

# Input by civil society organisations to the Asylum Report 2023

Fields marked with \* are mandatory.

Dear Colleagues,

The production of the *Asylum Report 2023* is currently underway. The annual [Asylum Report series](#) presents a comprehensive overview of developments in the field of asylum at the regional and national levels.

The report includes information and perspectives from various stakeholders, including experts from EU+ countries, civil society organisations, UNHCR and researchers. To this end, we invite you, our partners from civil society, academia and research institutions, to share with us your reporting on developments in asylum law, policies or practices in 2022 (and early 2023) by topic as presented in the online survey.

Please note that the Asylum Report does not seek to describe national systems in detail but rather to present key developments of the past year, including improvements and challenges which remain. Your input can cover practices of a specific EU+ country or the EU as a whole. You can complete all or only some of the sections.

All submissions are publicly accessible. For transparency, 2023 contributions will be published on the EUAA webpage. For reference, contributions to the 2022 Asylum Report by civil society organisations can be accessed [here](#), under 'Acknowledgements'. All contributions should be appropriately referenced. You may include links to supporting material, such as analytical studies, articles, reports, websites, press releases or position papers. If your organisation does not produce any publications, please make reference to other published materials, such as joint statements issued with other organisations. Some sources of information may be in a language other than English. In this case, please cite the original language and, if possible, provide one to two sentences describing the key messages in English.

The content of the Asylum Report is subject to terms of reference and volume limitations. Contributions from civil society organisations feed into EUAA's work in multiple ways and inform reports and analyses beyond the Asylum Report.

Your input matters to us and will be much appreciated!

**\*Please complete the online survey and submit your contribution to the Asylum Report 2023 by Friday, 3 February 2023.\***

## Instructions

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Before completing the survey, please review the list of topics and types of information that should be included in your submission.

For each response, only include the following type of information:

- New developments and improvements in 2022 and new or remaining challenges; and
- Changes in policies or practices, transposition of legislation or institutional changes during 2022.

Please ensure that your responses remain within the scope of each section. Thus, kindly refrain from including information that goes beyond the thematic focus of each section or is not related to recent developments.

## Contributions by topic

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**1. Access to territory and access to the asylum procedure (including first arrival to territory and registration, arrival at the border, application of the non-refoulement principle, the right to first response (shelter, food, medical treatment) and issues regarding border guards)**

#### A. Migrants crossing the Polish-Belarusian border

To a large extent, the comments from last year regarding the situation on the Polish-Belarusian border - including the large-scale pushbacks used by the Polish authorities - remain relevant.

A detailed description of this situation can be found in the report on the monitoring of this border published by the HFHR. As for the numbers – the detailed information will be published in the AIDA Poland country report.

Compared to last year, the issue of access of social organizations and people helping to the no-entry zone, which we described in last year's report, has changed. Compared to last year, the issue of access of social organizations and people helping to the no-entry zone in force from September 2, 2021, which we described in last year's report, has changed. It was in force until July 1, 2022, when the no-entry zone covering 183 towns was replaced by a no-entry zone within 200 meters of the state border line.

This change, although it certainly facilitated the access of social organizations and people providing humanitarian aid to migrants crossing the border and requiring support, did not change the policy of the authorities. A symbol of the hostility of the Polish authorities and services towards migrants crossing the Polish-Belarusian border last year was the wall that was built on it in just a few months. Its symbolic opening took place on July 1, 2022. The 186-kilometre wall, equipped with thermal cameras and motion detectors, was constructed to prevent entries from Belarus. The construction of the wall was shrouded in controversy - also because of the huge expenses incurred for it and the ecological costs of this project. It also did not translate into a decrease in the number of border crossings, which only became more dangerous. As reported by people involved in direct humanitarian assistance to migrants on the Polish-Belarusian border, they have repeatedly dealt with people who suffered severe injuries (e.g. broken limbs) in connection with crossing the wall.

At the time of writing this report (end of January 2023), 33 cases of death of migrants have been confirmed on the Polish-Belarusian border since August 2021. We know about last 2 bodies of people who died on the Polish-Belarusian border, whose identity has not yet been established, from the communiqué of the Commissioner for Human Rights, who joined the case by sending a letter to the District Prosecutor's Office in Hajnówka competent for the place where the corpses were found. At the same time, there are many indications that the death proceedings are not conducted by the Polish authorities in a diligent manner. From the requests for access to public information sent by the HFHR to law enforcement authorities, it is known that most proceedings are pending in one prosecutor's office under a common file number - despite the fact that deaths were often separated by a large time interval and significant geographic distance.

## 2. Access to information and legal assistance (including counselling and representation)

#### A. Migrants crossing the Polish-Belarusian border

As for people crossing the Polish-Belarusian border, the comments presented in last year's report remain valid. In them, we draw attention to the gross negligence of Polish institutions in providing information to migrants - both in the case of pushbacks, against whom no proceedings are pending yet, and people in the refugee procedure, primarily those staying in detention centres.

Reduction (June 2022) of the no-entry zone near the Polish-Belarusian border, mentioned in the previous report, made it easier for the lawyers to meet with their clients who have crossed it. This does not mean that there is a full access to legal assistance. Pushbacks happen so quickly that sometimes the legal representative does not have the opportunity to present his power of attorney, and s/he learns about the push back only after the fact. We have also received information that the Border Guard sometimes questions

the authenticity of powers of attorney concerning - especially if they concern legal representatives who are not professional attorneys. There were also cases of termination of powers of attorney by migrants, acting under the influence of the Border Guards, who were supposed to present them with false information, for example that they would receive other, better legal assistance.

#### B. Ukrainian refugees

Ensuring full information about the rights and forms to which they were entitled was one of the most important issues when people fleeing from Russian aggression in Ukraine began to arrive in Poland. It was particularly severe especially in the first days after the Russian invasion, when many thousands of people came to Poland every day - according to the then reports monitoring the situation of non-governmental organizations (including HFHR) at border crossings, stations and ad-hoc centers there was no information on the situation legal status of newcomers. At that time, there was also no specialized act that would regulate their situation. In response to this lack, databases created spontaneously, mainly by NGOs, began to appear, collecting the most important information in various language versions. These include information portals run by the Association for Legal Intervention and the Grupa Granica (not active anymore).

Similarly, initiatives related to providing legal support to newly arrived refugees began to emerge from the grassroots. In addition to non-governmental organizations that have been specializing in providing legal and social assistance to migrants for years, there have been initiatives by representatives of various legal professions. The first to offer free legal assistance were notaries, who, among other things, assisted in certifying documents sometimes necessary to take care of children in Poland. Helplines and legal aid points have been launched, among others, by: National Chamber of Attorneys at Law, District Bar Council in Warsaw.

Over time, also the government and individual ministries began to publish on their websites information dedicated to Ukrainian citizens and create new websites (e.g. [pomagamukrainie.gov.pl](http://pomagamukrainie.gov.pl)). A government helpline and a second one dedicated to victims of trafficking in human beings have also been launched.

The situation was improved by the introduction of the so-called special act - an act on assistance to citizens of Ukraine, which gathered in one place the most important provisions regarding the stay in Poland of Ukrainian citizens fleeing the war and their rights. The simple method of legalizing your stay in Poland introduced in it significantly reduced the number of legal problems that required professional support. It is worth emphasizing, however, that the Special Act has not been officially translated into Ukrainian.

At the end of 2022, the situation with access to information is ambiguous. Official information on the legal situation of Ukrainian citizens is largely dispersed - between the websites of individual ministries, institutions and local governments. Some ministries (e.g. the Ministry of Education and Science) previously provided comprehensive information on their websites, translated into Ukrainian – however, until the beginning of 2023 they had been removed, and only one language version remains available, Polish, and in exceptional cases also English.

In December 2022, HFHR participated in a meeting of non-governmental organizations with the Warsaw government. One of the issues raised was information chaos and disinformation. NGOs participating in the event pointed out that although there is a lot of information for Ukrainian refugees, none of which however has the stamp of “official”, there is a lot of confusion, and many people tends to be unsure about what source of information is the reliable one.

### 3. Provision of interpretation services (e.g. introduction of innovative methods for interpretation, increase/decrease in the number of languages available, change in qualifications required for interpreters)

In last year's report, we described problems related to the participation of translators in the procedure for granting international protection. We saw them this year as well.

For instance, the HFHR has raised doubts about the quality of some translations made as part of the refugee procedure - for example, the translation of interviews concerning the reasons for which a person applies for international protection. In several cases, we noted inaccuracies between the version presented by the Foundation's charges during legal advice and the one that was included in the final translation of the interview. It is worth noting that not all translators employed by the Office for Foreigners or the Border Guard are checked for the reliability of their translations - for example, there is no requirement that the translator be a sworn translator.

This is all the more alarming because in many decisions issued by the Head of the Office for Foreigners, in which he refused to grant the person international protection, one of the arguments was the inconsistency of the versions presented by the applicant - between the one presented when submitting the application to the Border Guard and the one presented during an interview conducted by the Office. In some cases, the differences described were small and related to individual words. We are concerned that in some cases the reason for discrepancies may not have been the applicant's mistake or even a desire to mislead the Office, but rather an imprecise translation. In the case of languages not commonly known in Poland, such as Kurdish Sorani or Arabic, there is no way for a lawyer to have insight into the quality of the translation.

Similar situations occur during detention procedures, during which the court decides whether to place a foreigner in a guarded centre. We have heard that some of the foreigners even declared their will to stay in a closed center before the court - and only then they were confronted with what such a stay really means.

Last year, there was also a shortage of translators - especially sworn translators - from the Ukrainian language. The needs in this regard were urgent especially in March and April 2022, when newly arrived refugees from Ukraine settled issues related to their stay, some of which required court intervention.

These included, among others, cases for the appointment of a temporary guardian for children from Ukraine coming to Poland without their parents or other legal guardians. This situation was described in detail in the HFHR report on unaccompanied children fleeing from Ukraine. In 2021, the list of expert court interpreters from Ukrainian included only 281 people for the whole of Poland (1,201 – Russian). Already on March 1, 2022, the National Union of Curators asked the Ministry of Justice whether it allows the participation of a translator who is not a court expert in activities conducted with the participation of persons who do not speak Polish. The Ministry then responded positively, granting permission for the participation of ad hoc interpreters. The president of the Association informed in the media that even allowing the participation of ad hoc translators, it was practically impossible to find the right person in just 3 days. According to the testimonies, the curators used such solutions as online translation applications or the help of friends or volunteers.

Similar problems were also pointed out by family courts. Both judges and probation officers received no help from the Ministry of Justice, but only an incentive to expand the lists of expert court interpreters. The way to overcome this problem was primarily to look for ad hoc translators. Most often they were people of Ukrainian origin who had been living in Poland for a long time. However, the effectiveness of this solution depended on the size of the diaspora in a given city.

#### 4. Dublin procedures (including the organisational framework, practical developments, suspension of transfers to selected countries, detention in the framework of Dublin procedures)

According to the statistical information provided by the Border Guard Headquarters in their letter of 17 January 2023, KG-OI-VIII.0180.184.2022.BK:

- In 2022, 116 foreigners were transferred from Poland to other member states. Most were transferred to Germany (37 foreigners), Romania (20 foreigners) and Lithuania (14 foreigners).
- In 2022, 501 foreigners were transferred to Poland from other member states. Most were transferred from Germany - 309 from Norway - 43 and from Sweden - 40.

The Border Guards do not provide statistics of how many of the returnees were detained or how many were ordered the measures alternative to detention. Both happen in practice.

There are no countries to which the transfers from Poland are suspended. However, we know of cases when the transfer from another country to Poland was prevented by a court of a given member state. In a judgment dated September 5, 2022 the Administrative Court of Minden, Germany, refused to transfer a group of asylum seekers to Poland. The German court found that due to existing deficiencies in the refugee reception system, returnees to Poland could be subjected to inhuman or degrading treatment, contrary to Article 4 of the EU Charter of Fundamental Rights. Similar justification was given by the Administrative Court in Hanover, Germany in a judgment of October 7, 2022 . In particular, the court considered the conditions in guarded centers for foreigners and the nearly automatic detention. In a May 31, 2022 ruling, the Court in the Hague prevented a Dublin transfer to Poland based on the assumption that the independence of the judiciary in Poland is under serious pressure and that there are serious concerns about whether the universal human rights of members of the LGBTQ+ community are still respected in Poland. On June 15, 2022, the Hague-based court, examining the case of an asylum seeker who was going to be returned to Poland, asked the Court of Justice of the European Union a preliminary question regarding the returns of asylum seekers to countries that, despite being members of the European Union, do not respect human rights (case registered under no. C-392/22).

In addition, we raise concerns whether, under the provisions of the Polish law, the Dublin returnees are always entitled to re-opening their first asylum procedure (one that was discontinued due to them leaving the territory of Poland, which is presumed to be a withdrawal of the application) or to lodge a new application that would not be considered inadmissible. Firstly, Article 40(6) of the Act on granting protection to foreigners on the territory of the Republic of Poland, sets out the 9-months time limit for making a declaration to re-open the procedure. Under that provision, if a person is transferred to Poland after the lapse of 9 months since their procedure was discontinued, their declaration shall be refused. Secondly, in order to re-open the procedure, the returnee shall make a declaration in writing to the Head of the Office for Foreigners, via a responsible Border Guard unit (Article 40(6) and (8)). Therefore, if the asylum procedure in Poland was already examined by the second instance authority (Refugee Board), and was discontinued by that body, according to the Refugee Board there is no possibility to reopen the procedure in its appellate phase (letter of the Refugee Board of 12 January 2023, DOB.WR.1510.1.2023). As a consequence, an appeal against the decision refusing to grant the international protection in the first instance is left without being examined to the merits. Thirdly, it was made known to the lawyers of the Helsinki Foundation for Human Rights that even though a returnee is entitled to re-opening their first asylum procedure, the Border Guards in the detention centres for foreigners make them lodge the second application instead.

As a consequence of the abovementioned concerns, instead of the continuation of the first procedure, the second one is initiated and is subject to the admissibility procedure. Usually the second application, as based on the same facts as the first one, would be declared inadmissible. The domestic law provides no exception in that respect to the Dublin returnees. Such situation could therefore violate Article 18(2) of the Dublin III Regulation.

Inability to continue the first asylum procedure also means that the Dublin returnees who had already spent the maximum period of 6 months in detention before having left Poland, could be again placed in detention centres after their transfer. In such cases the summary detention period exceeds 6 months.

## **5. Special procedures (including border procedures, procedures in transit zones, accelerated procedures, admissibility procedures, prioritised procedures or any special procedure for selected caseloads)**

In 2022, a special procedure for obtaining temporary protection on the territory of Poland was introduced for Ukrainian citizens leaving their country in connection with the Russian invasion after February 24, 2022. Its framework is created by the so-called special act - Act on Assistance to citizens of Ukraine in the context of the armed conflict in Ukraine of 12 March 2022. It is also one of the Polish forms of implementation of the institution of temporary protection introduced by the European Union - however, it is dedicated to a narrower group of people.

Thus, in Poland, only the citizens of Ukraine who came to Poland after February 24, 2022, and their spouses, are eligible for temporary protection specified in the special act. The remaining population groups listed in the European Council Decision may apply for a certificate of temporary protection granted to them by the Office for Foreigners under the conditions provided for in the Decision.

Persons covered by the protection under the Special Act, first of all, obtain the right to legally stay in the territory of Poland for a period of 18 months. In addition to the right to stay legally, the special act provides with the following rights:

- access to medical care in public health care facilities;
- access to accommodation and meals;
- the ability to perform work without the need to obtain a work permit;
- the possibility of running a business;
- access to the public education system;
- access to the higher education system;
- access to kindergartens and nurseries for children under the age of 7;
- access to social benefits: a one-time allowance of PLN 300, the right to family benefits.

Persons wishing to exercise the rights under the Special Act must submit an application to any commune executive body in Poland - it may be, for example, a commune office or a city office. Submitting the application means giving the person the population registration number (PESEL) and collecting basic information about them, including fingerprints. The application must be submitted in writing when visiting the office in person. At the moment, we do not have information about the duration of the procedure, possible queues or delays.

An application for granting a PESEL number and for protection under the Special Act may be submitted on behalf of a child by their parent, legal guardian, probation officer, temporary guardian or a person effectively taking care of him. Extending the possibility of applying also to those effectively providing care should be considered as a response to the fact that many children come to Poland or live with people who are not their legal guardians.

A very significant difficulty in practice is that the special act does not provide for the possibility of appealing in the procedure of granting protection and the PESEL number. Therefore, it is not possible to deny the refusal of protection by the office.

According to the data provided by UNHCR, by the January 2023 about 1,5 millions of Ukrainian refugees registered for temporary protection in Poland.



Due to the passage of time, however, the problem of the right of persons enjoying temporary protection to extend their stay in Poland is raised more and more often. Originally, the text of the Special Act contained a provision allowing for submitting an application for temporary residence after the expiry of temporary protection - on preferential terms. In October 2022, however, work was started on amending the Special Act, which entered into force in January 2023. The amendment provides for the removal of the procedure for extending the stay. It seems that in connection with the introduced provisions, persons enjoying temporary protection, in order to extend their legal stay in Poland for a period exceeding 18 months, will have to apply for a temporary residence permit only for the purpose of performing work or conducting business activity.

## **6. Reception of applicants for international protection (including information on reception capacities – increase/decrease/stable, material reception conditions - housing, food, clothing and financial support, contingency planning in reception, access to the labour market and vocational training, medical care, schooling and education, residence and freedom of movement)**

Asylum seekers are entitled to social assistance in the form of either direct financial support or accommodation and food<sup>[1]</sup> at an open centre for foreigners. In order to be directed to such a centre, they need to first arrive at the reception centre, where they spent on average several weeks up to years. The Commissioner for Human Rights noted generally good conditions at the reception centre in Dębak near Warsaw. It is worth noting that the center for foreigners in Dębak is located in the middle of the forest, about 2 kilometers from the nearest buildings. Getting from there to Warsaw - where foreigners are directed to specialist doctors or psychologists - takes about 40 minutes and requires the use of a suburban train, which can be difficult for people who are just finding themselves in Polish society. In addition, we know from organizations that regularly visit the center that one of the wings collapsed in 2022. No one was injured, but it required the transfer of a large number of people to another center in Góra Kalwaria.

An alternative to staying at the reception centre is financial support. The amount of the cash benefit to cover the costs of stay per person per month is: (1) single person: PLN 750 (aprox. EUR 250); (2) family of two: PLN 600 20 (EUR 120); (3) family of three PLN 450 (EUR 80); (4) family of four and more PLN 375 (EUR 75). These amounts are not sufficient to cover costs of sustenance.

Children have access to schools irrespective of the legal situation of parents and are accepted to district school upon parents' application. They may also be accepted to schools outside the district upon availability of places. There are also didactic activities carried out at the reception centers. Asylum seekers are allowed to work if their case decision was not issued within the period of six months. On the other hand, children placed in detention centres do not attend schools. Instead of going to school, they attend to didactic activities carried out in detention centres by the teachers hired by nearby schools.

In terms of medical care, applicants of international protection are also entitled to full medical care. This care is provided by the UdSC on the basis of the Act of June 13, 2003 on granting protection to foreigners on the territory of the Republic of Poland Republic of Poland. Under the Act, medical assistance includes the same benefits to which persons covered by health insurance are entitled, with the exception of spa treatment and spa rehabilitation. The scope of medical care provided by the subcontractor includes:

- primary health care;
- immunization of children in accordance with the immunization calendar;
- consultations and specialized examination;
- hospitalization;
- medical transportation;
- organization of placement in specialized long-term care facilities
- long-term care;



- dental care (excluding dental prosthetics).

However, medical assistance to these people is provided in Poland not under the general system of public health care, but under an agreement with the state, in Warsaw it is provided by a network of private Petra Medica clinics. Organizations specialized in supporting asylum-seekers in Poland have been struggling with the low level of these benefits for years. Apart from the quality of medical assistance, clinics are located in remote parts of the city that are difficult to reach, especially if a person lives in a center in Dębak and does not speak Polish. Moreover, in Petra Medica, interpreters are rarely provided to migrants - after all, their participation is necessary to give informed consent to a medical procedure. Therefore, in many cases, people who receive help are accompanied by NGO volunteers who know a given language.

Ukrainians under TP also enjoy the same access to medical care as Polish citizens, with the exception of spa treatment and spa rehabilitation, on the basis of the the Act of 12 March 2022 on helping Ukrainian citizens in connection with the armed conflict on the territory of that country.)

## **7. Detention of applicants for international protection (including detention capacity – increase /decrease/stable, practices regarding detention, grounds for detention, alternatives to detention, time limit for detention)**

In case of third country nationals the Polish courts tend to issue decisions on detention, and rarely resort to alternatives to detention. This also concerns persons expressing the wish to apply for asylum. What is more, the Human Rights Commissioner recorded the Border Guard officers' practice of misinforming persons apprehended after crossing the border asylum seekers that they can apply for protection only in guarded centres for foreigners. As a result, foreigners were detained on the basis of the provisions of the Act of 12 December 2013 on foreigners and not the Act on granting protection to foreigners in the territory of the Republic of Poland, which extended theirs' stay in detention. Significantly, families with minor children, unaccompanied children as well as victims of torture, violence and trauma experienced in their countries of origin or en route, are also placed in guarded centres for foreigners.

Additionally, foreigners only once are heard by the court in detention procedure while being apprehended. Moreover, the Border Guard do not sever the application to place or prolong their stay in detention, to the foreigners. So in practice, it means that foreigners do not have a chance to present their standpoint in the court proceedings in the first instance. They can do that only in the appeal which has to be prepared in Polish language.

Only the court decision is translated in to foreigners' language. The cover letter, which contains information on the possibility of appealing the court order, is always in Polish.

Asylum seekers from Afghanistan, Syria, Yemen, Erytrea were released from such guarded centres after some time (no precise data) by the decision of Head of the Office for Foreigners as there was a high probability of a granting them international protection in Poland.

Person released from guarded centres must reach an open reception center in Dębak near Warsaw or in Biała Podlaska on their own under the threat of discontinuation of their refugee proceedings. It happens that foreigners do not have enough financial means to get to these reception centres or they are released from detention centre at night.

Importantly, the Draft act amending the act on foreigners and certain other acts (UC2865) provides for prolonging the maximum period of stay in guarded centres for foreigners from 12 to 18 months. For these and other reasons, the HFHR concluded in its opinion that this draft amendment requires a thorough rethink and, as it stands, does not meet the standards of human rights and refugee law. However, work on the

amendment continues despite critical opinions.

Two temporary detention centres, established in response to the increased number of irregular arrivals via the Polish-Belarusian border, were closed in the second half of 2022, including the Wędrzyn[3] guarded centre, which was located in military barracks in an active military zone. In this centre, third country nationals were accommodated in multi-person rooms, up to 24 people, without a minimum of privacy. There were no sports and recreation activities that could relieve the tension, and concertina razor wire fences were deployed in walking areas, provoking self-mutilation and suicide attempts. very limited guaranteed minimum space per person in a guarded centers (less than 2 square meters); limited access to medical and psychological care in some of such centres; and insufficient provision of information on detention situation and legal status, resulting from language barrier and lack of sufficient access to legal assistance; limited access to the computers, Internet and outside world. See: report of the Polish Commissioner for Human Rights, the report of Supreme Chamber of Control.

Inadequate living conditions and prolonged stays at guarded centres resulted in several protests and hunger strikes by third country nationals. In response to these events, HFHR issued its opinion, pointing out the most important problems with the functioning of guarded centres, which in its opinion included:

- automatic placement in detention;
- non-implementation of non-custodial measures;
- detaining people who are not subject to deportation from Poland;
- automatic extension of the period of detention;
- failure to inform about the reasons for extending detention;
- not interrogating persons placed in the center by the court;
- failure to inform about their rights;
- placing children and pregnant women in guarded centers;
- staying in detention of people with experience of violence;
- lack of appropriate psychological care;
- limiting contact with the outside world.

## **8. Procedures at first instance (including relevant changes in: the authority in charge, organisation of the process, interviews, evidence assessment, determination of international protection status, decisionmaking, timeframes, case management - including backlog management)**

The newly introduced procedure for obtaining temporary protection for Ukrainian citizens fleeing the war is described in point 5. Apart from that, in other procedures at the first instance stage, no changes were noted compared to last year.

## **9. Procedures at second instance (including organisation of the process, hearings, written procedures, timeframes, case management -including backlog management)**

As mentioned in point 5, a significant problem in practice was the lack of a procedure in the second instance (appeal) against the decision to grant a person temporary protection provided for Ukrainian citizens fleeing the war.

At the end of the year, the Polish Parliament received a government proposal to amend the Act on Foreigners, the entry into force of which would change the rules of conduct in the second instance in the return procedure. According to the proposed changes, the appeal body against the decision of the

Commander of the Border Guard on the obligation to return would not be the Head of the Office for Foreigners, as it was before, but the Commander-in-Chief of the Border Guard. This means that at the administrative stage, the return procedure will be carried out only by the Border Guard, and the independent appeal body in the form of the Office for Foreigners might be eliminated.

At the end of December 2022, the project was at the stage of work within the Sejm, the lower house of the Polish Parliament.

It is also worth paying attention - as in the previous year - to the quality of appeal proceedings against decisions concerning international protection. They are conducted by the appeal body in relation to the Office for Foreigners - the Council for Refugees. Our experience and the experience of other organizations providing legal assistance to refugees in Poland show that proceedings in the second instance conducted by this authority are often symbolic and largely uncritically confirm the findings of the Head of the Office for Foreigners.

## **10. Availability and use of country of origin information (including organisation, methodology, products, databases, fact-finding missions, cooperation between stakeholders)**

In the past year, there were no major changes in this field compared to previous years.

## **11. Vulnerable applicants (including definitions, special reception facilities, identification mechanisms/referrals, procedural standards, provision of information, age assessment, legal guardianship and foster care for unaccompanied and separated children)**

### **A. Non-Ukrainians**

As mentioned in last year's report, the challenge in Poland is to identify people belonging to vulnerable groups. Our comments made then remain valid this year as well.

Our experience shows that the courts deciding on placing a person in detention (in the case of Poland, these are criminal courts) issue decisions automatically, based on the material presented by the Border Guard. Individual circumstances of that person are too often put aside while deciding on detention. Even individual circumstances such as being a victim of torture, serious physical or mental health problems are not properly assessed, resulting in people belonging to vulnerable groups (including minor children) spending months (up to 2 years) in detention. The courts do not undertake activities on their own initiative to clarify whether a given person is not particularly exposed to the negative effects of detention, and often they also omit the law and evidence presented by foreigners and their representatives.

The children with families are still placed in detention centres as a rule- in 2022, As of 1 February 2022, 416 children were placed in detention centres in Poland, out of a total of 1,652 detainees.

On 3 March 2022 the European Court of Human Rights issued a judgment in the case of Nikoghosyan and others v. Poland. In its judgment the Court reiterated its finding that the domestic courts which extended the applicants' detention, did not give sufficiently thorough and individualized consideration to the applicants' situation. the detention of both the adult and the child applicants, for a period of almost six months, was not a measure of last resort for which no alternative was available, and the national authorities had to act with greater speed and diligence. In this case the Court ruled there was a violation of Article 5 § 1 (f) of the Convention.

Still the best interest of a child is not taken into account in the judgements in some courts.

In 2022, several reports were created regarding the critical situation in Polish detention centers for

foreigners. The most important were:

- report of the National Mechanism for the Prevention of Torture at the Commissioner for Human Rights;
- report of the Amnesty International
- report of Supreme Chamber of Control.

The other violations are described in the point 7 of this report.

## B. Ukrainians

Among the war refugees from Ukraine there were also people belonging to vulnerable groups: unaccompanied children, the elderly, people with disabilities, etc. The HFHR's attention was particularly drawn to the situation of unaccompanied children - including children evacuated from Ukrainian institutional foster care centres, which began to appear en masse in Poland, especially in the first months after the aggression. In autumn 2022, the HFHR published a report devoted to this issue.

The Special Act introduced special solutions aimed at securing the situation of unaccompanied minors. These include provisions on temporary guardians, which have proven to be the most effective in terms of speed of proceedings. In addition, the special act established a record of minors, which is to create a framework for systemic protection for them. The Special Act was prepared urgently and contains very significant legal loopholes concerning, for example, proceedings for changing or dismissing a temporary guardian. Moreover, these solutions are available only to minor citizens of Ukraine - leaving children with third-country citizenship or without identity documents on the margin of interest.

The most important problems related to the procedure of appointing a temporary guardian included:

- Inability to conduct reliable evidence proceedings within the statutory period of 3 days for considering the application;
- Shortage of interpreters from Ukrainian, which hinders communication between the court and the participants in the proceedings;
- Failure to conduct hearings of children in some courts and fail to take their views into account.

The report also points to problems with maintaining a high standard of care for children evacuated from Ukrainian foster care in Poland. Many of them live in large centers that do not have the status of Polish foster care institutions, and are temporarily maintained by the local government or private sponsors. They are not formally included in the Polish system of foster care, which allows the standard of care for them to be lower than in the case of Polish children.

As for the other vulnerable groups, there is a lack of recognition of Ukrainian disability certificates in Poland, which means that the condition for access to social benefits is the re-entry of people, this time in Poland, into the certification procedure. There seems to be the need to create disability adjudication procedures adapted to the special needs of disabled refugees from Ukraine (e.g. with regard to the language barrier).

## **12. Content of protection (including access to social security, social assistance, healthcare, housing and other basic services; integration into the labour market; measures to enhance language skills; measures to improve attainment in schooling and/or the education system and/or vocational training)**

As for non-Ukrainians, more detailed information can be found in the ECRE's AIDA Country report on Poland.

There have been new developments in terms of the treatment of Ukrainians under temporary protection. In terms of integration into the labour markets, local labour offices and some local governments introduced a number of initiatives, including awareness raising campaign among employers on the conditions of employing Ukrainians under TP, encouragement to submit job offers, open for Ukrainians under TP, paid internships coupled with language learning, job fairs with a particular focus on Ukrainians, employment of Ukrainian speaking staff and interpreters. Warsaw also opened a dedicated Labour Office branch providing services to Ukrainian DPs. Other third country nationals under protection can also use the labour offices services, however, they are no dedicated services targeting non-Poles apart from Ukrainians under TP.

Many schools opened preparatory classes of Ukrainian students, focusing on the Polish languages learning and organized additional Polish classes and employed Ukrainian teacher assistants. With the help of the UNICEF funding, large cities also were able to open Education and Development Centres focusing on services for Ukrainian students, various workshops and trainings as well as spaces for online education (for those studying in the Ukrainian school system).

In terms of housing, a dedicated programme was introduced to reimburse the costs of accommodation and food to Poles who host Ukrainians under DP. The funding in the amount of PL40 (about EUR8) was granted for the maximum period of 120 days from the moment of arrival in Poland.

Ukrainians under TP and third country nationals with refugee status, auxiliary or humanitarian protection enjoy the same access to social and family and child benefits.

Ukrainians under TP qualify for social and family benefits in the same way as Polish citizens. A citizen of Ukraine residing on the territory of the Republic of Poland, whose stay on the territory of the Republic of Poland is considered legal on the basis of Art. 2 clause 1 of the Act on assistance to Ukrainian citizens fleeing the war, have the right to the following benefits:

- 1) family benefits referred to in the Act Of 28 November 2003 On Family Benefits,
- 2) child benefit referred to in the Act of 11 February 2016 on state aid in bringing up children, if the parent lives with children on the territory of the Republic of Poland,
- 3) a good start, referred to in the regulations issued on the basis of art. 187a Act of 9 June 2011 on supporting the family and the foster care system, if the parent lives with children in the territory of the Republic of Poland,
- 4) family caring capital referred to in Act of 17 November 2021 on family care capital, if the parent lives with children in the territory of the Republic of Poland,
- 5) contribution to the parent's fee for the child's stay in a nursery, children's club or with a day carer, if the parent lives with the child in the territory of the Republic of Poland (Act of February 4, 2011 on the care of children up to the age of 3).

Moreover, beneficiaries of the Act on assistance to Ukrainian citizens also have the right to an additional single (one-off) benefit in the amount of 300 zloty (aprx. 64 euro) per person. (Art. 31. 1. of the Act of 12 March 2022 on helping Ukrainian citizens in connection with the armed conflict on the territory of that country.)

Third country nationals granted refugee status or auxiliary protection may access various forms of support through Individual Integration Plans that last for 12 months. These include cash benefits to cover subsistence costs, in particular to cover expenses for food, clothing, footwear, personal hygiene products and housing fees, and to cover costs related to learning the Polish language; (The total amount of cash benefits to cover living expenses and expenses related to learning the Polish language to which a foreigner is entitled depends on the number of persons in the family and the period of implementation of the individual integration program, and currently ranges from PLN 647 to PLN 1376 per month. As of 01.01.2022, the benefit will increase to between PLN 721 and PLN 1450).

### **13. Return of former applicants for international protection**

The data at our disposal is based upon the public information provided by the Border Guard. It concerns all persons subject to the return procedure, not only former applicants for international protection.

Currently, the list of countries to which returns are suspended includes Syria, Afghanistan, Yemen, Eritrea

and Ukraine. This means, among other things, the resumption of deportations to, Palestine, to which returns had been suspended a year earlier. It is worth adding that, according to the HFHR's observations, the inability to enforce return decisions against Syrian, Yemeni, Afghani citizens, do not prevent the Border Guard from issuing a return decision to them. This creates a specific legal loophole that does not allow persons who have been given with an obligation to return and whose return is not possible to obtain the right to stay legally in Poland.

According to the data of the Border Guard, in 2022 the Border Guard carried out 777 forced returns to the country of origin, of which 730 concerned men over 18 years of age. More detailed information can be found in the ECRE's AIDA Country report on Poland.

#### **14. Resettlement and humanitarian admission programmes (including EU Joint Resettlement Programme, national resettlement programme (UNHCR), National Humanitarian Admission Programme, private sponsorship programmes/schemes and ad hoc special programmes)**

Poland does not participate in these programmes.

#### **15. Relocation (ad hoc, emergency relocation; developments in activities organised under national schemes or on a bilateral basis)**

Poland still does not fulfil its obligations under the Relocations Decisions.

#### **16. National jurisprudence on international protection in 2022 (please include a link to the relevant case law and/or submit cases to the [EUAA Case Law Database](#))**

In 2022, the most important judgments concerned the legality of decisions regarding the expulsion of people crossing the border outside border crossings, and therefore push backs. It can be said that thanks to the activities of the Voivodship Administrative Courts, a line of jurisprudence was established that the issuance of such decisions is unlawful. The courts decisions included:

1. Judgment of the Voivodship Administrative Court in Warsaw of April 26th 2022 (IV SA/Wa 420/22);
2. Judgment of the Voivodship Administrative Court in Warsaw of May 20th 2022 (IV SA/Wa 615/22);
3. Judgment of the Voivodship Administrative Court in Warsaw of May 27th 2022 (IV SA/Wa 772/22);
4. Judgment of the Voivodship Administrative Court in Warsaw of April 27th 2022 (IV SA/Wa 471/22);
5. Judgment of the Voivodship Administrative Court in Białystok of September 15th 2022 (IV SA/Bk 492/22); - this judgement is not yet final.

Among the judgments regarding push backs, it is worth paying attention to the judgment of the Voivodship Administrative Court in Białystok of October 27, 2022 (II SA/Bk 558/22). In this case, the case concerned an unaccompanied minor, a 16-year-old from Syria, who was turned back by the Border Guard to the border with Belarus without examining his care situation. The court ruled therein, acceding to the arguments of the Commissioner for Human Rights who participated in the case, that a minor should have a representative

appointed to represent him in these proceedings. Failure to appoint a curator resulted in a violation of Art. 12 sec. 1 and 2 of the Convention on the Rights of the Child - by preventing the minor from taking an active part in the proceedings, including inter alia in respect of lodging an appeal. This judgment is not yet final.

In 2022 we observed some positive examples of judgments repealing detention in favour of the alternative measures. For instance, in its decision of September 29, 2022, VI Kz 354/22 the Circuit Court in Jelenia Gora changed the decision of the first instance court and decided to grant alternative measures instead of detention to an Iranian citizen, women's and social rights activist. The court observed that the mere fact of illegal border crossing - especially for the reasons and circumstances cited by the applicant in her explanations - did not mean that the applicant will not abide by the alternative measures. According to the court, it did not appear that, applying the principle of proportionality, the conduct of further administrative procedures would be jeopardized if the foreigner remained free.

Detailed information on some unpublished judgments can be found in the information note of the HFHR and in the report on the monitoring of the Polish-Belarusian border.

Other updates on relevant national jurisprudence in asylum law can be found in the ECRE's AIDA Country report on Poland.

## 17. Other important developments in 2022

More information can be found in the ECRE's AIDA Country report on Poland.

## References and sources

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### 18. Please provide links to references and sources or upload any related material in PDF format

All relevant links can be found in hyperlinks that we added in the MS Word and PDF versions of the input which we hereby enclose.

### 19. Feedback or suggestions about the process or format for submissions to the Asylum Report

None.

Please upload your file

The maximum file size is 1 MB



## Contact details

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\* Name of Organisation

Helsinki Foundation for Human Rights

Name and title of contact person

Ada Tymińska

\* Email

refugees@hfhr.pl

I accept the provisions of the EUAA [Legal and Privacy Statements](#)

### Useful links

[EUAA Asylum Report 2022 \(https://euaa.europa.eu/asylum-knowledge/asylum-report\)](https://euaa.europa.eu/asylum-knowledge/asylum-report)

[Executive Summary -Asylum Report 2022 \(https://euaa.europa.eu/executive-summary-asylum-report-2022\)](https://euaa.europa.eu/executive-summary-asylum-report-2022)

[Sources on Asylum 2022 \(https://euaa.europa.eu/publications/sources-asylum-2022\)](https://euaa.europa.eu/publications/sources-asylum-2022)

[National asylum developments database \(https://euaa.europa.eu/national-asylum-developments-database\)](https://euaa.europa.eu/national-asylum-developments-database)

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