for Foreigners. However, it is also part of the government. Its composition includes experts in administrative law and social sciences (some of them are academics). The composition of the Board changes every five years, but some of the members participate in the work of the Refugee Board for more than one term¹⁰. The asylum 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. If the Office for Foreigners (in the first instance) or the Refugee Board (in the second instance) do not find a basis for granting refugee status, but asylum seekers are still deemed deserving of international protection, they obtain subsidiary protection.

The vast majority of decisions issued in the first instance involve the discontinuance of the procedure¹¹ or the leaving of the application without any examination (see *Table 8*). This is mostly because applicants are no longer present in Poland, are no longer interested in continuing their asylum procedure or do not register at reception centres where they are supposed to appear shortly after submitting their application. The rate of positive decisions depends on the country of origin. In the case of citizens from Syria, all decisions are either positive or left unprocessed (which is partially due to the absence of applicants in Poland), whereas in cases involving Russian citizens (of mostly Chechen origin), the vast majority of decisions are negative or the proceedings are discontinued. However, due to the scale of the inflow, the small share of positive decisions issued in the case of Russian citizens still gives this group the first position among foreigners granted refugee status and subsidiary protection. Between January 1, 2007 and March 1, 2018, 589 Russian citizens were granted refugee status. In comparison, in the same time period, 446 Syrian citizens and 107 Iraqi

¹⁰ The Refugee Board's website: <http://rada-ds-uchodzcow.gov.pl/> (Accessed 07 June 2018).

¹¹ 'Discontinuance' or 'discontinuation' is the term used to describe the decision on cancelling the proceeding due to the fact that the person who initiated the proceeding (here: the foreigner applying for international protection) is no longer interested in being a part of the proceeding or cannot be reached by Polish authorities (e.g. because of a lack of valid address of the applicant).

citizens obtained this form of protection. Since 2008, subsidiary protection was granted to 4.173 Russian citizens, 309 Ukrainian citizens and 107 Iraqi citizens (Office for Foreigners, 2018c).

Table 8. Decisions issued by the Office for Foreigners (first instance)

Year	2011	2012	2013	2014	2015	2016	2017
Refugee status	153	87	208	262	348	108	150
women in absolute numbers	64	35	82	80	138	47	57
% of women	42%	40%	39%	31%	40%	44%	38%
Subsidiary protection	155	140	146	170	167	150	340
women in absolute numbers	66	60	66	77	83	73	173
% of women	43%	43%	45%	45%	50%	49%	51%
Tolerated stay	170	292	405	300	122	49	19
women in absolute numbers	87	137	212	170	65	22	9
% of women	51%	47%	52%	57%	53%	45%	47%
Total: positive decisions	478	519	759	732	637	307	509
women in absolute numbers	217	232	360	327	286	142	239
% of women	45%	45%	47%	45%	45%	46%	47%

Source: own elaboration based on yearly statistics published by the Office for Foreigners (2018d).

The Refugee Board, which is the institution responsible for processing applications for international protection in the majority of cases in the second instance, confirms the decision issued by the Office for Foreigners (see *Table 9*). In case of some nationalities, they may, however, change the approach to granting international protection, which was the case for many Ukrainians who began coming to Poland as asylum seekers in 2014 (due to the military conflict in the Eastern part of Ukraine). Primarily they were not perceived by the relevant authorities as persons deserving international protection in Poland. This was explained as due to the fact that there was the possibility of their seeking protection internally, in other parts of Ukraine. This trend was changed by several positive decisions issued by the Refugee Board in 2015, and then also by the Office for Foreigners in 2016 and 2017. In June 2018, 88 citizens of Ukraine had residence cards based on refugee status, 355 – based on subsidiary protection. However, this is a marginal number, if we compare it to the numbers of temporary and permanent residence permits issued to citizens of Ukraine (see also Górny, 2017).

Table 9. Decisions issued by the Refugee Board (second instance)

Year	2011	2012	2013	2014	2015	2016	2017
Refugee status	4	29	5	5	12	20	1
Subsidiary protection	52	24	22	11	30	46	29
Tolerated stay	41	27	22	2	11	17	19
Maintenance¹²	1.216	899	940	1.306	1.783	1.978	2.118
Discontinuance / leaving unprocessed	200	112	174	104	391	174	166 ¹³

Source: own elaboration based on yearly statistics published by the Office for Foreigners (2018d).

1.2.8. Expulsions

Due to the growing scale of immigration and the Polish state's attendant attempts to more carefully control migration, the number of return orders and effective returns has been noticeably increasing since 2014 (see *Table 10*). Since much of the tightening state control has involved checks on the legality of employment (and being found in unlawful employment, which constitutes a basis for a return order), many of these return orders have been linked to economic migration.

Table 10. Foreigners ordered to return and returned following return order

Year	2011	2012	2013	2014	2015	2016	2017
Persons ordered to leave	7.750	7.995	9.215	10.160	13.635	20.010	24.825
Persons returned following return order	7.050	6.845	8.465	9.280	12.930	18.575	22.210

Source: Eurostat database, n.d.

1.2.9. Transfers under Dublin regulation or within readmission agreements

Data on transfers of foreigners to and from Poland, based on the Dublin regulation¹⁴ or readmission agreements reflect an important issue in the managing the flow of asylum seekers from the perspective of not only Poland, but also of other countries. This data confirm that Poland is rather a transit country for asylum seekers in the EU. According to Border Guard data, in 2017, 1.011 Russian citizens were transferred to Poland, out of 1.838 of all non-EU citizens transferred to Poland under Dublin regulation or within readmission

¹² Decision of the Refugee Board confirming the decision issued by the Office for Foreigners in the first instance.

¹³ The data for 2017 reflect cases transferred for re-examination.

¹⁴ 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 (recast), Official Journal of the European Union L180/60.

agreements. Most transfers were conducted through the border with Germany and Slovakia. A similar number of Russian citizens transferred to Poland from other countries was recorded in 2016, whereas in 2015, approximately 500 Russian citizens were transferred to Poland. In the case of Ukrainian citizens, about 350 persons were transferred to Poland yearly between 2015 and 2017, and most of these transfers were executed at the border with Germany and the Czech Republic (Border Guard Statistics, 2011-2017).

All in all, in 2017, Poland received 1.433 asylum seekers under the Dublin regime from other EU countries (mostly from Germany, Austria and France). In the same year, Poland requested the transfer of asylum seekers to other countries in 165 cases, but only approx. 10% were implemented (AIDA, 2018). Poland remains the country to which asylum seekers submit their first applications for international protection and then move to other countries to apply for international protection again. And this fact is often referred to when changes in law or practice assume reduced access to asylum procedures: if asylum seekers do not stay in Poland and do not wait for decisions, it is interpreted to mean that they are seeking better economic conditions rather than protection. Such an interpretation leads the authorities to the conclusion that asylum seeking in Poland is associated with irregular migration (see e.g. Szulecka, 2016: 228).

2. The socio-economic, political and cultural context

2.1. A brief history of immigration and migration policy development

Poland experienced significant migratory movements immediately after the Second World War as a result of changes in the Polish state's borders and the forced displacement of people to and from the country's territory. However, the beginning of the Cold War and the announcement of the Iron Curtain doctrine in 1948 made it almost impossible for migrants to enter Poland. Between 1949 and 1990, on average, from one to three thousand immigrants were registered annually. A majority of these immigrants were Polish citizens. Among the few arriving foreigners were mostly citizens of the USSR and other communist states, often spouses of Polish citizens; there were also cases of students from the USSR, Bulgaria and Vietnam who decided to settle in Poland after a marriage; and finally, pro-communist asylum seekers (e.g. over 13 thousand refugees from Greece in 1948-1950, also Chilean political forced migrants who fled their country in 1973) or Palestinians. In general, the period of the Polish People's Republic was not conducive to large scale immigration, the various forms of which were blocked and kept to a minimum, including foreign workers and tourists (Okólski, 2010: 34-36). This situation was due to the post-war reality, when the late 1940s brought repressive regimes to Central and Eastern Europe, and the countries of the region found themselves within the Soviet sphere of influence. Consequently, public authorities sought to take control of every aspect of inhabitants' lives, thereby overriding basic human rights, including the right to free movement. This limited both the inflow and outflow of the population. It also applied to Poland.

In the CEE region, however, there were periodic political and economic upheavals, which often resulted in large waves of migrants, including refugees. In the case of Poland, these waves happened especially in the years 1980-1981. The year 1980 brought a sharp political and economic crisis that contributed to mass strikes across the country and to the beginning of changes triggered by the increasing activity of trade unions and the Solidarity movement. However, on December 13, 1981, Martial Law was imposed in Poland, which on the one hand led to a wave of arrests and repressions, and on the other hand to a large-scale emigration, often of a refugee character (Slany, 1995: 74-85; see more: Stola, 2010). It is worth adding that according to the statistics of target countries, between the years 1951-1989, the U.S. registered immigration from Poland at a level of 177.6 thousand and Canada at a level of 117.4 thousand persons, while Australia registered about 30 thousand people (Slany, 1995: 150-151).

The transition from a centrally planned to a free market economy that attended Poland's shift from communism to democracy at the turn of the 1980s and 1990s ushered in a new phase in the modern history of migration in Poland. It was a breakthrough point for shaping the state's migration status. Only after 1989, one can observe both qualitative and quantitative changes in international migratory movements to and from Poland. However, Poland is not unique here, because a similar situation occurred in some of the other CEE countries – the communist ones from the Eastern Bloc who had been under the Soviet sphere of influence. They also gradually opened their borders to population flows.

The next key migration phases occurred during the time of preparations for Poland's membership to the European Union, its joining in May 2004 followed by accession to the Schengen zone in December 2007 (for air and sea border crossings since March 2008). Both the period preceding these events and the first years of membership resulted in significant legal, institutional and political changes for Poland, but also practical ones. As EU citizens, Poles were able to move and reside freely within the territory of the EU. Thus, some international migration evolved into so-called intra-EU mobility. In addition, the Eastern Polish borders became the Eastern borders of the EU, encompassing the Polish border with three non-EU countries: Ukraine, Belarus and the Kaliningrad Oblast of Russia.

The accession of Poland to the EU in 2004 made international migration a much more significant force shaping its demographic situation. It has become not only a state of net emigration (many Poles left for Western European countries, including Germany, the United Kingdom and Ireland), but – due to the improvement of its socio-economic conditions – also a target country of economic immigration, especially for migrants from Eastern European countries, including Ukraine. In the last few years, immigration from this part of Europe has steadily increased, and its character has been evolving. Already in 2014, the Russian Federation's annexation of Crimea followed by the armed conflict in Eastern Ukraine in the Donetsk and Luhansk regions stimulated a sharp increase in the number of Ukrainian immigrants to Poland, for not only economic but also political and humanitarian reasons. This contributed to growing political and socio-economic destabilization of the country. Some Ukrainians were internally displaced to western Ukrainian districts, while others decided to migrate beyond the state's borders, including to Poland.

The developments observed after the late 1980s have had a great impact not only on migration movements but also on Polish migration policy. The relevant literature identifies three main periods in the evolution of the abovementioned policy after 1989: a phase of institutionalization (1989-2001), a phase of Europeanisation (2001-2004) and a phase of stabilization (2004-2010) (Lesińska, Stefańska, Szulecka, 2010: 262-264). The key national strategic policy document in the area of migration *Migration policy of Poland – the current state and recommended actions* was developed and adopted by the Council of Ministers in 2012. In 2015, the Law and Justice party – which can be characterized as a nationalist and socially conservative party (Prawo i Sprawiedliwość – PiS, 2014; PiS, 2016, p. 4) – came to power. It cancelled the abovementioned strategic policy document in 2016. In the light of new national circumstances (the new ruling party and the consequences of its decisions, including crises having to do with democracy, the independence of the judiciary system and the rule of law) and new regional circumstances (the migration and refugee crises in the EU and increasing political and military instability in the Eastern Partnership countries induced by Russia), a closing date for the stabilization phase was set for 2015-2016. It was followed by an ongoing phase of revision (see more in part 4).

In 2016, the new government defined its list of Poland's priorities in the field of migration management broadly in the European context, including: 1. the protection of the EU's external borders, which meant full acceptance of the European Border and Coast Guard (Frontex after its reform of 2016); 2. greater assistance to refugees outside the EU (e.g. in Lebanon, Jordan or Turkey); and 3. total opposition to an automatic relocation scheme perceived as undermining the sovereignty of EU countries. In addition, as part of the government's approach, the response to Poland's demographic challenges would be to support women's fertility and a reasonably conducted migration policy, based on migration

from ‘the East near our borders’, in other words, mainly from Ukraine, and not the Middle East (Skiba, 2016: 4). The issue of priorities in the government’s migration policy appeared again in 2018 when the Council of Ministers adopted a strategic policy document titled ‘Socio-economic priorities of migration policy’. The publication of detailed solutions resulting from socio-economic priorities was planned for the second half of 2018. Generally, according to the document, the new migration policy of Poland must: be adapted to the priorities of the labour market; focus on supplementing labour resources with foreigners in sectors/occupations characterized by competency gaps (including protection of the national labour market); respond to the needs of foreigners and Polish citizens living abroad, including repatriates, so as to encourage them to return to the country and establish in or transfer to Poland their business activities; prevent further emigration and ensure an increase in return migration (MID, 2018).

At this point, it is worth adding that Poland's position on the solutions proposed by the EU in the face of the refugee and migration crisis has evolved in recent years. In May 2015, the European Commission announced, ‘The European Agenda on Migration’, which was supposed to be an attempt to provide a comprehensive response to the crisis in Europe. As part of immediate actions, an emergency relocation scheme and a resettlement mechanism were proposed. In July 2015, the Polish government of political party called Civic Platform confirmed its readiness to accept 2.000 refugees (about 1.100 persons from Greece and Italy under relocation and 900 under resettlement, mostly from Syria and Eritrea) and in September an additional 5.000 people. In September 2015, Poland voted for two Council decisions that involved the transfer of up to 160 thousand asylum seekers from Italy and Greece to other EU member states over a period of two years, until September 2017. After the elections in 2015, Poland withdrew from the declared number of asylum seekers to be accepted and has not yet implemented either a relocation or a resettlement scheme (Pachocka, 2016b). One has to remember that relocation was launched in accordance with Art. 78 (3) of the Treaty on the Functioning of the European Union (TFEU), which is devoted to EU asylum policy. It stipulates that: ‘In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament’. Thus, Poland is not fulfilling its obligations under EU law.

2.2. The ‘geography’ of migrants’ presence on national territory

A precise discussion of the presence and distribution of immigrants in Poland is difficult for a number of reasons, including the fact that various entities collect slightly different data on foreigners, including the Central Statistical Office, the Border Guard, the Office for Foreigners, the Ministry of Family, the Labour and Social Policy and the National Labour Inspectorate; the methodological framework used in Polish public statistics distinguishes between temporary and long-term migrants; migration in Poland is circular and incomplete; and there is a high mobility of non-EU migrants. One of the basic sources of information on the distribution of immigrants in Poland is the National Census. The last such census was carried out in 2011, and its results were published in subsequent years. The next census is planned for 2021.

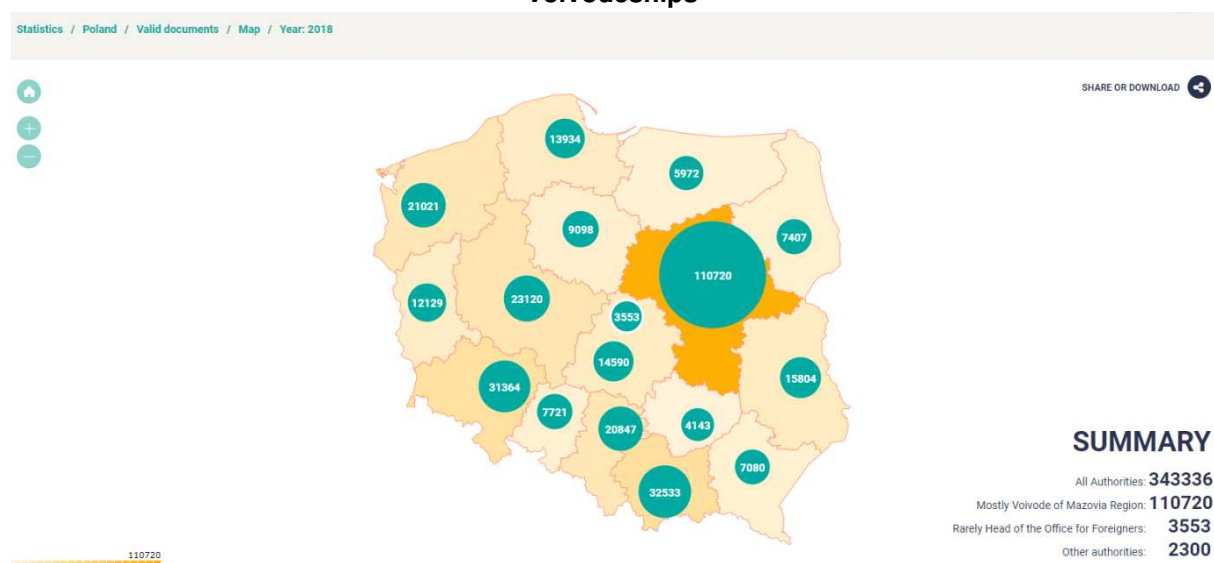
For the purposes of the 2011 National Census, data on immigrants were collected from a representative sample and from the data on immigrants living in collective accommodation places (e.g. centres for asylum seekers or student dormitories). These data mainly concern short-term immigrants who were understood to be foreigners staying in Poland without the right to permanent residence. Immigrants who have been granted permanent residence were considered inhabitants of Poland (Kostrzewa and Szałtys, 2013: 25-26). According to the 2011 National Census, the number of immigrants temporarily staying in Poland was 56.3 thousand people (Kostrzewa and Szałtys, 2013: 28), including 40.1 thousand temporary immigrants staying more than 3 months in Poland (Kostrzewa and Szałtys, 2013: 96-97).

In 2011, the distribution of immigrants temporarily living in Poland for more than 3 months was uneven, characterized by the largest concentration in four voivodships – Masovian with Warsaw as the capital (27.1%), Lesser Poland with Krakow as the capital (8.7%), Lower Silesia with Wroclaw as the capital (8.9%) and Silesia with Katowice as the capital (8.4%). A clear correlation was observed between the voivodship of residence of immigrants and the level of socio-economic development of the province measured by both unemployment and employment rates. In this respect, in 2011, the highest employment rate was recorded in Greater Poland, the Masovian region and Lesser Poland, of which the last two voivodships belonged to those most inhabited by temporary migrants. In 2011, over 81% of immigrants stayed in cities (Kostrzewa and Szałtys, 2013: 30-31).

An understanding of the distribution of what can broadly be understood as the immigrant population of Poland can be provided by an analysis of the number of valid resident cards issued for different categories of migrants, including such documents as temporary residence, permanent residence, registered residence of an EU citizen, EU long-term resident stay, permanent residence right of an EU citizen, residence of a family member of an EU citizen, permanent residence of a family member of an EU citizen as well as refugee status, subsidiary protection, residence due to humanitarian reasons and tolerated stay. One has to remember that these documents refer both to EU citizens and TCNs. In addition, they were provided by different authorities, for example, the 16 regional Voivodes¹⁵ and the head of the Office for Foreigners. As of May 18, 2018, there were 343.336 different types of valid documents issued for immigrants in Poland. The Masovian voivodship predominated, accounting for 32% of all valid documents. However, holders of residence cards also lived in other provinces of Poland (*Figure 1*).

¹⁵ As of the beginning of 2018, Poland is administratively divided into 16 voivodships (*województwo*), 380 poviats (*powiat*) and 2.478 communes (*gmina*). The largest voivodship is a Mazovian one, where the capital city – Warsaw – is located. The administrative division of Poland into 16 voivodeships was introduced by the administrative reform in 1999.

Figure 1: The number of all the valid documents for immigrants in 2018 in Poland by voivodeships



Source:

<https://migracje.gov.pl/en/statistics/scope/poland/type/statuses/view/map/year/2018/?x=0.7876&y=1.2391&level=1> (Accessed 18 May 2018).

2.3. A brief description of the society of the hosting country

The most comprehensive and cross-sectional data on the national, ethnic, linguistic and religious structure of the Polish population is provided by the National Census of 2011. Based on these results, the image of Polish society that we see is very homogeneous. Of Poland's 38.5 million inhabitants, 94.83% declared an exclusively Polish national and ethnic identity, while over 871 thousand persons (2.26%) declared both Polish and non-Polish national and ethnic identity (CSO, 2015c: 29). Examining the percentage of all individual/double national-ethnic identities during the census, in addition to a Polish one (98.5%), Silesian (1%), German (0.1%), Belarusian (0.1%), and Ukrainian (0.1%) identities were also indicated (CSO, 2015c: 36). Based on the results of the census from 2011, it can be stated that the vast majority of Polish people use Polish to communicate at home. The use of this language at home was indicated by 98.2% of the total population, and for 96.2% of people it was the only language used at home. Other languages spoken at home were Silesian, Kashubian, English and German (CSO, 2015c: 69). In 2011, for the first time in the post-war history of censuses, the Polish population was asked about their mother tongue. In 2011, Polish was the mother tongue for 97.78% of population, followed by Silesian (0.36%), German (0.15%), Ukrainian (0.07%), Belarusian (0.05%), Russian (0.04%), Kashubian (0.04%), Roma language (0.02%), English (0.01%), Lithuanian (0.01%), Lemko language (0.01%), French (0.01%) and Vietnamese (0.01%) (CSO, 2015c: 81).

In 2011, when asked about religious affiliation, 7.1% of respondents did not answer the question and 88.86% declared that they belong to a Christian denomination, including 87.58% belonging to the Roman Catholic Church, 0.41%, to the Orthodox church, 0.36% to Jehovah's Witnesses and 0.18% to the Evangelical-Augsburg church. In other words, 88.8% of the population are broadly understood to be Christians. In addition, in 2011, a small percentage calculated in hundredth parts of the total population were: Buddhists (6 thousand

persons) and Muslims (5.1 thousand persons). Followers of Judaism and other religions accounted for 0.8 thousand (CSO, 2015c: 92-95). In 2015, on the occasion of CSO research on social cohesion in Poland, 92.8% people aged 16 years and over declared their belonging to the Roman Catholic church, 3.1% claimed to lack any denominational affiliation, and 2.2% refused to answer the question (CSO, 2015b).

Since late 2015, after parliamentary elections, Poland has been ruled by the Law and Justice Party (PiS) whose ideology can be characterized as right-wing, conservative, traditional, Eurosceptic and populist. PiS received 37.58% of the total votes in 2015. The second highest vote-receiving party was the Civic Platform (PO), leading the former government, with 24.09% votes (PKW, 2015). PO can be described as a Christian democratic, liberal conservative and pro-European party in terms of ideology.

Beginning in 1990, Poland has been showing a steadily growing trend in terms of the Human Development Index (HDI)¹⁶. In 1990, Poland belonged to high human development countries (UNDP, 1990: 185). According to the most recent data, in 2015, in terms of its HDI value, Poland was ranked 36th out of 188 countries and territories covered, placing it in the group of countries with very high levels human development. However, compared to 2010, its position in the HDI rank fell by 3 in 2015. Among EU countries, and especially from the CEE region, Poland overtook, among others, Slovakia and Hungary, but it was, for example, lower than the Czech Republic (ranked 28th) (UNDP, 2016: 198, 202).

According to data provided by Eurostat, in 2017, the employment rate¹⁷ was 70.9% in Poland in comparison to 72.2% for the EU. In 2011, figures were 64.5% and 68.6% for Poland and the EU, respectively. This means that employment increased in 2011-2017 both at the national and at the EU level, however, the rate for Poland was slightly below the EU average (Eurostat, 2018a). At the same time, the unemployment rate¹⁸ fell in Poland from 9.7% in 2011 to 4.9% in 2017. In the case of the EU, it diminished from 9.7% to 7.6% (Eurostat, 2018b). This means that the labour market situation in Poland was more favourable than the EU average in 2017.

¹⁶ The Human Development Index is a synthetic measure that allows constant monitoring and assessment of the progress made in different countries in the three areas of human life that directly contribute to increasing human capabilities, i.e. a long and healthy life, access to knowledge and a decent standard of living. The calculation methodology was changed in 2010.

¹⁷ According to Eurostat, the employment rate of the total population is calculated by dividing the number of person aged 20 to 64 in employment by the total population of the same age group. The indicators are based on the EU Labour Force Survey.

¹⁸ According to Eurostat, the unemployment rate represents unemployed persons as a percentage of the labour force. The labour force is the total number of people employed and unemployed. Unemployed persons comprise persons aged 15 to 74 who were: i) without work during the reference week, ii) currently available for work, i.e. were available for paid employment or self-employment before the end of the two weeks following the reference week, iii) actively seeking work, i.e. had taken specific steps in the four weeks period ending with the reference week to seek paid employment or self-employment or who found a job to start later, i.e. within a period of, at most, three months. The indicator is based on the EU Labour Force Survey.

3. The constitutional organisation of the state and constitutional principles on immigration and asylum

3.1. Political system

Since 1989, Poland has been a democratic country based on the rule of law with a tripartite division of power as stated in the Constitution of the Republic of Poland¹⁹, passed in 1997. The provisions of the Constitution are applied directly and all other laws and ordinances, international agreements and regulations implemented by Poland must be in compliance with the Constitution. The Constitutional Tribunal is responsible for judging whether proposed or passed legislation is compliant with the Constitution and for reviewing the constitutionality of international agreements and regulations. In theory, the body is independent from the legislative and executive branches, and it occupies a separate position from common courts, the Supreme Court and the Supreme Administrative Court. In practice, since 2016, two laws regulating the work of the Constitutional Tribunal (*Law on Organisation and Proceedings at the Constitutional Tribunal of 2016*²⁰) and the status of constitutional judges (*Law on the Status of Judges of the Constitutional Tribunal of 2016*)²¹, in force since January 2017, have reigned in some of this independence. They introduced new regulations that increased the authority of the executive branch (including the General Prosecutor) over the work of the Tribunal. Moreover, since new laws have also reduced the practice of publishing the Tribunal's verdicts and restricted the media's presence during Tribunal hearings, these changes can be interpreted as reducing the transparency of the Tribunal's work (see also Wolny, 2018).

Both daily observations and media reports as well as experts' analyses (see e.g. Kunstra, 2016) indicate that since the end of 2015, the state has been experiencing a constitutional and judicial crisis. This crisis has to do with the selection of judges and their appointment and the disputable successive reforms of the *Law on the Constitutional Tribunal*²² and other reforms in the judiciary. In particular, the changes in the Constitutional Tribunal paralysed the work of this institution, lowered trust towards this body and promoted the belief that elected judges are not in fact independent²³. The number of cases referred to the Constitutional Tribunal and processed there has become very low, which is perceived as a sign of the dependence of this body on political decisions. The proposed and passed changes to the *Law on the Constitutional Tribunal* did not lead to improvement. All of these facts have led to the escalation of social disappointment, since the crisis has been associated with threats to the rule of law and protection of human rights (Szuleka, Wolny and Szwed, 2016). Also, other reforms implemented since 2016 (i.e. the reform of the election of the Supreme Judges and the National Council of Judges) raised concerns about the

¹⁹ The contents of the Constitution of the Republic of Poland are available on the website of Constitutional Tribunal (Constitutional Tribunal, 2018).

²⁰ Journal of Laws of 2016 item 2072.

²¹ Journal of Laws of 2016 item 2073.

²² *The Law of 22 July 2016 on the Constitutional Tribunal* (Journal of Laws of 2016, item 1157) was withdrawn in December 2016.

²³ The crisis started when in 2015 judges for the vacant positions were selected twice, firstly by the parliament dominated by the Civic Platform party, which lost their position in October 2015, and then were replaced by the Law and Justice party who determined that the previous selection was invalid.

possible political dependence of judges and threats to the rule of law. This in turn attracted the attention of the international audience as well as the EU Commission²⁴.

Matters related to asylum seekers and migrants fall mostly under the jurisdiction of the administrative courts. The acts on foreigners and granting international protection constitute a part of administrative law, which means that the Supreme Administrative Court has the highest rank in this respect. In the first instance, these are regional administrative courts that process foreigners' appeals, after decisions are issued by competent bodies (mainly the Office for Foreigners). Apart from administrative courts, there are also common courts competent in criminal, civil, economic, labour and family law. They operate on different levels, as regional courts, district courts and appellate courts. And, the Supreme Court occupies the highest authority in this branch of the judiciary.

Legislative power is executed by the parliament, which consists of the Sejm and the Senate. The Sejm is the lower chamber of the parliament and proposes laws or works on the law proposals that have been prepared, among others, by relevant ministries. The Senate controls the work of this lower chamber.

The executive power is wielded by the President of the Republic of Poland, and the government, which is led by the Prime Minister. The main ministers responsible for migration and asylum issues are those who head the Ministry of the Interior and Administration, the Ministry of Family, Labour and Social Policy, and the Ministry of Foreign Affairs. The Ministry of the Interior and Administration supervises the Border Guard, which is responsible for receiving applications for international protection, border control, running the guarded centres for foreigners (including asylum seekers) and executing the decisions issued by courts in the cases of foreigners and asylum seekers. The Office for Foreigners, responsible for proceedings regarding applications for international protection and for securing the social needs of asylum seekers in Poland, also belongs to the group of institutions that are supervised by the Ministry of the Interior and Administration. The Office for Foreigners is also responsible for processing appeals to decisions on residence permits issued by voivodes, who govern at the regional level.

The Ministry of Family, Labour and Social Policy is responsible for providing social assistance to all citizens of Poland, as well as to foreigners who fulfil certain conditions. For example, it coordinates and supervises the functioning of the local family support centres and local centres of social assistance, which are public bodies, part of the local government. The local family support centres are involved in providing the beneficiaries of international protection with assistance as part of individual integration programmes (IPI). This Ministry is also responsible for proposing and implementing laws concerning the employment of foreigners. It supervises local and regional labour offices and departments of regional offices (*urzędy wojewódzkie*) involved in the issuing of work permits and seasonal work permits, in the registering of declarations of hiring foreigners and in conducting labour market testing and the listing of professions that are deficit in Poland.

The Ministry of Foreign Affairs has competencies related to the supervision of consular offices as well as implementing laws related to visa issuance. Its role seems more important from the perspective of the mobility of visa holders or beneficiaries of bilateral agreements related to mobility. Additionally, as far as asylum issues are concerned, it should be

²⁴ See more in e.g. the series of EU Observer reports on the communication on judicial reform in Poland between Polish government and the EU bodies (Zalan, 2018a; 2018b; 2018c).

mentioned that the Ministry represents Poland in proceedings conducted by the European Court of Human Rights, which is of significance in the light of numerous claims submitted at ECHR against Poland with regard to asylum-related issues²⁵.

The territorial structure of Poland assures the decentralisation of public authority in Poland (article 15 of the Constitution of Poland). Laws and policies are elaborated at a central level, with some level of freedom in creating local policies given to the regional (*województwo*) and local (*powiat*) territorial units in Poland. The implementation of laws and policies is coordinated by regional (*wojewoda* – voivode) or local (*starosta*) governors. As far as migration and asylum issues are concerned, the process of granting residence permits takes place at the regional level, but the institutions responsible for these procedures are only executing the policy and rules established by the government. Voivodes (through relevant departments of their offices) process applications for either temporary or permanent residence permits. They also issue work permits. Local governors are responsible for issuing short-term permits for seasonal work. Both at regional and also at local levels social assistance is provided, which is of importance for foreigners who obtain international protection. They can take advantage of the support in integration offered by local family support centres. Policies in this respect are often elaborated at central or regional levels. However, there are also elements of migration and asylum governance that are centralised. This applies especially to the processing of applications for international protection – they are processed by the central unit, the Office for Foreigners. Appeals to decisions on asylum are processed by the Refugee Board. Also, control activities linked to migration governance are coordinated at central levels (the Headquarters of the Border Guard), but in practice, the tasks are performed by local units (including border controls) and regional branches.

3.2. The main legal basis for migration and asylum

According to the Polish Constitution, all people under the authority of the Polish State shall enjoy the freedoms and rights ensured by the Constitution (article 37 para 1), and exemptions²⁶ from this principle regarding foreigners should be specified by statute (article 37 para 2). Thus, other laws than the Constitution state, for instance, who can work in Poland and on what basis, who can access public healthcare, who can be supported in integration processes, etc. As far as asylum and migration are concerned, the Constitution of Poland 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 this articles stipulates that: ‘Foreigners shall have the right of asylum in the Republic of Poland in accordance with principles specified by statute’, and is followed by the 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’ (The Constitution of the Republic of Poland of 1997, article 56). The Constitution does not refer to 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

²⁵ See for instance information on MFA answer to claims regarding disrespect for ECHR order regarding the access of a potential asylum applicant to Polish territory and possibility to ask for international protection (MFA, 2017b; HFHR, 2017a).

²⁶ The exemptions are described in part 5 of the report, which summarizes the rights and obligations attached to various legal statuses of non-citizens in Poland.

the Law on Protection described below. One should remember, however, that this constitutional provision concerning asylum (para 1 of article 56) refers to a national form of protection, *azyl* (see more in part 5).

Of importance are also other constitutional provisions, such as article 32 stating that all people are equal before the law and that no one shall be discriminated against in political, social or economic life for any reason. These provisions do not pertain exclusively to citizens; they address all people, which means also foreigners. The provisions of the Constitution are of a very general nature, and this law does not distinguish foreigners of different statuses.

In general, in the context of implementing migration policies, the following provisions of the Constitution should be mentioned:

- Article 40: ‘No one may be subjected to torture or cruel, inhuman, or degrading treatment or punishment’;
- Article 41 (1): ‘Any deprivation or limitation of liberty may be imposed only in accordance with principles and under procedures specified by statute’ – it refers to the issue of detention of foreigners;
- Article 47: ‘Everyone shall have the right to legal protection of his private and family life, of his honour and good reputation and shall be able to make decisions about his personal life’ – it refers to the right to legal protection of private and family life (important in the context of issuance of return orders and their execution);
- Article 70: the right to education; compulsory education for children under 18; education free of charge in public schools (important in the context of detention of children).

As far as access to healthcare is concerned, the general provision states that everyone has the right to protection of their health. However, the state is responsible for providing health care only to citizens (regardless of their financial condition), although special attention is paid to vulnerable groups (children, pregnant women, the disabled and the elderly; article 68 of the Constitution). The provision of obligation to provide healthcare for vulnerable groups and to prevent contagious diseases does not refer to citizenship, which make it possible to conclude that foreigners, regardless of their legal status, should also be offered access to public healthcare, if they are members of the mentioned groups.

4. The relevant legislative framework in the fields of migration and asylum

4.1. The national legislation on immigration and asylum

Migration and asylum issues are addressed by both primary and secondary laws. There are two main acts that govern migration and asylum:

1. The *Law on Foreigners of 12 December 2013* (in short: Law on Foreigners)²⁷,
2. The *Law on granting protection in the territory of Poland of 13 June 2003* (in short: Law on Protection).

These two laws are supplemented by a number of other acts and ordinances that establish the details for processing migrants, asylum seekers, and refugees²⁸. In general, these laws regulate two different spheres, but the Law on Foreigners may be treated as more general, since it applies to all foreigners, i.e. non-Polish citizens on Polish territory. However, specific rules regarding certain categories of foreigners (such as EU citizens and members of their families as well as asylum seekers and beneficiaries of international protection) are included in other acts. The conditions for admitting asylum seekers, granting international protection and for executing asylum procedures are specified in the Law on Protection of 2003. It guarantees foreigners who submit applications for international protection additional rights and poses other obligations than in the case of third country nationals coming to Poland (e.g. with visas for work or study purposes). For instance, foreigners applying for international protection cannot leave the territory of Poland before their decision is issued (unless they decide to return to their country of origin). They should attend the hearing as well as register in a specified time (2 days) and place (reception centre) after submitting the application to become eligible to obtain social assistance. Whereas other categories of foreigners do not have access to public health care, asylum applicants can access the health professionals hired by the Office for Foreigners, which is responsible for asylum procedures (see more on rights for asylum applicants in part 5).

In the migration and asylum legislative framework, other acts set procedures and rules that apply to foreigners and other actors involved in foreigners' adaptation or migration control in Poland (e.g. employers, border guards)²⁹. In the context of asylum seekers and refugees of special importance are the provisions of the Law on Social Assistance of 2004³⁰. With regard to economic migration the Law on Promotion of Employment and Labour Market Institutions of 2004³¹ should be mentioned.

²⁷ In case there is a need to refer to previous acts concerning foreigners, the name of the act is given with the year of its enacting, e.g. *Law on Foreigners of 1997*.

²⁸ Ordinances are referred to in parts 5 and 6. They are also included in the Annex I.

²⁹ See more in Annex I.

³⁰ Journal of Laws of 2017, item 1769 (consolidated text).

³¹ Journal of Laws of 2017, item 1065 (consolidated text).

4.2. The development of migration and asylum law and their institutional frameworks

The beginning of the development of national legislation on immigration and asylum can be traced to the beginning of the political transition in Poland in 1989. In fact, before this year Poland was a country restricting both foreign immigration and Polish emigration. Only liberalisation of border control and passport policies along with political reforms in neighbouring countries contributed to the process of Poland becoming a country of immigration. However, until 2014, especially after Poland's accession to the EU in 2004, the most visible trends were emigration of Polish nationals and foreigners transiting through the territory of Poland, either seeking international protection or looking for better economic opportunities. Since 2015, an increased inflow of foreigners (but not asylum seekers) has been observed. Considering the scale and character of mobility and changing regulations, one can identify four distinct stages³² in the development of the Polish migration and asylum legislative framework³³:

- Opening of the borders,
- Regulation of migration,
- Controlled openness and attempts to create a migration strategy,
- Revision of policy and laws.

The Ministry of the Interior and Administration significantly influenced the development of both Poland's national migration legislation and state policy (especially the document summarising migration policy accepted by the government in 2012³⁴). The activity of this ministry in proposing laws and influencing policy was mostly linked to the fact that after the transition, Poland needed new institutions and regulations to address inflows from other countries on either a long-term or short-term basis as well to address the claims of other states regarding foreigners traversing Poland and entering other countries, such as Germany or Sweden (also for the purpose of applying for refugee status). For this reason, the first and second phases of migration policy development were dominated by working on policies and practices aimed at: the introduction of control mechanisms (at the border and within the territory of Poland), establishing a legal, institutional and reception system for persons seeking asylum and the creation of rules and institutions to legally administer foreigners' stay on Polish territory. This stage was also characterised by the establishment of international cooperation and bilateral agreements for managing cross-border mobility and reacting to irregular flows.

Only after Poland's accession to the EU, along with the significant outflow of Polish citizens from the Polish labour market and the possibility to use EU funds, can one observe

³² The three main phases in migration policy development described in part 2 were linked to the institutional framework and the Europeanisation process. The phases proposed in this part focus more on the development of asylum policies.

³³ The division (as far as the first three phases are concerned) is based on the summary of migration policy development presented by Renata Stefańska and Monika Szulecka (2014) and then updated for analytical needs. A similar description of phases of migration policy development was proposed by Sławomir Łodziński and Marek Szonert (2016).

³⁴ *Polska polityka migracyjna – stan obecny i postulowane działania (Migration policy of Poland – the current state and recommended actions)*, accepted by the Polish government in July 2012 (MIA, 2012). In 2014, the government accepted the plan to implement its recommendations.

the development of new migration and asylum laws and practices aimed at facilitating access to the labour market and attempts to elaborate integration policies and practices. This phase can be called ‘controlled openness’. It was characterized by the creation of a number of policy tools for facilitating foreigners’ access to the Polish labour market.

The most recognised example of liberalisation of foreigners’ access to the labour market was the introduction in 2006 of an employers’ declaration of intent to employ a foreigner. It allowed employers to hire a foreigner for at most 3 months within 6 months, and since 2008 – for 6 months within a 12 month period without an obligation to obtain a work permit. Between mid-2006 and mid-2007 the employment on such basis was possible only in agriculture. Since August 2007 the regulation was addressed to employers in all sectors of the economy willing to hire a citizen of one of the countries mentioned in the regulation: Belarus, Russia, Ukraine. In the next years citizens of three other countries could benefit from this procedure (Moldova since 2009, Georgia since 2010, Armenia since 2014).

Registering declarations was free of charge, whereas obtaining a work permit costs from 12 to 45 EUR, depending on the type of permit. Importantly, the process of obtaining a work permit was more complicated and time-consuming. It took about a month to get such a permit. Since 2007, getting work permits was easier, but still required waiting time and costs (although they were lower in comparison to costs in the past – even 200 euro for a work permit). The declaration registered at the local labour offices allowed the employer to hire the foreigner immediately, without waiting for the decision. Due to the increasing scale of immigration of foreigners working on the basis of such a declaration, the procedure of registering declarations eventually also became less automatic, and employers had to wait about a week for the possibility of hiring a foreigner in 2016 and 2017³⁵. In January 2018, the system of employing foreigners became more restrictive and complex due to the introduction of amendments implementing the EU Seasonal Work Directive³⁶ and specifying the conditions of refusal of work permits or declarations. Still, the declaration procedure remains a simplified way of accessing the labour market in Poland for the citizens of one of the mentioned 6 countries³⁷.

The period following Poland’s accession to the EU was also characterised by the state’s openness to foreigners and to cooperating with social service organizations dedicated to running integration initiatives and offering social and legal advice free of charge. This openness could be supported by relevant EU funds (see more in Table 11). And yet, the Polish state’s openness was ‘controlled’ in the sense that these efforts aimed at protecting Poland’s external borders and improving immigration services.

Poland’s change of government in October 2015 and the beginning of the European refugee crisis brought about the onset of the fourth phase of Polish migration legislation, which can be characterized in terms of a revision of previous laws and policies. Within a

³⁵ This information comes from an ongoing study on the procedures for employing foreigners in Poland. See more at: <http://www.migracje.uw.edu.pl/projects/quality-assesment-of-public-employment-services-in-terms-of-the-simplified-employment-procedure-for-foreigners-po-wer/> (Accessed 7 June 2018).

³⁶ *Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers*, Official Journal of the European Union, L 94/375.

³⁷ More details on the conditions of employment of third country nationals in Poland are in the amended *Law on Promotion of Employment and Labour Market Institutions of 20 April 2004*, Journal of Laws of 2017, item 1065 (consolidated text).

year, Poland's new government annulled the strategic document on migration policy that had been accepted by the previous government. During this period, state security became one of the greatest priorities in terms of migration policy and responding to refugee crisis in the EU and its neighbourhood. As immigration continued to grow in scale, repressive measures (such as refusals of entry, tighter controls of migrants' work and residence permits and more heavy reliance on return orders) became more and more common. This shift in policy is in part the result of the fact that immigration during this period continued to increase in scale, but it also reflects the new priority placed on state security in migration policy. This period has also seen a reduction in the government's openness to collaborating with social service organizations dedicated to providing legal and integration support to immigrants and refugees.

Table 11 presents the development of migration and asylum law and policy (including institutional development). The introduced laws and changes reflect the state's emphasis on certain aspects, such as integration or public safety at particular moments. The changes also reflect the influence of external factors linked to Poland's accession to the European Union and the Schengen zone or decisions taken at the EU level concerning responses to the migratory or refugee crisis. The development of migration policies was also aimed at liberalisation or specification of provisions related to foreigners' access to the labour market (described also in Table 11).

Table 11 Development of migration and asylum laws and policies

Year	Introduction of laws/changes in the law	Institutional and political changes
1989	Introduction of a work permit for foreigners (along with the provisions of employing foreigners)	'Opening of the borders' linked to the beginning of political transition (liberalisation of passport policy)
1991	The signing of the Geneva Convention of 1951 and the New York Protocol of 1967 and introduction of the possibility to apply for refugee status to the Law on Foreigners of 1963 (The law amending the Law on Foreigners of 1963, 1991, article 1(3)); refugee status was granted by the minister of the interior in consultation with the minister of foreign affairs.	The signing of an agreement on readmission with Schengen countries: the introduction of a visa-free regime between Poland and the Schengen countries
1993		Establishment of the Office for Migration and Refugees at the Ministry of the Interior (in 1997 changed into the Department of Migration and Refugee Issues at this Ministry)
1993		The signing of an agreement with Germany on cooperation around the consequences of migration, including financial aid for Poland linked to the asylum situation
1996	Granting foreigners with refugee status the right to social assistance (The Law amending the Law on Social Assistance and other laws, 1996, article 1(2)).	
1997	Introduction of a new Law on Foreigners ³⁸ (it replaced the Law on Foreigners of 1963). The changes included, among others, additional requirements from incoming foreigners, including	Establishment of a Refugee Board (it started its activity in 1999)

³⁸ Journal of Laws of 1997, no 114, item 739.

	visitors and tourists.	
2001	Introduction of an amendment to the Law on Foreigners ³⁹ . Changes included, among others, the establishment of the Office for Repatriation and Foreigners and introduction of temporary protection.	Establishment of the Office for Repatriation and Foreigners (changed in 2007 to Office for Foreigners). The Office served as the institution issuing decisions in asylum proceedings in the first instance (previously this competence was performed by the Ministry of the Interior).
2001	Implementation of the ordinance of the Minister of Labour and Social Policy of 13 December 2001 regarding individual integration programmes for refugees (IPI), coordinated by local family support centres ⁴⁰ .	
2003	Introduction of a new Law on Foreigners of 2003 ⁴¹ , including, among others, restrictions in provisions of visas.	
2003	Introduction of Law on granting protection to foreigners in the territory of Poland of 2003 ⁴² , including among others the introduction of a permit for tolerated stay (a national form of protection).	
2003	First regularisation programme for foreigners, lasting from September to December 2003 (among other provisions it included the possibility to leave Poland without consequences despite unlawful stay; requirement to stay in Poland at least since 1997).	
2004	Introduction of Law on Social Assistance ⁴³ , which included, among others, developed provisions on integration programmes for refugees.	
2004	Introduction of Law on the promotion of employment and labour market institutions ⁴⁴ including provisions specifying conditions of issuing work permits for foreigners	
2006	Introduction of simplified procedure of employing foreigners on a short-term basis in agriculture (the procedure has been developed in the following years)	
2007	Second regularisation programme for foreigners (it lasted from July 2007 until January 2008; the required period of stay amounted to 10 years, and it was dedicated to foreigners who could not benefit in the first regularisation programme)	Mobilising of EU funds linked to the SOLID programme – Solidarity and management of migration flows (including the European Fund for Refugees started already in 2006, and European Fund on Integration).
2007	Introduction of facilitations in the system of admitting foreigners to the labour market: lower cost of obtaining a work permit and simplified procedures for issuing a work permit. Additionally, the simplified procedure related to short-term work became available in all the sectors of the economy (citizens of Belarus, Russia, Ukraine could benefit	

³⁹ Journal of Laws of 2001, no 42, item 475.

⁴⁰ See more on the development of legal basis for integration of refugees in Cegielka et al (2008: 9).

⁴¹ Journal of Laws of 2003, no 128, item 1175.

⁴² Journal of Laws of 2003, no 128, item 1176.

⁴³ Journal of Laws of 2004, no 64, item 593.

⁴⁴ Journal of Laws of 2004, no 99, item 1001.

	from it; in 2009, Moldova, in 2010, Georgia and in 2014, Armenia joined the group of countries, whose citizens could benefit from the facilitation)	
2008	Amendment to the Law on Protection, including, among others, introduction of subsidiary protection. Amendment to the Law on Social Assistance, including, among others, giving access to individual integration programmes to foreigners with subsidiary protection status	
2010	Introduction of an amendment to the Law on Education, enabling foreigners to attend Polish secondary schools until foreigners are 18 years old (the same access as Polish citizens)	
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; specifying of the conditions of apprehension and detention of asylum seekers ⁴⁵	
2012	Introduction of Law on regularisation of stay of particular foreigners on the territory of Poland ⁴⁶ (passed in 2011, lasted for the first half of 2012; included provisions on the possibility of obtaining a residence permit by failed asylum seekers (who got negative decisions and were ordered to leave before Jan. 1 st , 2010 and were staying irregularly in Poland) or asylum seekers applying for international protection several times (being in the course of a subsequent procedure after Jan. 1 st , 2010)	Acceptance by the Polish government of a strategic document on migration policy ('Polish migration policy – the current state and recommended activities')
2014	Introduction of a new Law on Foreigners of 2013 ⁴⁷ , 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, the introduction of 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 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

⁴⁵ Journal of Laws of 2011 no 191, item 1133.

⁴⁶ Ibidem.

⁴⁷ Journal of Laws of 2013, item 1650.

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 migratory 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 ⁴⁸ .
2017	The 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 improvement of information exchange between different countries and institutions
2018	Introduction of amendments to the Law on the Promotion of Employment and Labour Market Institutions aimed at implementing the Seasonal Worker EU directive and the specification of conditions of issuance and refusals to issue work permits for foreigners and registering declarations on hiring of foreigners	
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.	

Source: own elaboration based on the table prepared by Stefańska Renata and Szulecka Monika (2014: 4-5).

4.3. Sub-national legislation

Since granting international protection and support for beneficiaries of international protection is regulated at the national level, at the sub-national level we can rather talk about policies and practices, instead of specific legislation. Local authorities may work out solutions aimed at improving conditions for refugees' adaptation. Most of the initiatives have been carried out in Warsaw, where for example, the City Office decided to establish a Multicultural Centre open for initiatives either authored by refugees or asylum seekers or addressed to them. The sub-national measures (local initiatives) are often based on collaboration with NGOs offering legal advice or integration support to asylum seekers, migrants and refugees. Another example of active local authorities regards Lublin in the eastern part of Poland and Gdansk in the northern part of Poland (see also Pawlak, 2018). For instance, in Lublin and Warsaw, there are the so-called sheltered flats⁴⁹, which are reserved for persons with international protection status (Chrzanowska and Czerniejewska, 2015: 3). The sheltered flats are allocated to persons who are not independent enough to live on their own and need support to improve their conditions and become more

⁴⁸ For details see: MIA (2016).

⁴⁹ For more about sheltered housing see e.g.: MFLSP, n.d.

independent. It is dedicated to, for instance, mentally ill persons, persons leaving foster care and disabled persons. Also, foreigners who obtained international protection in Poland and who cannot find accommodation on their own, but express readiness to improve their situation, may be offered sheltered housing. The number of such flats offered to beneficiaries of international protection is, however, limited. Also, the time of stay in such a flat should not exceed 24 months. The flats are funded by municipalities.

5. The legal status of foreigners⁵⁰

5.1. Asylum seekers

In formal terms asylum seekers are all those who submit applications for international protection either at the border or within the territory of Poland, at one of the Border Guard units. There is no legislative definition of asylum seeker in Poland. Polish legislation uses the term 'a person applying for international protection' to describe persons who submitted applications for such protection (Law on Protection).

Applications are submitted to the Office for Foreigners through the Border Guard (article 24 of the Law on Protection). The Border Guard is responsible only for receiving applications and providing asylum seekers with necessary medical aid and information on further steps. The merits of each application are then examined by the Office for Foreigners. Applications for international protection may also be lodged by foreigners staying in guarded centres for foreigners, in a pre-trial facility or in prison. In such a case, the application is submitted through the Border Guard from the unit located in the territory of the applicant's detention centre (article 24 of the Law on Protection).

Applications for international protection should be lodged personally. If the person seeking to apply cannot reach the BG unit (e.g. because he or she is disabled, a pregnant woman, an older person, a single parent or a person staying in a detention centre or a hospital), it is possible to submit a declaration of intent to apply for international protection in writing by post (snail mail or electronic post). Such a declaration confirmed in written protocol may also be submitted to a Border Guard officer at the BG unit where the applicant came personally, but BG could not receive the full application on that day. The potential applicant should be informed about the place where and the date upon which they can submit their application. In cases when a declaration of intent to apply for international protection is submitted, the application should be received within three days. In the event of a mass inflow of asylum seekers, the provisions permit the extension of this period to up to ten days (article 28 of the Law on Protection).

To become an applicant for international protection in formal terms, the person must submit an application at a Border Guard unit and get a temporary confirmation of their identity. This document is further used in administrative procedures following the submission of an application. It confirms the identity and the status of an applicant for international protection. It does not allow foreigners to enter other countries. According to the law, applicants for international protection cannot cross the border based on the temporary identity document they get upon submitting an application. This rule is included in the information asylum applicants receive after lodging an application. They also receive instructions about how to register at the reception centre to gain social assistance, such as accommodation at centres for asylum seekers or a financial allowance to cover expenses linked to accommodation and meals.

Applications for international protection may also be lodged on behalf of spouses and minors for whom the applicant is legally responsible (biological or adopted children), provided that the minor is not married (article 25 of the Law on Protection). The spouse of

⁵⁰ The provisions described in this part are compliant with the law in force as of April 30th, 2018.

the applicant should be informed by the Border Guard about the consequences of lodging an application together or separately if doing so would better address the real causes of fleeing from their country of origin (article 27 of the Law on Protection)⁵¹.

Foreigners lodging applications at the border may be assisted by an international or non-governmental organisation providing aid to foreigners upon request or with the applicant's consent to be assisted by representatives of these organisations (article 29 of the Law on Protection). The assistance of these organisations is free of charge.

Confirming the identity of an applicant is the task of the Border Guard that receives the application. The procedure for receiving an application includes checking a person's identity documents and documents authorising them to cross the border and stay on the territory of Poland, checking whether the applicant has these documents (possessing them is not necessary), taking photos of a person and taking fingerprints. The BG is responsible for guaranteeing the presence of an interpreter (if needed) at the moment of submitting an application. Only vulnerable groups are transported to reception centres by the BG or with the use of transport organised by the BG. A detailed search of the person and his or her belongings may be performed when this is necessary for security reasons. Both the submission of an application and the search should be performed in a room guaranteeing the comfort of the applicant insofar as other people who are not authorized to assist in either of these procedures are not present. The search should be conducted by a person of the same sex as the applicant. If the BG receiving the application has doubts regarding the age of an applicant who claims to be a minor, BG officers inform the applicant that their age can be checked by medical examination and they inform them about the consequences of this procedure. If there is no possibility to determine whether the person is an adult or a minor, he or she is considered to be a minor. In cases in which the person refuses to undergo a medical examination, they are considered to be an adult (The Law on Protection, 2003. article 32).

The applicant should be informed in writing, in a language they understand, about the procedure (what it looks like, who is responsible for issuing the decision), the applicant's rights and obligations (including the consequences of withdrawing their application), and about procedures linked to Dublin regulations (the possibility of exchanging data with other countries potentially responsible for proceedings linked to an application for international protection and potential transfer to other responsible countries). Applicants should further be provided with a list of NGOs offering support for foreigners and information on the conditions for obtaining free legal support as well as the scope of social assistance and medical aid, including accommodation at reception centres and the possibility of getting a financial allowances for accommodation outside the centres. The Border Guard should talk to applicants individually about the consequences of applying for international protection in different countries and applicants' obligation to remain in the territory of Poland until a decision is issued (article 30 of the Law on Protection).

⁵¹ Apart from crucial information about the circumstances and reasons for their leaving their country of origin, reasons for seeking protection and getting to the country where the application for international protection is submitted, the application contains, among others, the preferred language to be used in the procedure (e.g. for hearing purposes) as well as information on applicants' health condition. The application also contains information on previous proceedings in which the foreigner and persons covered by the application took part.

After the application is received, the BG transfers it to the Office for Foreigners within 48 hours. The Office checks whether Poland is responsible for processing the application of the foreigner (and also whether the applicant has lodged applications in other countries).

Asylum seekers have no right to family reunion during the proceedings. If the procedure lasts longer than 6 months, and the delay is not the result of the applicant's behaviour, the applicant is issued a document confirming the on-going proceeding and authorising them to work in Poland without a work permit until a final decision is reached (article 35 of the Law on Protection).

Applicants for international protection are entitled to (chapter 4-5 of the Law on Protection):

- social aid (accommodation in centres or elsewhere, financial allowance to satisfy basic needs) and medical assistance (the scope of medical services is the same as for Polish citizens, but spa treatment is excluded; medical services are provided by health care units contracted by the Office for Foreigners, which creates a parallel healthcare system for asylum seekers⁵²);
- free Polish language lessons;
- education for children;
- assistance in voluntary return to the country, if they are able to return there (e.g. the country will admit the foreigner);
- free communication with representatives of UNHCR, representatives of international organizations, and non-governmental organizations ensuring assistance to foreigners, including legal assistance,
- the possibility of giving consent to UNHCR to convey information on the course of proceedings, on granting international protection and for making notes or copies of the files,
- free of charge legal information given through the course of the proceedings in the 1st instance and about the granting of international protection by the employees of the Office for Foreigners;
- free of charge legal assistance available on the basis of the Law on Protection⁵³.

The free legal assistance provided to asylum seekers covers the grounds for drawing up an appeal to all of the decisions issued after an application's examination. Grounds for appeal include negative decisions on an application, the transfer of an applicant to another member state, the discontinuance of the procedure, the refusal to consider a foreigners' declaration of intent to apply for international protection, the treatment of an application as inadmissible and the deprivation of international protection. Making use of free legal assistance requires that foreigners give power of attorney in writing.

⁵² See more: Chrzanowska and Klaus (eds., 2011); M. Szczepanik (2017).

⁵³ The free legal assistance is available to an applicant for international protection and to a foreigner who has been issued a decision depriving them of international protection who act on their own, without an attorney at law. In case a foreigner deprived of international protection has income equal or higher than the social minimum, they cannot benefit from free legal assistance based on the legal provisions of the Law on Protection.

The reception system for asylum applicants is coordinated by the Office for Foreigners, which is the central institution with a branch office in Biała Podlaska, 30 kilometres from the border with Belarus and the BCP in Brest/Terespol. The office is responsible for providing social assistance, and it runs reception centres and centres for asylum seekers. There are two reception centres in Poland: in Biała Podlaska, 30 kilometres from the border crossing point in Brest-Terespol, and in Podkowa Leśna-Dębak, in the suburbs of the capital city of Warsaw. The reception centres serve as the first places where asylum seekers are accommodated and registered, before they are moved to centres for asylum applicants in other parts of Poland. The reception centre in Biała Podlaska is for first-time asylum applicants. The reception centre in Dębak Podkowa Leśna serves mostly as a reception centre for asylum seekers sent to Poland as Dublin transfers. There are nine centres for applicants for international protection where foreigners are accommodated after the initial stage of processing them upon their arrival. Those who do not benefit from accommodation in the centres visit the contact points for foreigners who benefit from assistance outside the centres, either in Warsaw or Lublin.

Material assistance, accommodation and medical care are provided to all asylum seekers during the entire period of the procedure and up to two months after the final decision on their case. If, however, an application is discontinued, assistance is offered for up to 14 days after that decision becomes final. If applicants receive a negative decision, they must leave the territory of Poland within 30 days (in general), which means that in practice they may not take advantage of social assistance for more than 30 days. The timeframe for providing asylum seekers with material assistance may change according to the phase of the appeal procedure and the decision of the Voivodship Administrative Court. According to a national report on the asylum system in Poland, since 2016, the Court has mostly refused to suspend the enforcement of a negative decision on an international protection application for the duration of the applicant's appeal process. Since the negative decision on their application ends the social benefits to which applicants had been entitled while awaiting a decision, those asylum seekers appealing a negative decision are left without support. However, some asylum seekers have reported good practices on the part of the centres, which have allowed them to continue staying there despite no longer being entitled to assistance (HFHR, 2018: 40).

Regardless of the stage of the procedure, all asylum seekers are entitled to material reception conditions. To obtain them, they must however register at one of the reception centres⁵⁴ within two days of submitting the application for international protection (article 30 of the Law on Protection). If they do not get to the centres within this time, their asylum proceedings are discontinued⁵⁵. The material assistance provided to asylum seekers includes accommodation and financial means to satisfy basic needs. Asylum seekers may be accommodated either in the centres run by the OF, or independently. In the case that they refuse accommodation in the centres run by OF, they are granted a financial allowance for accommodation outside of the centres. *Figure 2* below shows the types of assistance provided to applicants for international protection in Poland.

⁵⁴ See map of the centres at: The Office for Foreigners (2018e).

⁵⁵ Nonappearances at the reception centre usually stem from the fact that asylum seekers, often assisted by members of their families based in Western countries, try to travel across Poland to get to other countries, where they also apply for international protection.

Figure 2: Social assistance for applicants for international protection in Poland

Source: The Office for Foreigners (2018a).

Medical aid is provided to all asylum seekers. And, upon submitting an application, asylum seekers with life-threatening health problems receive emergency health care either at the border, on the way to a reception centre or after registering at a reception centre. The Office for Foreigners signs a contract with a service provider, which is then responsible for delivering medical assistance. As of April 2018, the private healthcare company 'Petra Medica' provides medical services for asylum seekers. It covers both specialised treatment and medical stations providing medical assistance by doctors and nurses at the centres⁵⁶.

Asylum seekers who are not entitled to material reception conditions include the following individuals:

- beneficiaries of subsidiary protection applying for refugee status again;
- holders of permits for stay due to humanitarian reasons or for tolerated stay;
- foreigners staying in Poland based on a temporary stay permit, a permanent stay permit or an long-term resident's EU residence permit;
- foreigners staying in youth care facilities or detention centres or who are in pre-trial custody or detention for criminal purposes.

Since 12th February 2018, the Border Guard is obliged to provide some categories of returned asylum seekers (within the Dublin procedure) with transport to the reception centre and in justified cases also with food. These categories of foreigners include: single parents, pregnant women, the elderly and disabled persons who declare that they want the procedures following their applications for international protection submitted in Poland to be continued (HFHR, 2018: 41).

As far as asylum seekers who should leave Poland according to the Dublin procedure are concerned, they may be provided with social assistance upon request (submitted no later than 30 days after the decision to transfer them to another EU country is delivered).

⁵⁶ See more on the types of social assistance on webpage of the Office for Foreigners (2018a).

This support may cover travel costs, the cost of food and medical assistance during travel and administrative costs of documents such as visas and permits. The assistance may be provided until the transfer is executed (HFHR, 2018: 41).

According to a report prepared by HFHR (2018), asylum seekers can apply to change assistance granted in the centre to assistance granted outside of the centre. However, due to the schedule of payments and the content of decisions issued by the Office for Foreigners, foreigners may have to leave the facility for asylum seekers at the end of one month and have to wait for financial resources until the middle of the following month (HFHR, 2018: 40-41). According to the OF's interpretation, foreigners may stay in the facilities until the first payment, but in practice asylum seekers decide to leave the centres earlier, since staying there would decrease the allowance they would receive. In some instances, asylum seekers who are in the midst of appealing their procedures are not provided with social assistance at the Office that is responsible for delivering this because the OF's databases are not updated to reflect that these asylum seekers have in fact lodged their appeals. According to practitioners, after a negative decision on their application becomes final, some asylum seekers living outside of the centres have been afraid to go to the Office or to the centre to access the benefits to which they are entitled for fear of being controlled and potentially apprehended by the BG on the days when benefits are distributed (HFHR, 2018: 41).

5.2. Beneficiaries of protection

5.2.1. Beneficiaries of international protection

Decisions to grant protection are made by the Office for Foreigners in the first instance and by the Refugee Board in the second instance. 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 protection⁵⁷. If the Office for Foreigners or the Refugee Board do not find a basis for granting refugee status, but asylum seekers are still deemed deserving of international protection, they obtain subsidiary protection. As far as rights and obligations are concerned, both statuses create almost the same opportunity structure.

According to article 13 of the Law on Protection, to get refugee status, the foreigner must experience a justified fear of persecution in the country of origin due to race, religion, nationality or political beliefs or belonging to a particular social group, and they cannot or do not want to benefit from the protection provided by the country of origin. The character of persecution should constitute a serious threat to human rights. It cannot be a single action, but rather must involve an accumulation of activities constituting a threat to the person's human rights. The persecution may take the form of physical, psychological or sexual violence, a discriminatory way of applying legal, administrative, court or police measures towards the foreigner, disproportional or discriminatory punishment or proceedings, lack of

⁵⁷ The third form of international protection is temporary protection. This status is granted to groups and in fact this legal tool has never been used by Polish authorities. It was introduced into the Polish law in 2001, by the Law amending the *Law on foreigners of 1997*, Journal of Laws of 2001 no 42 item 475, article 1.

possibility to appeal against the disproportional or discriminatory punishments and punishment for refusal to serve in the army when the army is engaged in criminal activity.

While assessing the reasons for persecution, the following issues are considered (article 14 of the Law on Protection):

- the term 'race' covers skin colour, origin and belonging to a particular ethnic group;
- the term 'religion' refers to any beliefs and behaviours linked to theism or atheism, participation or avoiding participation in religious services conducted publicly or privately, on an individual or collective basis;
- the term 'nationality' includes not only citizenship, but also cultural, ethnic and language identity, originating from a certain region or political system or links to communities living in other states;
- the term 'political beliefs' relates to opinions on state institutions involved in activities contributing to the fear of persecution, regardless of whether or not the asylum applicant respected priorities of these institutions;
- the term 'group' is understood as a particular social group, especially if it has a separate identity in the country of origin and if members of the group have features that are unchangeable, inborn or if they have a common history or consciousness that implies that none of the members of the group can be forced to change their identity (e.g. this may be a group of people with a certain sexual orientation, provided that the group's activity does not violate the laws of the European Union or Poland).

Importantly, the reasons for persecution may only be associated with the person and may not constitute an actual feature of that person. This means that if bodies involved in persecutory activity consider the person to be, for instance, Jewish, and persecute them on these grounds, although the person is not, in fact, Jewish, the fear of persecution is justified. The fear of persecution or serious harm may also be justified if it concerns past events, and there is no proof that the risk of persecution or serious harm in the country of origin has ceased to exist.

Asylum seekers deemed not deserving of refugee status, but still seen as facing a real risk of being seriously harmed if they are returned to their country of origin are granted subsidiary protection (article 15 of the Law on Protection). The risks taken into account when deciding about this form of protection include possibly being executed or sentenced to capital punishment, tortured or treated in an inhumane way, or experiencing a serious individual threat to their life and health due to international or internal military conflicts in which civilians are attacked (in the country of origin).

The fact that the reasons for persecution may appear after a foreigner leaves the territory of the country of origin is recognised by Polish authorities. This means that not only asylum seekers just arriving to Poland may be considered deserving of international protection, but also those who are already in Poland even for a longer time period, especially if their actions constitute behaviour that would not be acceptable by persecuting powers in their country of origin.

The provision saying that asylum seekers should seek to gain protection in another region of their own country of origin when there is no reason to fear persecution, meant that for asylum seekers from Ukraine, who were the second-largest national group that applied

for international protection in Poland in 2014, there was basically no chance of receiving a positive decision (see part 1 for details). Only part of Ukraine faced direct threats and the risk of persecution so it was believed that affected individuals could move to another part of the country. Assessment of the possibility to move to a safe part of the country of origin is conducted on an individual basis, considering the personal situation of the foreigner (article 18 of the Law on Protection).

According to article 19 of the Law on Protection, granting refugee status is refused if there is no justified fear of persecution in the country of origin or if the foreigner benefits from protection (other than that provided by UNHCR) in another country, where they can safely return to continue benefitting from that protection. If foreigners lodge a subsequent application and there are reasons to suspect that the circumstances linked to persecution were provoked by the foreigner to create the basis for an application, the application will be denied. There are a number of reasons for issuing negative decisions, such as serious suspicions of the applicant having committed a crime against peace, a war crime or a crime against humanity, as defined in international instruments. Other reasons for issuing a negative decision include the applicant being guilty of behaviour not compliant with the aims and rules of the United Nations (linked to peace) or the applicant having committed other non-political crimes outside of Poland before submitting the application for international protection. If the person is considered to have encouraged others to commit crimes against peace or humanity or to have taken part in such crimes, this may also constitute a basis for denying refugee status. Negative decisions on refugee applicants are also issued if the Polish authorities determine that the applicant is eligible for Polish citizenship and can enjoy the benefits and fulfil the obligations of citizenship.

In sum, subsidiary protection is not granted if there is no risk of suffering from serious harm. Aside from foreigners accused of crimes against peace and humanity (or encouragement to commit them), foreigners who have committed other crimes, either in Poland or in other countries, are also refused this form of protection. Importantly, if a person is deemed a threat to state security and society, they are denied subsidiary protection. Finally, if someone's application for protection is seen as an attempt to avoid punishment for crimes committed abroad, their application for international protection will be met with a negative decision (article 20 of the Law on Protection).

Depriving foreigners of refugee status may be a consequence of a voluntary acceptance of protection provided by the country of their citizenship (citizenship possessed so far or regained, or citizenship of another country that provides protection to a foreigner). Refugee status may also be revoked if a foreigner voluntarily returns to the country, which they left due to fear of persecution. If the fear of persecution is no longer justified and the foreigner can benefit from the protection provided by the state of origin or a previous residence, refugee status will also be withdrawn. Perpetrating criminal acts against peace and humanity or acts not compliant with UN objectives, or providing false information or documents in their application for refugee status will also result in the revocation of refugee status. However, if the foreigner who provided false or incomplete information still meets the requirements for obtaining refugee status, which means that despite false information provided, the person experiences justified fear of persecution, this form of protection is not withdrawn (article 21 of the Law on Protection).

Analogous conditions lead to the withdrawal of subsidiary protection. It is not withdrawn if the foreigner can demonstrate that the harm he or she experienced in the past may

reoccur in the future upon their return to their country of origin. And, subsidiary protection may also be withdrawn if a person commits a crime, either in Poland or outside of it (article 22 of the Law on Protection).

Following the submission of an application for international protection, the duration of the application process can last from 6 months to fifteen months, depending on how complicated the case is, how many applications were submitted at the same time during that period, and whether or not the applicant performs their obligations in following asylum procedures (article 34 of the Law on Protection). In practice, this period is always much longer, and the proceeding takes usually about one and a half years.

In the course of evaluating an application, if the Office for Foreigners finds that another country is responsible for processing the application, it contacts the competent bodies of that country with a request to take responsibility for processing the application (concerning the applicant, and if relevant, the other persons covered by the application). If the applicant is to be transferred to another country, the foreigner may be escorted to the border by the Border Guard (article 37 of the Law on Protection).

According to article 38 of the Law on Protection, an application for international protection may be considered inadmissible if:

- the potential applicant has already obtained international protection in another country;
- a third country is considered to be the first safe country for the potential applicant and the potential applicant may benefit from the protection provided there;
- the potential applicant submits a subsequent application for international protection with no new proof or arguments relevant to their application for international protection;
- the spouse of an applicant submits a separate application, but there are no reasons to process the application of spouses separately.

The authorities can accelerate the proceedings following the submission of an application for international protection when the applicant's reasons for seeking protection are not due to fear of persecution because of features stated in the law (e.g. race, religion and others mentioned above) or the risk of suffering serious harm caused by conflict or military actions. The proceeding may also be accelerated if information or documents provided by the applicant are false, confusing or not probable (i.e. when they are in contradiction to the facts as determined by the responsible institutions). It is also accelerated if an applicant submits an application for the sole purpose of avoiding the execution of a return order issued to them, or if they constitute a threat to state security or public order (or were expelled from Poland for these reasons in the past) (article 29 of the Law on Protection). The duration of these accelerated procedures is limited to 30 days, and there is a seven-day time period for appealing the decision. In practice, the conditions for accelerated processing of a given application are often not ascertained until long after the 30-day window has already lapsed, which results in the procedure lasting the same amount of time as a standard application. So far, there has been no border procedure in the Polish legislation, although there are plans to introduce such in the future (see more in part 6).

Due to the high share of decisions of discontinuance in asylum procedures (see part 1), the reasons for issuing such a decision should be mentioned. The following situations are reasons to discontinue an asylum procedure (article 40 of the Law on Protection):

- the applicant withdraws the application;
- it may be supposed that the applicant withdrew the application in the following circumstances: if the applicant did not come to the reception centre within two days after submitting an application or being released from a detention centre, and they did not provide any address, at which to reach them in Poland or they left the reception centre for more than seven days without a justified reason; if they left the place where they were ordered to stay during the procedure or did not report to the institution where they were ordered to report in the specified period of time; if they did not come to the hearing and did not present justification for this within seven days, or if they left the territory of Poland;
- children who became adults during application processing or the spouses of the applicant (covered by the same application) who do not agree to take part in the procedure and who leave Poland or the reception centre without justification. In this case, the discontinuance regards only the part of the application concerning the spouse or children.

The procedure may be continued again if the applicant declares his or her interest in continuation within nine months from the decision to discontinue the procedure. Such a declaration may be submitted only once and is submitted through Border Guard officers to the Office for Foreigners. The procedure is continued after OF receives this declaration (article 40 of the Law on Protection). In February 2018, an amendment to the Law on Protection obligated the Border Guard to guarantee food and transport to the reception centre for vulnerable groups who declare their will to continue their procedure after they are transferred within Dublin procedures from other countries (article 40a).

In deciding about granting international protection, the fact of whether the foreigner applied for protection as early as possible is also taken into account (article 42 of the Law on Protection). In practice, submitting an application after an extended stay in the country is considered comparable to those who submit an application to avoid execution of return orders (see e.g. Szulecka 2016). Since 2014, due to the introduction of the new Law on Foreigners of 2013, the authority issuing a return order is obliged to inform foreigners about the possibility of applying for international protection. Submitting such an application causes the suspension of the procedure of issuing a return order. However, the issuing of a return order, in this case, will not be suspended if the applicant has already previously lodged applications for international protection status (articles 304 and 305 of the Law on Foreigners).

Applicants for international protection are obliged to participate in the procedure in the sense that they provide the required information, especially about the circumstances for determining a fear of persecution or suffering from serious harm. They must also react to the requests of the Office for Foreigners to take part in the hearing or to provide clarifications (article 41 of the Law on Protection).

The hearing takes place without the presence of other persons, even if they are covered in the same application, unless their presence is important for determining the circumstances

relevant to the decision. The hearing should be conducted by competent personnel, with expertise in the situation of the applicants' countries of origin and with the presence of an interpreter. Upon the request of the applicant, both the official conducting the hearing and the interpreter should be the same sex as the applicant, if this allows for determining the details of the case. The hearing may be recorded (audio and video recording), if the applicant is informed about this beforehand. No hearing will be held if there is no need to collect additional information, and all information necessary to make the decision was in the application. And, no hearing will be held if the foreigner's health does not allow for conducting the hearing within 6 months (article 44 of the Law on Protection).

Before issuing the decision on granting international protection, the Office for Foreigners turns to the Border Guard, the head of the regional Police unit and the head of the Agency of Internal Security (and other institutions, if necessary) to get information on potential criminal activity that the applicant might be or might have been involved in or threats to state security and public order that the applicant may constitute. This information should be obtained by the Office within 30 days or three months, if the case is complicated. The information is not collected for applicants below 13 years of age (article 45 of the Law on Protection).

If the application covers other persons assisting the applicant and the decision on granting refugee status to the applicant is positive, the positive decision covers also another person concerned in the application (regardless of their experiences with fear of persecution). Children of foreigners granted refugee status born in the territory of Poland obtain refugee status automatically. And, in cases in which one of the persons covered by the application is considered deserving of refugee status, this status is granted to all persons considered in the application, including the applicant. The decision will only be negative in cases in which the person covered by the application is responsible for committing acts against peace and humanity, they already benefit from protection in other countries or they may obtain protection due to links with Polish citizenship (article 48 of the Law on Protection). The same aforementioned norms apply to the granting of subsidiary protection. A positive decision is issued to all persons included in the application, even if the justified risk of suffering from serious harm concerns only one person, provided that these persons are, for instance, not involved in criminal activities (article 51 of the Law on Protection).

The decision issued to foreigners, including negative ones and decisions about transferring a person to another country must be rendered in a language the foreigner understands, and must include details on how he or she can access free legal aid. Withdrawal of refugee status or subsidiary protection is initiated by the Office or it follows upon the request of the Border Guard, the Police, the Internal Security Agency or the Ministry of Justice. In cases of withdrawal, a hearing is held at which the foreigner may present information important to the decision about withdrawal of international protection status. The UNHCR may have access to the foreigner's case if they are to be deprived of international protection. The foreigner should be informed about the possibility of benefitting from free legal aid after the decision of withdrawal is issued (article 54a and 54b, 54d, 54e, 54f of the Law on Protection).

Foreigners granted refugee status and subsidiary protection have access to:

- the labour market (the possibility to work on the same basis as Polish citizens⁵⁸);
- social assistance on the same basis as Polish citizens;
- individual integration programmes (IPI)⁵⁹;
- health care financed by the state;
- housing sponsored by the state⁶⁰ (in practice access to this housing is not exclusively for beneficiaries of international protection, it is available to all residents in difficult situations);
- public education (compulsory for children);
- professional training financed by the state, within programmes of professional development;
- family reunion.

Foreigners granted international protection are entitled to an individual integration programme (IPI) that is based on an agreement between the beneficiary and the local family support centre. The scope of support depends on the condition of the foreigner and his or her family. The family support centre should provide assistance in enabling the foreigner to establish contacts with the local community and contacting the local centre for social assistance. The centre should also provide assistance in finding housing (preferably a shelter flat). The programme at the individual level is coordinated by a particular employee of the family support centre. It is assumed that during the programme beneficiaries are registered at local labour offices and actively look for jobs and take part in language courses (to learn Polish if they do not know it already). They should contact the person responsible for the programme at least twice a month. The programme is financed by the voivodes, but its realisation is delegated to family support offices at local levels. The cost of the programme is paid for on an individual basis (article 93 of the Law on Social Assistance⁶¹).

5.2.2. Beneficiaries of national forms of protection

According to the Law on Protection (article 3), the forms of protection granted to foreigners in Poland include the above-mentioned refugee status and subsidiary protection, temporary protection⁶² and asylum. Asylum is a form of national protection granted when the foreigner's stay in Poland is important due to the interests of the country (article 90 of the Law on Protection). The provision specifies only that there should be 'a good interest to the Republic of Poland', leaving the precise interpretation to decision-makers. For years, asylum was not granted at all or in just a few cases annually. Only in 2014 did Polish authorities begin granting asylum more frequently to Ukrainian nationals fleeing the military conflict in Western Ukraine, which was part of an effort to specifically support persons of Polish roots fleeing

⁵⁸ Article 87 of the *Law on Promotion of Employment and Labour Market Institutions*, Journal of Laws of 2017 item 1065 (consolidated text).

⁵⁹ Described in part 6.

⁶⁰ According to available data, the city of Warsaw offers five flats sponsored by the state to refugees yearly, and the city of Lublin offers yearly one such flat to persons who have obtained international protection.

⁶¹ Journal of Laws of 2017, item 1769 (consolidated text).

⁶² Never applied by the Polish authorities.

that conflict. Because their families did not always fulfil the conditions to obtain a residence permit in Poland, they were granted asylum, which reflects recognition by the Polish authorities of the fact that the stay of a particular foreigner in Poland is important to the interests of the Republic of Poland (Klaus, 2017).

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 (see details in *Table 11*). 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. 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 childrens' rights, the 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.

A permit for stay due to **humanitarian reasons** is issued in the course of deciding about a return order. It is issued by the Border Guard to foreigners whose return is impossible due to humanitarian reasons (i.e. due to family issues, children's rights, the risk of being tortured or forced to work, the potential of being deprived of the right to a fair trial after return). Foreigners with this permit have access to social assistance that covers shelter, food, necessary clothing and financial benefits. The permit is not issued if the foreigner committed a serious crime in Poland or another country or if he or she constitutes a threat to state security or public order. It may be withdrawn if it is discovered that the documents upon which the decision to issue the permit was based were false or if other grounds that would normally disqualify a candidate from receiving this kind of permit are discovered after the permit has already been issued (chapter 3 of part VIII of the Law on Foreigners).

A permit for **tolerated stay** is also issued in the course of the procedure for deciding about a return order. It is issued by the Border Guard in the following situations:

- if it is impossible to execute a return order (e.g. because there are no technical possibilities to organise a return flight or it is not possible to get travel documents for the foreigner, or the court issued a decision on ban of removal of a foreigner to a particular country);
- if in the country where the foreigner would be sent, he or she would experience threats to their lives, torture or being forced to work.

It is assumed that holders of these permits committed crimes or constitute a threat to state security or public order, which causes that granting them for stay due to humanitarian reasons is impossible. Foreigners with a permit for tolerated stay have access to social assistance in terms of shelter, food, necessary clothing and financial (goal-oriented) benefits (chapter 3 of part VIII of the Law on Foreigners).

As compared to national forms of protection, holders of the above-mentioned permits have reduced access to social assistance. They may work in Poland or run their own business, but they cannot access any support in terms of integration or adaptation to the Polish labour market, from which the beneficiaries of international protection may benefit.

The permits are valid for 2 years. They may be prolonged, if there are still reasons to protect the foreigner from being returned to his or her country of origin. Whereas the permit for stay due humanitarian reasons allows the holder to cross borders, crossing borders is not possible with a permit for tolerated stay. The protective dimension of these permits should be mostly understood as preventing foreigners from having to return to their country of origin, since their return could cause harm to their family rights or their children's rights.

5.2.3. Regular migrants

Since 2014, the residence permit system in Poland has become quite complex. It has been changing along with implementation of EU directives or reforms of national laws (see more in *Table 11*). A description of the system for issuing residence permits must be preceded by an explanation about visa types. Due to Poland's policy of admitting foreigners to the labour market as well as due to its geopolitical context (neighbouring an important migration source country, Ukraine), the dominant category of documents authorising foreigners to cross the border or to stay in the territory of Poland are either the Schengen visa or national visas (see part 1 for basic data on these two visas). They allow for a short term stay of up to 3 months or up to 12 months, respectively, but for migrants who travel between Poland and their home countries obtaining a visa valid for several years is a common strategy. Visas are typically issued by Polish consulates abroad (supervised by the Ministry of Foreign Affairs), but they can be also issued by voivodes and in exceptional cases by the Border Guard. Since these visas are in fact issued in countries of origin, and they are separate instruments for authorising foreigners to stay for up to one year in Poland, they may be treated as a kind of residence permit issued in countries of origin (see also IOM, 2009: 36). The main category of residence permits are issued in the territory of Poland by voivodes, and they are valid for either up to 3 years (in the case of temporary residence permits) or permanently. Particular types of residence permits, the conditions of obtaining them and the rights attached to them are described below.

As far as **visas**⁶³ are concerned, they may be issued for:

- work (based on a declaration of intending to hire foreigners, a seasonal work permit or a work permit);
- business;
- higher education or other forms of education;
- research or participation in conferences;
- visit;
- tourism;
- medical treatment;
- repatriation;
- other purposes.

⁶³ Visas are regulated in part IV, chapter 1 (issuance of visas), chapter 2 (the prolongation of visas) and chapter 3 (the annulment and withdrawal of visas) of the *Law on Foreigners of 2013*.

Schengen visas and national visas are issued by consular offices abroad (in exceptional cases on the territory of Poland by BG or voivodes). Applications for visas require documents confirming the purpose of stay (e.g. work or studies). Entering Poland with a visa is possible if a foreigner possesses medical insurance and financial means sufficient for the purpose of the planned stay in Poland. There are exceptions for some categories of visa holders, for example, repatriation visas or visas issued for work purposes.

A visa is not issued, among other reasons, if the foreigner does not confirm the purpose of his or her stay, if there are doubts about whether or not the declared purpose is the real one if he or she is on the list of foreigners whose stay is undesirable in the territory of Poland or if his or her data is in the Schengen Information System (SIS) due to a previous refusal of entry.

A stay based on a national visa may be prolonged for the same amount of time as the original visa was issued for. Foreigners apply to voivodes to prolong visas. Visas may be annulled or withdrawn by the consul or by the Border Guard. The reasons for visa withdrawal or annulment are the same as those for refusal of issuance: among other things, reasons include concerns about the purpose of the stay being for a purpose other than the one declared, a lack of medical insurance, the data entered into SIS indicates the visa should be refused or the person is on a list of foreigners whose stay is undesirable in the territory of Poland.

A temporary residence permit⁶⁴ may be linked to:

- the performance of work based on a single stay and work permit;
- the performance of work as a highly skilled worker (EU blue card);
- the performance of work within an intra-company mobility framework;
- the performance of posted work;
- the performance of seasonal work;
- the performance of business activities;
- studies and research;
- family reunification;
- victims of trafficking in human beings;
- other circumstances (also for foreigners staying unlawfully)⁶⁵.

The validity depends on the purpose of stay in Poland; in general, it is between three months and three years. The permit is granted only to those foreigners who have justified their motives for staying in the territory of Poland for more than three months. This means that very short periods of stay due to tourism or for business purposes, not exceeding three months, are not covered by the temporary residence permit. Persons applying for international protection and persons granted either international protection, a permit for a

⁶⁴ Temporary residence permits are regulated in part V of the Law on Foreigners. The catalogue of temporary residence permits is complex and depends on the purpose of stay. The conditions of issuance of particular types of temporary residence permits may differ.

⁶⁵ This kind of permit is seen as a regularisation mechanism and it is described in the part focused on undocumented migrants.

tolerated stay, a stay due to humanitarian reasons or asylum cannot apply for temporary residence permits – their applications will be dismissed.

Refusing to deliver one's fingerprints results in the inadmissibility of one's application for a temporary residence permit. Negative decisions are issued to foreigners who, among other reasons, deliver false documents, do not provide documents confirming their reasons for staying in Poland, are listed in the register of foreigners whose stay is undesirable in Poland, whose data are in SIS for purposes of refusal of entry or who are considered undesirable in the territory of Poland for security reasons.

A permit may be withdrawn if the reason of stay is no longer valid or if the foreigner does not fulfil the conditions for the granting of this permit any more. Also, if there are security issues in place or if the person is considered undesirable, the permit may be withdrawn. Decisions on issuance or withdrawal are made by the voivode. Applications should be submitted personally (this does not include children under 6). Applications for minors are submitted by their parents or legal guardians.

The procedure should take 1 month or at most 2 months in complicated cases (due to the obligation to consult security services before the permit is issued). In practice, it takes about half a year or even more, and the queues to submit an application result in prolongations of the waiting period. The application must be submitted on the last day of legal residence at the latest. The stay of a foreigner is considered lawful until the decision is issued (if the application for residence permit was complete in formal terms).

Permanent stay permit and long-term resident's EU residence permit⁶⁶ are issued by voivodes within 3 months. If the negative decision is issued, the appeal procedure is processed by the Office for Foreigners which has 2 months for issuing a decision. In practice the issuance may take much longer, and foreigners wait for the permits half a year or even more (the length of the procedure is linked to the increase in immigrant inflows in a relatively short time period). Foreigners with these permits have unlimited access to the labour market and social assistance. The only right that holders of the mentioned permits lack is the right to vote in public elections. A permanent stay permit is granted to, among others, foreign children whose parents have this status and victims of trafficking if they previously stayed in Poland on a temporary residence permit for victims of this crime. Also, persons granted international protection after 5 years of stay based on a positive decision or based on a permit for stay due to humanitarian reasons may apply for permanent residence permits. In the case of holders of permits for a tolerated stay, the required period of stay amounts to 10 years. In turn, the long-term resident's EU residence permit is issued to those foreigners who can prove that they have stayed in Poland legally for at least 5 years before applying for this permit. The foreigner has to prove that they are in possession of regular income (which translates into having regular, registered work, from which taxes and other required contributions are paid), health insurance and knowledge of the Polish language.

Negative decisions are issued to foreigners whose stay is illegal, who overstay in terms of the documents authorising their stay and who are married to Polish citizens, but for whom the relationship is considered to be a marriage of convenience. In the case foreigners whose stay is undesirable or who are seen as a threat to state security, a negative decision will be issued. The same applies to cases of people who have financial commitments towards the state (e.g. unpaid taxes or unpaid execution of a return order). The permit is withdrawn if the

⁶⁶ The permits are regulated in part VI of the Law of Foreigners.

foreigner constitutes a threat to state security or if it is otherwise necessary due to Poland's interests. Also, if the foreigner used false documents to get this permit, it may be withdrawn. Similarly, withdrawal of a permit will ensue if the foreigner stays for more than 6 years outside of Poland. The same conditions of withdrawal are applied to cases of a long-term resident's EU residence permit. All foreigners, who previously stayed in Poland and who can prove they had authorised work in Poland for at least 5 years may apply for a long-term resident's EU residence permit.

5.3. Undocumented migrants

There is no legal definition for an undocumented migrant in Polish legislation. The definition may be based on the prerequisite of a return order having been issued. The reasons for this are numerous, but can be summarised as: possessing no valid documents authorising a stay in Poland, working without authorisation or in breach of the law, infringement of conditions for visas or residence permits that have been issued (e.g. working during a visa issued for a tourist stay; details are specified in article 302 of the Law on Foreigners).

Observing what happens in practice, we can conclude that foreigners may become undocumented (without valid documents authorising them to stay in Poland) if:

- they cross the border in an unlawful way (with false documents or with documents fraudulently obtained or they cross through the green border—between border crossing points);
- they come to Poland with valid visas, permits or other documents authorising them to stay in Poland and overstay the term of validity of these documents without any attempts to apply for the required documents;
- they stay in Poland despite obtaining a return order with a specified term of execution.

In general, those who enter Poland irregularly become undocumented due to their manner of entering the country. Overstaying may relate to various situations. First, foreigners may overstay the terms of validity of the documents authorising them to stay. Without any initiative on their part to prolong the permitted period of stay, they just 'lose' their regular status and become undocumented. This fact may only be detected by the relevant authority, which is the Border Guard or Police or the Office for Foreigners, when their documents are checked. As a consequence of this, the foreigner will be ordered to leave Poland (a return order). Forced returns are executed immediately, whereas voluntary returns must occur within a specified period of 15 to 30 days. In the case of a foreigner being ordered to return but not leaving Poland, he or she remains undocumented in the territory of the country, and if detected by authorities, the foreigner will be issued a return order that law enforcement will execute. In such cases, a foreigner may be detained, and law enforcement will force them to comply with the return order. Detention is applied in cases in which there is a risk that the foreigner will not leave the territory of Poland voluntarily or that the foreigner constitutes a threat to state security and public order. Also, if it is impossible to confirm the identity of a foreigner immediately upon apprehension, the person may be detained for the time necessary to confirm his or her identity and acquire the necessary documents (provisions of apprehension and detention are included in articles 394-407 of the Law on Foreigners).

Undocumented foreigners may also benefit from voluntary return programmes. In Poland, this is facilitated by the International Organisation for Migration, which offers support

for those wishing to return to their countries. Also, the Office for Foreigners offers assistance and support in voluntary returns. In specific circumstances, undocumented migrants may be granted authorisation to stay in Poland. Polish legislation includes provisions that can be seen as regularisation mechanisms. For example, there is the possibility of getting a temporary residence permit if the foreigner stays in Poland illegally, but there are important reasons justifying the stay in Poland, such as waiting for remuneration from an employer who hired the foreigner, but who did not pay for work performed, or if the foreigner is staying with members of his or her family, especially children (separation from children will constitute an infringement of children's rights; more on this category of permits is in article 187 points 5-7 of the Law on Foreigners).

Also, permits issued in the course of return procedures, namely permits for tolerated stay and permits for humanitarian stay, may be treated as a kind of regularisation mechanism. However, the difference between these permits and the temporary residence permit described above concerns the initiator of the procedure. The return procedure is initiated by the Border Guard, who decides about possible barriers to issuing a return order. The application for a temporary residence permit is submitted to the voivodship office by a foreigner staying in Poland without valid documents.

Moreover, regularisation programmes allow foreigners to apply for a residence permit, even if they were staying unlawfully at the moment the programme was introduced. Until 2018, there were three regularisation programmes in Poland (see *Table 11* above), but only the last one, implemented in 2012, provided conditions for the regularisation of 'failed' asylum seekers, which means asylum applicants who received negative decisions or who were in the midst of a subsequent procedure. A very small number of asylum seekers benefitted from this law. Out of 9.5 thousand applications that were submitted during the programme, which took place during the first half of 2012, only 147 applications were submitted by 'failed' asylum seekers or those who had applied several times for international protection. The very low interest in regularising their status in the course of this special programme could be associated with lack of knowledge about the programme or fear that the application will be rejected and then followed by a return order. This can be also linked to a lack of incentives for gaining a residence permit, whereas being an asylum applicant is linked to receiving social assistance. For asylum seekers, repeating their application for refugee status and thus benefitting from assistance seemed to be the best way to manage in the host country (Dąbrowski, 2012: 39). However, after introduction of restrictions for getting social assistance by asylum seekers who submitted subsequent applications, this way became less attractive.

Undocumented migrants are not entitled to work legally in Poland. They also do not receive housing from public resources or social assistance. Health care is accessible for them on a paid basis, but they can also receive emergency medical aid via all healthcare facilities, be they private or public. However, the foreigner is usually requested to pay for the services provided. If their condition does not allow for this, problems with payment are solved through publicly collected money or money offered by local authorities or social organisations. It often happens that the cost of treatment is not covered by the patient or by any other organisation or public body, and this contributes to hospital debt.

According to Polish legislation, all children (under age 18), are obliged to attend schools and to participate in education in some way. This obligation means that foreigners,

regardless of their status, are eligible to attend public schools on the same basis as Polish citizens.

The rights of undocumented migrants are limited to the general framework of human rights, since there are no separate provisions for persons who are undocumented. The laws referring directly to undocumented migrants in general use the term foreigners staying in the country in breach of the law. This phrasing allows them to distinguish foreigners who have no documents authorising them to stay in the country from foreigners who possess documents authorising them to stay and perform income-earning without proper permits or contracts. The latter is seen as semi-legality, and such a status is much more common in the Polish context. The concept of semi-legality or semi-compliance (see e.g. Kubal, 2013, Ruhs and Anderson, 2010) means, among other meanings, authorised stay and informal employment of the migrant. Importantly, for state authorities, semi-compliance means the same as non-compliance when it is revealed that the foreigner's activities are not lawful. For instance, if a migrant with a valid visa with a right to work for a particular employer performs for profit activities at another workplace, without authorisation, this means semi-compliance on the part of the migrant. For the Border Guard, who controls the legality of work and who finds that work for another employer is not authorised, this means infringement of the conditions of the issued visa, which results in the issuance of a return order. If there is no detection of unlawful activities during the authorised stay, however, semi-compliance has important, often positive, implications for the migrants' sense of security and stability, as well as an impact on the economic decisions they take. From the authorities' perspective, the lack of detection still means compliance – migrants are seen as respecting immigrations laws, at least apparently (Stefańska and Szulecka, 2013: 98; Szulecka, 2017)

Criminal law includes provisions of punishment for all those who enable or facilitate unlawful stays in Poland or for those who willing assist foreigners in irregular border crossing (Articles 264 and 264a of the Penal Code of 1997⁶⁷). Persons hiring a foreigner who stays in Poland unlawfully can also face prosecution. It is the obligation of an employer to check a foreigner's authorisation to stay before commissioning their work⁶⁸.

5.4. Unaccompanied foreign minors

The definition of an unaccompanied minor was introduced into the Law on Protection (article 2 point 9a) in 2008. It defined an unaccompanied minor as underage foreigners who come to Poland or who stay on its territory without the assistance of responsible adults, and it authorised the law to take care of this child. In 2014, it was specified (Journal of Laws of 2014 item 1004, article 1) that the documents confirming the responsibility of the adult should be compliant with the law binding in Poland. Such a change was certainly the consequence of doubts emerging at different stages about the movement of underage foreigners, especially during border controls. According to Polish law the responsibility of an adult over a minor needs a special form (a document respected by Polish law).

Unaccompanied minors have priority as far as receiving their declaration of intent to apply for international protection is concerned. Such a declaration initiates a special

⁶⁷ Journal of Laws of 2017, item 2204 (consolidated text).

⁶⁸ More details on this can be found in the *Law on the results of hiring foreigners illegally staying on the territory of Poland of 15 June 2012*; Journal of Laws of 2012, item 769).

procedure adjusted to the needs of underage foreigners. Border Guard employees who receive a declaration from an unaccompanied minor are obliged to register this declaration, to immediately turn to the regional custodial court to establish a legal representative for the underage applicant (a special guardian – *kurator*) (article 61 of the Law on Protection) and to place the applicant in foster care. Within three days from the moment of receiving the motion from the BG, the Court should appoint a legal representative for the minor⁶⁹. The legal representative is responsible for representing the minor's interests on behalf of the minor in applying for international protection and the for following procedures, which can include transferring to another Member State based on the Dublin Regulation, getting social assistance, participating in the individual integration programme, as well as getting support for voluntary return to the country of origin (Article 61 of the Law on Protection).

The Border Guard also turns to the custodial court in cases of unaccompanied minors being transferred from other Members States based on Dublin regulations, having no legal representative or having not been placed in foster care previously. In these mentioned cases, the actions of the Border Guard involve both designating a legal representative and placing the unaccompanied child in foster care.

During the proceeding that follows a submitted application for international protection, if it turns out that the person covered by the application is an unaccompanied minor, the authority responsible for processing these applications, which is the Office for Foreigners, submits a motion to the custodial court to place the minor in foster care. A decision on foster care should be made by the court within ten days from the moment of receiving the motion from the Border Guard or from the Office for Foreigners.

If a minor is assisted by a relative who is not responsible for the minor according to Polish law at the moment of declaring their will to apply for international protection, the Border Guard officer may designate the relative as a legal representative provided that the relative consents to this. The BG may also apply to regulate the responsibility of the relative towards the foreign child until he or she is placed in foster care⁷⁰. The Border Guard uses a list of NGOs whose representatives are willing to become guardians for unaccompanied minors, since the law requires that such guardians have experience working with unaccompanied minors (HFHR, 2018).

The Office for Foreigners responsible for processing the application for international protection received from an unaccompanied minor informs the applicant about the possibility to search for relatives with the help of international organisations and he or she provides assistance in this search.

After receiving either a declaration of intent to apply for international protection or an application, the Border Guard takes the unaccompanied minor to emergency foster care units or emergency centres for education and care. The child remains under the care of the foster family or the care centre until a decision on foster care is issued by the custodial court (article 62 of the Law on Protection). Both foster care and also medical care are covered by the state until the final decision is issued (article 63 of the Law on Protection).

⁶⁹ According to HFHR's report accessible on AIDA website, the process of designating the legal representative may take much longer, even two months (HFHR, 2018). However, according to the law, the decision should be made immediately, not later than within three days.

⁷⁰ The provision has been introduced to the Polish law in 2017 and is in force since February 12th, 2018. Article 2 para 2 letter b of the Law amending the Law on Protection – Journal of Laws 2018 no 107.

The proceeding is accelerated only in instances in which the unaccompanied minor constitutes a threat to public safety and order or if he or she was previously expelled from Poland due to these reasons (article 63a of the Law on Protection). This provision was introduced to Polish law in 2015⁷¹. Similar reasons, namely constituting a threat to public safety and order, may be a reason for entering a minor's personal data into the register of persons whose stay is undesirable in the territory of Poland (article 436 para 2 of the Law on Foreigners). In general, though, minors' data are not entered into that register.

An unaccompanied minor should be informed at least seven days before the hearing set by the Office for Foreigners about the date and place of the hearing and about how to prepare for this part of the proceeding. Information is passed to the minor by the legal representative. The hearing may be performed within the presence of an adult indicated by the minor. It should be conducted in a language and manner understandable to the minor and adjusted according to his or her age. The guardian should be present at the hearing. Also, a psychologist or education specialist should take part in the hearing with the aim of preparing an assessment of the child's physical and psychological condition (Article 65 of the Law on Protection).

If an unaccompanied minor's application for international protection is unsuccessful, he or she is left in foster care until the child can be transferred to competent bodies (in minors' issues) or relevant organisations in the child's country of origin. The cost of a stay in foster care and medical aid is covered by the state.

During the administrative procedure, unaccompanied minors must be represented by a legal representative, a guardian. This applies also to foreign children without a care provider who are not applying for international protection. There are some privileges provided for unaccompanied minors in the general provisions on foreigners. Among others, unaccompanied minors may get support for their voluntary return without waiting for two years from the previous return with support (article 334 para 6 of the Law on Foreigners). Unaccompanied foreign minors born in Poland may be granted a permit for temporary stay due to other reasons (article 187 para 2 of the Law on Foreigners), which means that even if they lack valid documents authorising them to stay in Poland they may benefit from regularisation mechanisms.

If an unaccompanied minor is apprehended in the territory of Poland by the Police, the child is referred to the Border Guard, which applies to the court with a motion to place the foreigner in a centre of care and education or in a guarded centre for foreigners (run by the Border Guard). The court deciding on placing an unaccompanied minor in a guarded detention centre should consider the following factors: the level of development of the minor in physical and psychological terms, the personal features and condition of the minor as well as the circumstances of apprehension which have influenced the decision to place the minor in detention. Minors under 15 cannot be placed in guarded centres or in pre-trial facilities.

In cases in which there are doubts about the age of the foreigner applying for international protection and if that person either declares themselves to be minor or is identified as such by the BG authority, the person may be referred to a medical specialist for a detailed medical examination. However, the foreigner must give his or her consent to undergo the examination. Lack of consent results in treating the applicant as an adult⁷². In

⁷¹ Journal of Laws of 2015 item 1607, article 1.

⁷² This information available is on the website of The Office for Foreigners (2018b).

cases in which an unaccompanied minor has been apprehended and is to be placed in a guarded centre, if there are doubts about the person's age, the minor or their legal representative are asked to consent to a medical examination. If they do not consent to such an examination, the foreigner is treated as an adult (article 397 of the Law on Foreigners). The interests of minors accompanied by adults who were apprehended and will be placed in guarded centres for foreigners should also be taken into account by the courts deciding on the detention of the adult foreigner (article 401 para 4 of the Law on Foreigners). Unaccompanied minors in guarded centres should be in a separated space, whereas minors with their parents or guardians placed in detention should share the same room (article 414 para 3 and 4 of the Law on Foreigners).

A return order that is issued to a minor is executed if this foreigner has responsible adult persons to take care of him or her in the country to which they will return. Moreover, the minor should be assisted by a legal representative or they should be referred to a legal representative in the country to which the foreigner is to be returned (article 332 of the Law on Foreigners). All minors staying in detention are entitled to participate in educational and sports activities appropriate for their age and period of stay (article 416 para 2 of the Law on Foreigners).

6. The refugee crisis driven reforms (or reform proposals)

In the period of study, political changes and changes in implementation of laws could be observed rather than changes in the legal framework. Moreover, not all the changes were directly linked to the refugee crisis, if we consider the refugee crisis to be directly associated with the inflow of asylum seekers from the Middle East and Africa through the South of Europe since 2011, reaching a peak of inflow in 2015. However, the crisis contributed to the broad political debate in Poland on the required solutions either addressing the results of refugee crisis in the EU, or preventing future mass inflow of migrants and asylum seekers to Poland.

As it was already mentioned in part 2 and part 4, the years between 2015 and 2018 were characterised by changes in Poland's government. This means that not only external factors such as the refugee crisis affecting some of the EU states or the terrorist attacks in France, Belgium or Germany contributed to the shift in migration policy. This was also the change of the government that influenced the direction of migration policy, especially the instruments aimed at managing flows of asylum seekers. Only the priorities linked to economic migration remained almost the same: preferences for foreigners from non-EU countries neighbouring Poland and efforts to maintain the complimentary position of foreigners on the labour market in Poland. In turn, political decisions on participating in EU relocation and settlement mechanism changed along with the change of the government in October 2015. The preliminary preparations to admit asylum seekers have been cancelled short after elections. In July 2015, Polish government led by Civic Platform decided to relocate 1.100 refugees from Italy and Greece, and to resettle 900 asylum seekers indicated by UNHCR from Lebanon. Office for Foreigners elaborated a plan of implementing this decision, including instruments of verification and reception conditions (MIA, 2015). The government led by the Law and Justice party emphasised the issue of state security and explained the decision not to participate in relocation mechanism with the threats to security stemming from the fact that it is impossible to verify the identity of persons to be relocated. And if such a security issue emerges, the state can refuse to relocate foreigners. Thus, pointing to the will to guarantee safety of Polish citizens and state security, the government in fact withdrew from the decision on relocation within EU mechanism (MIA, 2017).

There were several changes to the Law on Protection, but it seems that only the law proposal concerning the introduction of border procedure (described below) may be treated as driven by refugee crisis and potential future mass inflow of similar character. At least the proposal was justified with these arguments. It is worth noting that some of the reforms in Polish asylum law were driven by phenomena linked to asylum seekers from the Caucasus applying for international protection in Poland or due to the obligation to implement EU directives, rather than the consequences of military conflicts and instability in South- and South Eastern Europe. Nevertheless, the new changes to asylum procedures and social assistance for asylum seekers mostly aimed to prevent foreigners from applying for international protection just to legalise their entry into the territory of the EU and to benefit from social assistance on the way to other countries perceived as more attractive for asylum seekers.

Between 2011 and 2017 the following changes to the Law on Protection and related ordinances were introduced⁷³:

1. the introduction of relocation and resettlement mechanisms, as well as the category of ‘mandatory refugee’, extending the conditions for withdrawing someone’s international protection status (related to the improvement of the situation in the country of origin and protection being accessible there) – in force since 2012⁷⁴,
2. an amendment to the ordinance regarding guarded centres for foreigners (in force since November 2017).

Despite lack of significant changes in the law, the reality of crossing Belarussian and Polish border by asylum seekers has changed significantly. As it was already stated, in the Polish case this is Border Guard which receives applications for international protection. It is also responsible for border control and issuing refusals of entry. In the Polish case, especially since 2015, submitting an application at the border has been quite difficult, as foreigners without valid visas or residence permits have simply been refused entry (Chrzanowska et al., 2016; Górczyńska and Szczepanik, 2016; Commissioner for Human Rights, 2016). The problem is especially visible at the Polish-Belarussian border and the main BCP through which potential applicants for international protection come to Poland. The majority of them come from Caucasus countries and hold Russian citizenship (see more in part 1). They cross Belarus on the way to Poland and are very often refused entry into Poland and sent back to Belarus. It happens that the same person is sent back to Belarus over a dozen of times⁷⁵ before they are let into the territory of Poland and their application for international protection is received by the Border Guard. Those foreigners who are refused entry stay at the railway station in Brest (a border town in Belarus) and try to enter the territory of Poland repeatedly. The situation at the border with Belarus, especially at the railway BCP in the Brest/Terespol crossing point, has attracted the attention of both national and international organisations and public bodies, such as the Polish Ombudsman. Official visits to the border and initiatives undertaken by social service organisations have brought the situation of persons who declare that they seek protection but experience barriers in accessing the procedure brought to public attention (Chrzanowska et al. 2016; Górczyńska and Szczepanik, 2016; HFHR, 2018)⁷⁶. At the same time, the Border Guard has explained their refusals by saying applicants did not declare that they were seeking protection and instead gave other reasons for wishing to enter Poland (e.g. to get medical treatment or to join family in Germany etc.; Szulecka 2016).

Already in the 1900s, asylum seekers coming to Poland were associated with so-called ‘false’ asylum seekers, which meant persons using the asylum channel to enter Poland or other EU countries (see e.g. Okólski, 2010: 41). The issue of ‘false’ asylum seekers

⁷³ The changes are described chronologically in *Table 11* above.

⁷⁴ Amendments were introduced by the *Law on legalisation of stay of some foreigners in the territory of Poland and on the change of the Law on granting protection to foreigners in the territory of Poland and on the Law on Foreigners*, of 28 July 2011; Journal of Laws of 2011 no 191 item 1133.

⁷⁵ Examples of asylum seekers who tried to cross the border in Brest/Terespol to submit application for international protection over a dozen of times are reflected in the report prepared by NGOs monitoring the access to asylum procedure at the border with Belarus (e.g. Chrzanowska et al., 2016: 40).

⁷⁶ See also the information published after Ombudsman’s office representatives at the BCP in Terespol: (Commissioner for Human Rights, 2016).

remained present in public debates in Poland after 2000 and after Poland accessed the EU and the Schengen zone (e.g. Szulecka, 2016: 230). Thus, the phenomena observed in Poland are not connected with asylum seekers meant while discussing the refugee crisis in the EU with its peak in 2015. However, border practices can be attached to the consequences of this crisis and the shift in Police: putting the emphasis on security issues and preventing irregular migration (associated with ‘false’ asylum seeking). The problem in fact relates to the way declarations are received. After potential applicants cross the border and are not in possession of a visa, they are all questioned in the public sphere of the BCP about the circumstances and purpose of their entry to Poland. This preliminary stage of receiving declarations is treated by the BG as part of border control so that a significant number of travellers without visas are issued refusals of entry and sent back to Belarus. However, social service organisations, the Ombudsman and lawyers offering legal aid to potential applicants for asylum point out that these events should instead be seen as a first step in receiving an application for international protection, particularly because the Border Guard is only responsible for receiving applications, not for assessing them (see e.g. Klaus, 2017).

Overall, the above mentioned problems should be treated as reduced access to the procedure itself. By not being given the possibility to lodge an application for international protection, a person cannot become an asylum seeker in formal terms, and consequently cannot access the rights attached to this status (including the right to social assistance or medical aid). In practice, refusal of entry also means denied access to the procedure.

On 30th January 2017, the Ministry of the Interior and Administration proposed amendments to the Law on granting international protection in the territory of Poland. The proposal introduced a new institution, namely the border procedure, which simplified the procedure for processing applications for international protection given that the applicant stays in detention before the decision is issued. The proposal also mandated that the decision should be issued within 20 days and established a list of safe countries of origin and safe third countries to be used in deciding cases in which the border procedure would be applied. The proposal was also aimed at reshaping the appeal body responsible for processing appeals of decisions on applications for international protection.

The proposal raised many concerns, especially among NGO representatives experienced in providing legal advice to asylum seekers. After holding public consultations and discussions in relevant legislative circles, the proposal was amended and published in June 2017, and then sent to further legislative proceedings and consultations between ministries. As of April 2018, the proposal was still under consideration at the legal commission of the governmental centre of legislation (the last version of the proposal is dated January 9th, 2018). The latest version of the proposal includes crucial elements, which reform the law on granting protection (criticised by different bodies in the first half of 2017); it introduces the border procedure; it establishes the list of safe countries of origin and safe third countries, and it reduces the possibility to appeal in cases in which the decision is taken within the border procedure mode, because the negative decision causes an immediate obligation to return⁷⁷. The main critics about the proposal were linked to its relevance to the real problems observed at the border, which is the reduced access to apply for international protection (described above).

⁷⁷ See the proposal and the legislative history of the proposal at: RCL (2018).

Controversies were also raised by a proposal to build housing containers for asylum seekers at the border. In fact, if the border procedure is introduced, it may mean almost automatic detention for the majority of asylum seekers, especially if they come from a country on the accepted list of safe third countries and safe countries of origin. Nevertheless, given the features of the population of asylum seekers arriving in Poland (many families with children), the idea of containers and improved security in existing centres seems to be a very disproportional response to the challenges observed. Contrary to other EU states experiencing huge inflows, trends observed in Poland are rather stable⁷⁸. In the end, the possibility of accommodating detained foreigners in containers⁷⁹, if there are no rooms for foreigners in the existing buildings was introduced by the law amending the Ordinance on guarded centres for foreigners (article 3a added)⁸⁰. The containers should be equipped with sanitary facilities.

The legal reform associated – often without justification – with the refugee crisis is the law regarding counterterrorism actions. In Poland, it was enacted in 2016⁸¹. The necessity of introducing this law was explained by rising concerns about terrorist threats based on events observed in other EU countries. Despite a lack of confirmed threats in Poland, the authors of the counterterrorism act convinced the public of the need to establish a legal basis for the activity of security services to prevent terrorist events in the future. Although all commentators agreed that preparing for such an eventuality was important, the details of the enacted law sparked controversy. Some criticized the law for discriminatory measures that would be applied if a foreigner was suspected of terrorist activity. Others pointed out that the law did not provide a precise definition of what ‘being suspected’ means, which can lead to abuse of powers by the police and security forces. As far as foreigners are concerned, the law allows for operational control to be applied by the Internal Security Agency towards foreigners for three months without the consent of any external body. Moreover, the circumstances when such control may be conducted are not specified sufficiently (see e.g. Buczkowski, 2016: 26-27). The Polish Ombudsman, international organizations, and Polish NGOs have also criticized the law for infringing on foreigners’ privacy, and they have questioned other general provisions of the act⁸². Although the law does not directly refer to migration or asylum governance, it should be considered a related reform because it has had direct ramifications on migration governance, and the law was in large part a reaction to mounting media and policy-maker concerns about a possible nexus of terrorism due to the refugee crisis. The specific timing of the legislation’s introduction, however, was also partially determined by the need to allay security concerns prior to two large international events that took place in Poland in the summer of 2016, the NATO summit and World Youth Days.

⁷⁸ See also the comment on the proposal published by Helsinki Foundation for Human Rights (HFHR, 2017b).

⁷⁹ The existing centres for foreigners consist of buildings with surrounded yards. There are 6 guarded centres for foreigners in Poland. They are supervised and administrated by the Border Guard.

⁸⁰ *The ordinance amending the ordinance on guarded centres for foreigners and pre-trial custody of 3 November 2017*, Journal of Laws of 2017, item 2113.

⁸¹ *The Law on counterterrorism actions of 10 June 2016*, Journal of Laws of 2016, item 904.

⁸² Already in 2016 the claim of the Polish Ombudsman was sent to the Constitutional Tribunal. The trial was supposed to take place in May 2018. However, because the planned panel of judges was considered by the Polish Ombudsman to be inadequate (not full and some judges should not take part in trials), the claim was withdrawn at the end of April 2018 to avoid a further ‘legal mess’. (See more: Commissioner for Human Rights, 2018). See also the report of Amnesty International on the counter-terrorist law (Amnesty International, 2017).

Conclusion

The development of Poland's migration and asylum policies and laws date back to 1989 when political and socio-economic transformations began. At this time, the whole region of Central and Eastern Europe (CEE) experienced important changes, ranging from the collapse of the USSR and the establishment of new states and governments to the economic development and progressive integration of some post-communist states within Western Europe. The geopolitical changes in the region brought an 'opening' of borders in Poland. Waiving restrictions in passport policy, in turn, contributed to a growing scale of mobility both from and to Poland. Importantly, Poland as a country on the way from the East to the West also became a transit country for economic migrants and asylum seekers. The attractiveness of Poland as a country of destination increased along with its accession to the European Union and its joining the Schengen zone. And, EU accession contributed significantly to the outflow of Polish nationals to EU labour markets. At the same time, however, it also influenced the development of migration policies and laws, which became necessary not only to react to observed phenomena (a reactive policy characterised the 1990s in particular), but also to manage external migration in the way most profitable to the country and its economy while attracting desirable migrant workers to the Polish labour market.

The history of asylum seekers and refugees in Poland is strictly determined by the region of origin of foreigners seeking protection in Poland. For more than two decades, foreigners applying at the Polish-Belarusian border (usually at railway BCP in Brest-Terespol) for refugee status have been mostly from the Caucasus region (formally Russian territory). The migration and refugee crisis experienced by Europe in 2015 and in the following years (Pachocka 2016a and 2017) did not influence the demographics of arriving migrants and asylum seekers in Poland. It was rather conflicts or political and economic disturbances in countries to the east of Poland that shaped the demographics of asylum seekers and foreigners granted international protection. The consequences of the so-called 'Arab Spring' or problems encountered by countries in the Middle East were to some extent reflected in Poland's experiences of admitting asylum seekers. One example is the very high rate of recognition of applications for international protection submitted by citizens of Syria. However, asylum proceedings linked to inflows from the Middle East did not dominate in terms of the overall administration of asylum applications submitted in Poland.

Since 2015, new intensive debates about possible solutions to the so-called 'refugee crisis' have prompted Polish policy-makers to introduce reforms to both international protection and immigration law. Due to the need to avoid problems with masses of asylum seekers and conflicts related to differences in culture and religion, the new Polish government of October 2015 has been refusing to implement both relocation and resettlement schemes proposed by the European Commission within the framework of the European Agenda on Migration (EAM) issued in May 2015. Instead, it emphasises the involvement of the Polish government in offering help in the regions of origin (and considers this kind of assistance to be the most effective solution). The government has also been working on legal amendments aimed at accelerating asylum proceedings in circumstances where there has been a potential misuse of asylum procedures, such as cases in which the foreigner's intention was to get into Poland in order to enjoy the possibility of moving freely, although not always lawfully, to countries perceived as more attractive and more supportive of asylum seekers. 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 asylum procedure and push-backs of potential applicants.

Appendices

ANNEX I: OVERVIEW OF THE LEGAL FRAMEWORK ON MIGRATION, ASYLUM AND RECEPTION CONDITIONS

Legislation title (original and English) and number	Date	Type of law (i.e. legislative Law, regulation, etc...)	Object	Link/PDF
<p>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.).</p> <p>Constitution of the Republic of Poland of 2 April 1997, Journal of Laws of 1997 no 78, item 483 with amendments</p>	2 April 1997	Constitution	General regulation of the political system, civic rights and human rights	http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19970780483/U/D19970483Lj.pdf
<p>Ustawa z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej (Dz.U. 2018 poz. 51, tekst jednolity)</p> <p>Law of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland (Journal of Laws of 2018 item 51, consolidated text).</p>	13 June 2003	Law	Granting international protection to foreigners; conditions of reception, details of asylum procedures	http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20031281176/U/D20031176Lj.pdf
<p>Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach (Dz.U. 2017 poz. 2206, tekst jednolity)</p> <p>Law on Foreigners of 12 December 2013 (Journal of Laws of 2017, item 2206, consolidated text)</p>	12 December 2013	Law	Rules of issuing and withdrawing visas and residence permits; regulation of administrative procedures regarding foreigners' stay and control activities; rules of issuing and executing return orders	http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20130001650/U/D20131650Lj.pdf
<p>Ustawa z dnia 14 czerwca 1960 r. Kodeks Postępowania Administracyjnego (Dz.U. 2017 poz. 1257, tekst jednolity)</p> <p>Law of 14 June 1960 Code of administrative</p>	14 June 1960	Law	Administrative procedures: terms, rules of appeal procedures	http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU19600300168/U/D19600168Lj.pdf

proceedings (Journal of Laws of 2017, item 1257, consolidated text)				
Ustawa z 20 kwietnia 2004 r. o promocji zatrudnienia i instytucjach rynku pracy (Dz.U 2017, poz. 1065, tekst jednolity) Law on Promotion of Employment and Labour Market Institutions of 20 April 2004 (Journal of Laws of 2017, item 1065, consolidated text)	20 April 2014	Law	Rules of admitting foreigners to the labour market in Poland, issuing work permits and registering declarations of hiring foreigners, functioning of labour agencies	<a href="http://prawo.sejm.gov.pl/i
sap.nsf/download.xsp/W
DU20040991001/U/D20
041001Lj.pdf">http://prawo.sejm.gov.pl/i sap.nsf/download.xsp/W DU20040991001/U/D20 041001Lj.pdf
Ustawa z 12 marca 2004 r. o pomocy społecznej (Dz.U. 2017 poz. 1769, tekst jednolity) The Law on Social Assistance, Journal of Laws of 2017, item 1769, consolidated text)	12 March 204	Law	Rules of granting social assistance, including integration programmes for beneficiaries of international protection	<a href="http://isap.sejm.gov.pl/is
ap.nsf/download.xsp/WD
U20040640593/U/D2004
0593Lj.pdf">http://isap.sejm.gov.pl/is ap.nsf/download.xsp/WD U20040640593/U/D2004 0593Lj.pdf
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) Ordinance of the Minister of the Interior and Administration of 19 February 2016 on the amount of assistance for foreigners seeking international protection (Journal of Laws of 201, item 311).	19 February 2016	Regulation	Amount of assistance for asylum seekers	<a href="http://prawo.sejm.gov.pl/i
sap.nsf/download.xsp/W
DU20160000311/O/D20
160311.pdf">http://prawo.sejm.gov.pl/i sap.nsf/download.xsp/W DU20160000311/O/D20 160311.pdf
Rozporządzenie Ministra Spraw Wewnętrznych z dnia 23 października 2015 r. w sprawie regulaminu pobytu w ośrodku dla cudzoziemców (Dz. U. 2015 poz. 1828) Ordinance of the Minister of the Interior of 23 October 2015 on the rules of stay in the centre for foreigners (Journal of Laws of 2015, item 1828)	23 October 2015	Regulation	Rules of stay in the centre for asylum seekers	<a href="http://prawo.sejm.gov.pl/i
sap.nsf/download.xsp/W
DU20150001828/O/D20
151828.pdf">http://prawo.sejm.gov.pl/i sap.nsf/download.xsp/W DU20150001828/O/D20 151828.pdf
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 z późn zm.)	24 April 2015	Regulation	Detention centres for foreigners	<a href="http://prawo.sejm.gov.pl/i
sap.nsf/download.xsp/W
DU20150000596/O/D20
150596.pdf">http://prawo.sejm.gov.pl/i sap.nsf/download.xsp/W DU20150000596/O/D20 150596.pdf

Ordinance of the Ministry of the Interior and Administration of 24 April 2015 on the guarded centres and detention centres for foreigners (Journal of Laws 2015 pos. 596 with amendments)				
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Source: Own elaboration.

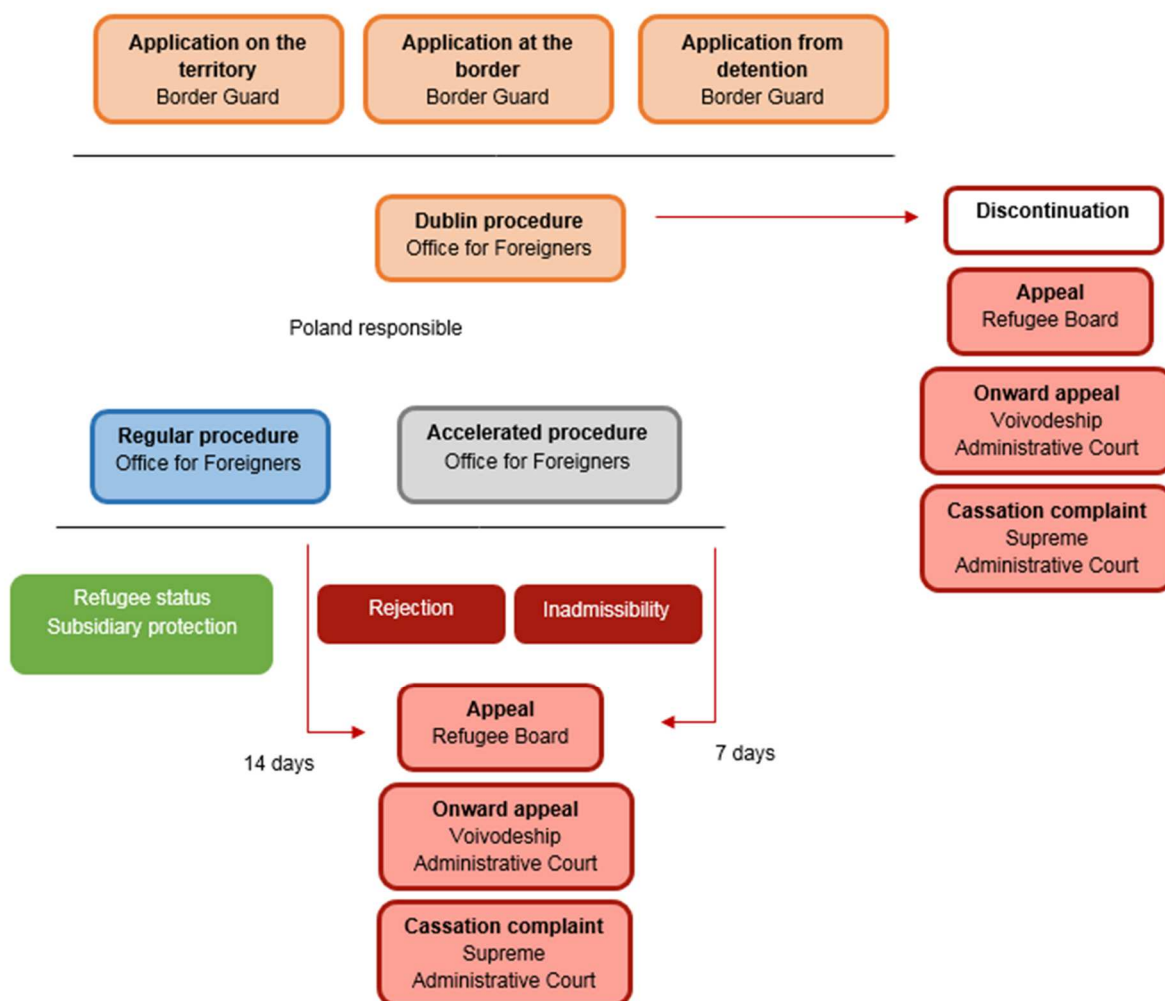
ANNEX II: LIST OF AUTHORITIES INVOLVED IN THE MIGRATION GOVERNANCE

Authority (English and original name)	Tier of government (national, regional, local)	Type of organization	Area of competence in the fields of migration and asylum	Link
Ministry of the Interior and Administration Ministerstwo Spraw Wewnętrznych i Administracji	National (implementation of laws at the level of governmental administration in regions – voivodeships)	Government	Supervision of the Border Guard; elaboration of migration policies, proposing laws linked to migration and asylum, supervising departments of voivodeship offices in the area of issuance of residence permits and work permits	https://www.mswia.gov.pl/
Ministry of Foreign Affairs Ministerstwo Spraw Zagranicznych	National	Government	Elaboration and implementation of visa policies, supervision of Polish consulates	https://www.msz.gov.pl/pl/
Ministry of Family, Labour and Social Policy Ministerstwo Rodziny, Pracy i Polityki Społecznej	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' work; coordinates work of local family support centres and local centres of social assistance	https://www.mpips.gov.pl/
Office for Foreigners Urząd do Spraw Cudzoziemców	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	https://udsc.gov.pl/
Refugee Board Rada ds. Uchodźców	National	Public administration	Processing of appeals to a decision on granting international protection in the second instance	http://rada-ds-uchodzcow.gov.pl/
Straż Graniczna Border Guard	National with regional and local units	Public administration	Protection of state border, border control, control of legality of stay and employment of foreigners, receiving of applications for international protection,	https://www.strazgraniczna.pl/

			running detention centres for foreigners, issuing return orders and (if applicable) permits for stay due to humanitarian reasons and permits for tolerated stay	
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Source: Own elaboration based on various sources.

ANNEX III: FLOW CHART OF THE INTERNATIONAL PROTECTION PROCEDURE



Source: Helsinki Foundation for Human Rights,
<http://www.asylumineurope.org/reports/country/poland/asylum-procedure/general/flow-chart>
 (Accessed 24 April 2018).

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Glossary and list of abbreviations

BCP – border crossing point

BG – Border Guard

OF – Office for Foreigners

MIA – Ministry of the Interior and Administration

MID – Ministry of Investment and Development

MFA – Ministry of Foreign Affairs

MFLSP – Ministry of Family, Labour and Social Policy

HFHR – Helsinki Foundation for Human Rights (NGO involved in providing asylum seekers and refugees with legal and social advice)

CSO – Central Statistical Office

SIS – Schengen Information System