



RECEPTION OF CHILDREN ON THE MOVE IN POLAND

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1. Application of international law in domestic law of Poland

1.1. Ratified international treaties

According to the Constitution of the Republic of Poland,

“The sources of universally binding law of the Republic of Poland shall be: the Constitution, statutes, ratified international agreements, and regulations.” (Article 87)

“International agreements ratified with prior consent granted by statute shall be promulgated in accordance with the procedures required for statutes.” (Article 88)

“Ratification of an international agreement by the Republic of Poland, as well as renunciation thereof, shall require prior consent granted by statute - if such agreement concerns:

- 1. Peace, alliances, political or military treaties;*
- 2. Freedoms, rights or obligations of citizens, as specified in the Constitution;*
- 3. The Republic of Poland's membership in an international organization;*
- 4. Considerable financial responsibilities imposed on the State;*
- 5. Matters regulated by statute or those in respect of which the Constitution requires the form of a statute.” (Article 89)*

All ratified agreements are the subject of these provisions, regardless of the method of ratification (by the president or by the parliament through the enactment of a statute).

Further, Article 91(1) states that:

“After promulgation thereof in the Journal of Laws of the Republic of Poland (Dziennik Ustaw), a ratified international agreement shall constitute part of the domestic legal order and shall be applied directly, unless its application depends on the enactment of a statute.”

Pursuant to these provisions, Polish courts will apply international law where such agreements have been ratified and announced in the Journal of Laws, provided that the norms in such agreements do not require enactment by statute. This means that the agreements of international law must be self-executing, i.e. sufficiently clear and precise so that they constitute an independent basis for the formulation of claims thereunder.

Finally,

“The Republic of Poland may, by virtue of international agreements, delegate to an international organization or international institution the competence of organs of State authority in relation to certain matters.” (Article 90(1)).

An international agreement ratified upon prior consent granted by statute shall have precedence over statutes if such an agreement cannot be reconciled with the provisions of such statute (Article 91(2)). Any further laws established by an international organisation which was established pursuant to an agreement ratified by the Republic of Poland are also applied directly and take precedence in the event of a conflict of laws (Article 91(3)).

Poland has signed and ratified the following key international agreements:¹

1. Convention for the Protection of Human Rights and Fundamental Freedoms, Geneva 1950 (ratified 19 January 1993² with declaration)³, including protocol No. 7 to the Convention, Strasbourg 1984;
2. The Convention Relating to the Status of Refugees, Geneva 1951 (accession 27 September 1991);⁴
3. Protocol relating to the Status of Refugees, New York 1967 (accession 27 September 1991);⁵
4. European Agreement on the Abolition of Visas for Refugees, Strasbourg 1959 (ratified 20 April 2005⁶ with declaration);⁷

¹ <http://udsc.gov.pl/prawo/akty-prawa-miedzynarodowego/> and Galicki, Z. *Prawno-międzynarodowa ochrona uchodźców a polskie prawo wewnętrzne*. Available at: http://biurosejmu.gov.pl/teksty_pdf_94/r-67.pdf

² https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?p_auth=FK02W1CE

³ https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/declarations?p_auth=FK02W1CE&coeconventions_WAR_coeconventionsportlet_enVigueur=false&coeconventions_WAR_coeconventionsportlet_searchBy=state&coeconventions_WAR_coeconventionsportlet_codePa ys=POL&coeconventions_WAR_coeconventionsportlet_codeNature=10. Applicable for a period of three years as from 1 May 1993.

⁴ https://treaties.un.org/Pages/ViewDetailsII.aspx?src=IND&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&lang=en

⁵ https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=V-5&chapter=5&lang=en

⁶ https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/031/signatures?p_auth=QFwBI7zO

⁷ https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/031/declarations?p_auth=FK02W1CE&coeconventions_WAR_coeconventionsportlet_enVigueur=false&coeconventions_WAR_coeconventionsportlet_searchBy=state&coeconventions_WAR_coeconventionsportlet_codePa ys=POL&coeconventions_WAR_coeconventionsportlet_codeNature=10.

5. European Agreement on Transfer of Responsibility for Refugees, Strasbourg 1980 (ratified 20 April 2005 with reservation)⁸;
6. Agreement between the Minister of the Interior and Administration of the Republic of Poland and the International Organization for Migration on co-operation concerning voluntary returns of aliens from the territory of the Republic of Poland, Warsaw 2005;
7. UN Convention on the Rights of the Child, New York 1989 (ratified 7 June 1991 with declaration)⁹;
8. International Covenant on Civil and Political Rights, New York 1966 (ratified 18 March 1977); and
9. International Covenant on Economic, Social and Cultural Rights, New York 1966 (ratified 18 March 1977).

The legislative acts relevant to migration, asylum procedures, reception conditions and detention in Poland are the following:¹⁰

1. Law of 14 June 1960 Code of administrative procedure (Journal of Laws 2013 pos. 267);¹¹
2. Law of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland (Journal of Laws 2012 pos. 680) ("**Law on Protection**");

Settlement in the meaning of Article 5 of the European Agreement on the Abolition of Visas for Refugees shall be construed as the stay related to the transfer of the refugee's important vital interests, for which the refugee was granted a permit different than a visa in line with provisions regulating the entry, transit, stay and departure of aliens from the territory of the Republic of Poland.

Stay for which the refugee was granted a permit for the purpose of attending an educational establishment, medical establishment, convalescent home or other similar institutions shall not constitute settlement within the meaning of the said Article 5.

⁸ <https://rm.coe.int/1680078b0d>. In accordance with Article 14, paragraph 1, of the Agreement, the Republic of Poland declares that it will not accept a request for readmission presented on the basis of the provisions of Article 4, paragraph 2. In accordance with Article 14, paragraph 1, of the Agreement, the Republic of Poland declares that insofar as it is concerned, transfer of responsibility under the provisions of Article 2, paragraph 1, shall not occur for the reason that it has authorised the refugee to stay on its territory for a period exceeding the validity of the travel document solely for the purposes of studies or training.

⁹ https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&clang=en. Declaration made on 28 September 2016 with regard to the reservations made by the Federal Republic of Somalia upon ratification.

¹⁰ <http://www.asylumineurope.org/reports/country/poland/overview-legal-framework> accessed in July 2017

¹¹ Ustawa z dnia 14 czerwca 1960 r. Kodeks Postępowania Administracyjnego (Dz.U. 2013 poz. 267). Available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19600300168>

3. Law of 10 September 2015 amending the Law on Protection¹² and other acts (Journal of Laws 2015 pos. 1607);¹³ and
4. Law of 12 December 2013 on foreigners (Journal of Laws 2013 pos. 1650) (“**Law on Foreigners**”).¹⁴

The Law on Protection and associated legislation is expected to be further amended. A draft of a bill to this effect was initially presented on 30 January 2017, and most recently following an assessment of the effects of a proposed law and amendments on 13 June 2017, has since been reviewed by the Legal Department of the Ministry of Interior and Administration (MSWiA) in January 2018. No further action has as yet been taken by the Council of Ministers.¹⁵ The aim of the amendments is the alignment of Polish law with EU law, particularly the Regulation (EU) No 604/2013 of the European Parliament and the Council of 26 June 2013 (“Dublin Regulation”) which establishes the criteria and mechanisms for determining the member state responsible for examining the application for international protection lodged in one of the member states by a third-country national or a stateless person, with respect to, among others, the concept of a “safe country of origin” (*bezpieczny kraj pochodzenia*), “safe third party country” (*bezpieczny kraj trzeci*), effective appeal mechanisms, and free legal assistance for foreigners.

The main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions and detention are the following¹⁶:

1. Ordinance of the Minister of Interior and Administration of 19 February 2016 on the amount of assistance for foreigners seeking international protection (Journal of Laws 2016 pos. 311);¹⁷

¹² Ustawa z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej (Dz.U. 2012 poz. 680). Available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20031281176>. References to the Law on Protection in this report are to the amended and consolidated version currently in force.

¹³ Ustawa z dnia 10 września 2015 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw. Available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20150001607>

¹⁴ Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach (Dz.U. 2013 poz. 1650). Available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20130001650>

¹⁵ The draft bill, consultations, subsequent amendments and ancillary documents are available in Polish at: <https://bip.mswia.gov.pl/bip/projekty-aktow-prawnyc/2017/24478.Projekt-ustawy-o-zmianie-ustawy-o-udzielaniu-cudzoziemcom-ochrony-na-terytorium-.html>

¹⁶ <http://www.asylumineurope.org/reports/country/poland/> as updated in February 2018

¹⁷ 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). Available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20160000311>

2. Ordinance of the Ministry of Interior of 23 October 2015 on the rules of stay in the centre for foreigners (Journal of Laws 2015 pos. 1828);¹⁸ and
3. Ordinance of the Ministry of Interior and Administration of 24 April 2015 on the guarded centres and guarded centres for foreigners (Journal of Laws 2015 pos. 596).¹⁹

It should be noted, however, that there is no single legislative act which would comprehensively govern the treatment of unaccompanied minors. Many initiatives with regard to such minors are undertaken by various institutions and organizations, and consolidated data on unaccompanied minors' status or a single framework for action in the treatment of unaccompanied minors has often not been available²⁰ for the purposes of this report. The lack of a clear systemic framework is in part the result of the negligible scale of migration of unaccompanied minors to Poland²¹ - in 2017, 113 unaccompanied minors were applying for international protection in Poland and 19 minors were placed in detention centres.²²

1.2. How is the principle of “best interest of the child” interpreted in domestic law?

There is no definition of the concept of “best interest of the child” / “wellbeing of the child” (*dobro dziecka*) under Polish law. The Family and Guardianship Code (*kodeks rodzinny i opiekuńczy*)²³ defines parental authority as an obligation as well as a right to custody over the child and his/her possessions, and to oversee the child's upbringing, which ought to be exercised as required by the wellbeing of the child and the public interest. Article 72 of the Constitution establishes the obligation of the state to ensure the protection of the rights of the child, including the right to protection from “violence, cruelty, exploitation and actions which undermine their moral sense” (Article 72(1)), and the right to care and assistance from public authorities for children deprived of parental care (Article 72(2)). Public authorities and guardians are also required to consider and give priority to the views of the child when

¹⁸ Rozporządzenie Ministra Spraw Wewnętrznych z dnia 23 października 2015 r. w sprawie regulaminu pobytu w ośrodku dla cudzoziemców (Dz. U. 2015 poz. 1828). Available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20150001828>

¹⁹ 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). Available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20150000596&min=1>

²⁰ http://cejsh.icm.edu.pl/cejsh/element/bwmeta1.element.desklight-d26e83ba-b52c-4030-a635-9d9c28970da3/c/Wlodarczyk_J_Wojcik_S_2014_Dzieci_cudzoziemskie_bez_opieki.pdf

²¹ <https://emn.gov.pl/download/75/20855/MalolaciEN.pdf>

²² <http://www.asylumineurope.org/reports/country/poland/asylum-procedure/guarantees-vulnerable-groups/legal-representation> accessed in July 2017

²³ Law of 25 February 1964 (Dz.U. 1964 nr 9 poz. 59). Available at: <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19640090059>

establishing the rights of the child (Article 72(3)), and the office of the Polish Ombudsman for Children (*Rzecznik Praw Dziecka*) has been created to ensure compliance with this obligation (Article 72(4)).²⁴

S. Kolodziejcki has interpreted the concept of “best interest of the child” as a system of material and spiritual values necessary for the correct physical, spiritual and moral development, and preparation of the child for working for the common good of society. Reference is further made to the UNHCR Guidelines on Determining the Best Interests of the Child²⁵ and the principles of the UN Convention on the Rights of the Child.

In a highly publicized recent case concerning the application in Poland of a Danish court’s decision depriving a Polish mother of parental rights,²⁶ the Supreme Court held that the “best interest of the child” (*dobro dziecka*) is the deciding and guiding principle in determining the application of the Danish decision in Poland. The Court confirmed the Appellate Court’s reference to the express protections afforded to the child and his/her interest under the Polish Constitution, the 1980 Hague Convention, UN Convention on the Rights of the Child and the Polish Family and Guardianship Code, and noted that such principles are integrated into the Polish public order. Specifically, in this context, Article 12 of the UN Convention was invoked, which states that “States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child”.^{27,28}

Similarly, a 2000 decision of the Supreme Court concerning the issue of the interest of the child in the context of primary custody of the child²⁹ referred to the principles in Article 3 of the UN Convention on the Rights of the Child and the preamble to the 1980 Hague Convention as corresponding to the concept of the “best interest of the child” (*dobro dziecka*) under Polish law. The primary and guiding principle in any proceeding and action concerning a child must first concern his/her wellbeing.

²⁴ <http://dladobradziecka.pl/dobro-dziecka/>

²⁵ [http://orka.sejm.gov.pl/WydBAS.nsf/0/1783DAABA26F9AEEC1257A30003B7711/\\$file/8_17.pdf](http://orka.sejm.gov.pl/WydBAS.nsf/0/1783DAABA26F9AEEC1257A30003B7711/$file/8_17.pdf)

²⁶ Supreme Court decision of 31 January 2018, IV CSK 442/17

²⁷ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

²⁸ <https://brpd.gov.pl/aktualnosci/dobro-dziecka-ponad-wszystko> and
<http://www.sn.pl/sites/orzecznictwo/Orzeczenia3/IV%20CSK%20442-17-1.pdf>

²⁹ Supreme Court decision of 7 July 2000, III CKN 796/00

Further, a 1997 decision of the Supreme Court concerning the context of a mother seeking custody of a bank account held in the name of her daughter reaffirmed that the guiding principles for any Guardianship Court decisions should refer back to the concept of “best interest of the child” (*dobro dziecka*) and the wellbeing of the child and public interest. The Court noted that the concept of the best interest of the child is complex, and encompasses personal matters, such as the physical and spiritual development, the adequate education and upbringing, the preparation for adulthood, as well as the material dimension.³⁰

1.3. Separated and unaccompanied children

The Polish legal system does not differentiate between an “unaccompanied minor” and a “separated minor”. Pursuant to the Law on Protection, an “unaccompanied minor” (*małoletni bez opieki*) is a minor foreigner who is arriving or staying in the territory of the Republic of Poland unattended by any adult person responsible for him/her in accordance with Polish law.³¹ This is a broad definition and includes minors travelling in the company of adults in respect of whom it may not be proven that in accordance with Polish law (including any international treaties to which Poland is a party, such as the Hague Convention) they have the right to exercise guardianship over the minor akin to parental care.³²

2. Reception of children in Poland

2.1. Initial evaluation

On arrival in Poland a minor, like adults, must hold a valid travel document (note minors may cross borders using their own passport or based on an entry in the passport of a parent or legal guardian, under the care of whom the minor is travelling, depending on the provisions of national law) and a visa, if applicable.

In the absence of such documents, if an unaccompanied minor is not seeking international protection, he/she will be returned to his/her country of origin in a simplified procedure, ordinarily requesting the airline to transfer the minor back to his/her country of origin. If the airline cannot or is not willing to do so, the minor may be admitted to a youth care facility or a guarded centre (only in the case of

³⁰ Supreme Court decision of 11 February 1997, II CKN 90/96

³¹ Article 2(9a) Law on Protection

³² <https://interwencjaprawna.pl/docs/ARE-216-na-granicy.pdf>

unaccompanied minors over 15 years of age) in Poland pending the conclusion of the return procedure (see 7 below).

Minors seeking international protection, including unaccompanied minors, however, may not be turned away and should immediately apply for international protection (see below), in which case their entry will be authorized.³³ An unaccompanied minor applicant who does not hold the requisite documents must request international protection during border control, and minors who are staying on Polish territory should do so to the relevant authority operating in the area of that guarded centre.³⁴ The Helsinki Foundation for Human Rights has however recently reported on the increase in denials of access to Polish territory of persons seeking asylum and invoking persecution in their country of origin at the Polish border crossing in Terespol, with applicants unsuccessfully attempting to lodge asylum applications even 40-50 times. Four cases remain pending before the European Court of Human Rights.³⁵

Applications for granting international protection to minors entering Poland with their parents are included in the parents' application.³⁶ This means that any decision on the granting of international protection will apply equally to the applicant parents and their minor children.³⁷ For the duration of the procedure, a minor under the care of his/her parents may remain with them.

Where an unaccompanied minor has declared his/her intention to file an application for international protection to the Border Guard (*Straż Graniczna*), the receiving official must draft a protocol of this, register the declaration, and a request must immediately be made to the Guardianship Court to appoint a legal representative (*kurator*) to represent the minor in the proceedings.³⁸ See 3.2 below. Fingerprints will be taken by the Border Guard from applicants over 14 years of age.³⁹ Even when a minor is not applying for international protection, his/her official status in Poland must be determined, and the

³³ <https://emn.gov.pl/download/75/20855/MalolaciEN.pdf>

³⁴ <https://emn.gov.pl/download/75/20855/MalolaciEN.pdf>

³⁵ <http://www.asylumineurope.org/reports/country/poland/> as updated in February 2018

³⁶ Articles 25 and 26 Law on Protection

³⁷ <http://refugee.pl/wp-content/uploads/2015/09/ja-w-procedurze.pdf>

³⁸ Article 61(1) Law on Protection and <https://interwencjaprawna.pl/docs/ARE-216-na-granicy.pdf>

³⁹ <https://emn.gov.pl/download/75/20855/MalolaciEN.pdf>

Guardianship Court will also appoint a legal representative to represent the minor in proceedings seeking the legalisation of their stay in Poland (or for the purposes of the return procedure).⁴⁰

An unaccompanied minor cannot act on his/her behalf. Only a legal representative or representative of an international or non-governmental organisation providing assistance to applicants, including legal aid, may file an application for the granting of international protection on behalf of an unaccompanied minor (NGO representatives are at times present at the border crossing and therefore immediate application is possible⁴¹). An international NGO will do so if based on an individual assessment of the minor's situation the organisation deems that the minor may require such assistance.⁴² The application form contains prescribed information and must contain the details of the unaccompanied minor's family members located in other EU member states.⁴³

An application for international protection filed to the Border Guard in the unaccompanied minor's name must be received and registered by the Border Guard immediately, and no later than 3 working days from the appointment by the Guardianship Court of the legal representative.⁴⁴

The application is forwarded to the Head of the Office for Foreigners (*Urząd do Spraw Cudzoziemców*) within 48 hours of receipt,⁴⁵ and the Head of the Office for Foreigners determines the EU member state which should be responsible for processing the application.⁴⁶

Immediately on receipt of the application for international protection (as well as whenever new circumstances in relation to the applicant arise), the Head of the Office for Foreigners also determines whether persons considered as members of a vulnerable group, i.e. whether they are minors, suffering from serious illness including mental illness, victims of human trafficking and/or torture and/or psychological and physical, including sexual violence or based violence based on gender, sexual orientation or gender identity. If he/she is considered a member of a vulnerable group he/she should receive special treatment during the application process for granting international protection, or in

⁴⁰ <https://emn.gov.pl/download/75/20855/MalolaciEN.pdf>

⁴¹ <https://interwencjaprawna.pl/docs/ARE-216-na-granicy.pdf>

⁴² Article 26(2) Law on Protection

⁴³ Article 26(6) Law on Protection

⁴⁴ Article 61(3) Law on Protection

⁴⁵ Article 30(1)(12) Law on Protection

⁴⁶ Article 36 Law on Protection

terms of receiving social assistance.⁴⁷ The Head of the Office for Foreigners may request medical, including psychological examinations of the applicant to determine whether the applicant should be granted special treatment, and if no such examination is commissioned, the applicant may arrange for such examination at their own expense. The Polish Ombudsman published a report within the National Mechanism for the Prevention of Torture in 2017 in which it has been confirmed that there is an ongoing problem with the system of identification of vulnerable groups in Poland.⁴⁸

During the course of the proceedings, the authorities will conduct a personal interview with the applicant to determine the circumstances of the case and to allow the applicant to clarify any discrepancies or inaccuracies in his testimonies and statements. However, the procedure followed during a minor's interview differs from that followed for adult applicants.⁴⁹

Generally, all minors will undergo the interview with a caseworker from the Office for Foreigners whenever their age and psycho-physical state allow this.⁵⁰ The Head of the Office for Foreigners must notify the minor's legal representative of the date and location of the interview no later than 7 days prior to the date of the interview, to allow the legal representative to inform the minor of the significance and potential consequences of the interview, as well as preparation methods.⁵¹ Prior to the interview, the Head of the Office for Foreigners must instruct the minor about the legal and factual circumstances of the case which may impact the application for international protection, as well as inform the minor of his/her right to request that a specified adult attend the interview.⁵² The interview must be conducted in a language understandable to the minor and in an adequate manner taking into account the minor's age, maturity level and mental development, including the fact that he/sh may have limited knowledge of the actual situation in their country of origin.⁵³ The minor must be accompanied by the legal representative, and may be accompanied by an adult identified by the child (to the extent this does not disrupt the proceedings) as well as a translator if the minor does not speak Polish. A psychologist or pedagogue will be present and will prepare an opinion on the minor's

⁴⁷ Article 68 Law on Protection

⁴⁸ <http://www.asylumineurope.org/reports/country/poland> as updated in February 2018

⁴⁹ <http://refugee.pl/wp-content/uploads/2015/09/ja-w-procedurze.pdf>

⁵⁰ <http://www.france-terre-asile.org/images/stories/mineurs-isoles-etranangers/dam27-pol.pdf>,
<https://emn.gov.pl/download/75/20855/MalolaciEN.pdf> and <http://www.asylumineurope.org/reports/country/poland> as updated in February 2018

⁵¹ Article 64 Law on Protection

⁵² Article 65(1) Law on Protection

⁵³ Article 65(2) Law on Protection

psycho-physical condition. The legal representative may ask questions and submit comments throughout the interview.⁵⁴

Only the following persons may administer the proceedings for granting international protection to unaccompanied minors:⁵⁵

1. persons with higher education and 2 years of relevant work experience involving child care;
2. persons with higher education and 2 years of relevant work experience involving public administration who have completed training in the field of international protection for minors;
or
3. persons with higher education in the fields of pedagogy, psychology or sociology and 2 years of relevant work experience involving public administration.

The interviewer must also be trained in interview techniques.⁵⁶

Vulnerable applicants (who include minors, see above) must be given the opportunity to elect that the caseworker be a member of their own gender, as well as to elect the gender of the other participants of the application procedure (medical doctor, translator, psychologist).⁵⁷ Though there is no specialised unit dealing with vulnerable groups such as children at the Office for Foreigners, caseworkers receive interview technique training for vulnerable persons by psychologists and European Asylum Support Office.⁵⁸

In practice, the Office for Foreigners confirmed that minors are always interviewed in their place of stay.⁵⁹

Under statute, the application should be processed within 6 months of receipt, unless exceptional circumstances arise, in which case it may be extended to 15 months.⁶⁰ In practice however, the process

⁵⁴ Article 65 Law on Protection and <http://www.asylumineurope.org/reports/country/poland> as updated in February 2018

⁵⁵ Article 66 Law on Protection

⁵⁶ <http://www.france-terre-asile.org/images/stories/mineurs-isoles-etranangers/dam27-pol.pdf>

⁵⁷ Article 69 Law on Protection and <http://www.asylumineurope.org/reports/country/poland> as updated in February 2018

⁵⁸ <http://www.asylumineurope.org/reports/country/poland> as updated in February 2018

⁵⁹ <http://www.asylumineurope.org/reports/country/poland/asylum-procedure/guarantees-vulnerable-groups/special-procedural-guarantees> accessed in July 2017

⁶⁰ Article 34 Law on Protection

has taken significantly longer than the standard time limit – in 2017 the average processing time was 176 days, with the longest processing time being 1,491 days.⁶¹ Applications submitted by unaccompanied minors are subject to the same procedure as those submitted by adults, and may be fast-tracked only where the minor constitutes a threat to state security or public order, or had been expelled from Poland for this reason in the past.⁶² Similarly, no formal expedited procedures are available for victims of torture, rape or other serious forms of psychological, physical or sexual violence. According to the Office for Foreigners and their recent communications with the Helsinki Foundation for Human Rights, however, cases of vulnerable applicants and detainees are prioritised, however processing times are long due to complexity of the cases.⁶³

Unaccompanied minors seeking international protection, upon turning 18 continue being eligible for such protection on the same terms as before, however they are no longer represented by the legal representative (*kurator*) as they acquire legal capacity. Although upon turning 18 individuals must leave the youth care facilities or foster families, they may also be able to remain in youth care facilities or foster families until the age of 25 in certain limited circumstances provided they are continuing with their studies. There are no special regulations in place in this regard in respect of unaccompanied minors who are not seeking international protection, and such persons have the ability to apply for legalization of their stay in Poland through the ordinary procedures.

A foreigner who turned 18 during his stay on Polish territory and filed an application for a temporary residence permit within 1 year of becoming an adult may not be refused such residence if this is in his/her best interest, and the only reason for refusal would have been his illegal residence on Polish territory.⁶⁴ Persons who have turned 18 and are transitioning out of the youth care system are provided with assistance, including financial assistance for continuing with their studies and becoming independent, help with legal issues and psychological assistance and assistance with finding housing and employment. They must nominate a guardian to assist them at least 1 month prior to turning 18 to be able to rely on with the process of achieving independence, and devise a structured programme (individual independence programme) in relation to this, particularly with regard to education or vocational qualifications, housing and employment. It is imperative that a minor settles his/her legal

⁶¹ <http://www.asylumineurope.org/reports/country/poland> as updated in February 2018

⁶² Articles 63a and 39(1)(5) Law on Protection

⁶³ <http://www.asylumineurope.org/reports/country/poland> as updated in February 2018

⁶⁴ <https://emn.gov.pl/download/75/20855/MalolaciEN.pdf>

status prior to achieving maturity as this will impact his/her access to programmes assisting with gaining independence. All types of assistance may be claimed until the applicant turns 26. It has however been noted that aside from programmes assisting independence, an unaccompanied minor does not receive any assistance and is largely left to fend for him/herself upon reaching maturity. His/her degree of success depends on personal determination and the determination of persons and institutions under whose care the unaccompanied minor found himself/herself as a child.⁶⁵

2.2. Establishment of identity / Age assessment

The initial verification of the identity of a person applying for international protection is undertaken in the initial phases of the application process, i.e. upon submitting the application⁶⁶ for granting international protection to the Border Guard. Verification of the applicant's identity and age is carried out based on travel documents presented to the Border Guard.⁶⁷ If however, the minor does not carry travel documents with him/her, the determination of the age is made based on his/her statement.⁶⁸

When the determination of the unaccompanied minor's age is not possible on the basis of the documentation collected and during the application process and doubts arise as to his/her age or on the basis of other circumstances the applicant may be subjected to medical examinations to determine his/her age if she/he, or his/her legal representative, gives consent to such examination. The applicant must be informed in a language understandable to the applicant of the possibility of ascertaining his age through a medical examination, the method of carrying out the medical examination, the significance of the examination to the application procedure for granting international protection, and the consequences of his/her refusal to undergo such examination.⁶⁹

⁶⁵ <https://emn.gov.pl/download/75/20855/MalolaciEN.pdf>

⁶⁶ Application form available at <http://www.nadwislanski.strazgraniczna.pl/download/13/106145/WNIOSEKUDZIELENIEOCHRONYMIEDZYNARODOWEJ.pdf>. The application form states that "Anything that may contribute to solving the case and is not against the law can be enclosed to this applications as an evidence. In particular, the evidence may be documents, testimonies of witnesses, experts' opinions and minutes of inspections." The details of the travel document being deposited must also be provided.

⁶⁷ Article 23 Law on Foreigners; types of travel documents accepted by the Border Guard can be found in the Commission implementing Decision C (2013) 4914 of 2 August 2013

⁶⁸ <https://emn.gov.pl/download/75/20855/MalolaciEN.pdf>

⁶⁹ Article 32 Law on Protection

Any individual detained on Polish territory, whether going to the detention centre or being arrested, who claims to be a minor, may also be subject to a medical examination where doubts regarding his/her age exist.⁷⁰

There are no specific requirements regarding the examination other than that it must be conducted having regard to the individual's dignity and using the least invasive method. An examination typically involves a general examination, specialist analysis of an x-ray of the applicant's wrist and an orthopantomogram.⁷¹ The result of the examination must state the applicant's age and the margin of statistical error associated with the calculation. In practice, little weight is given in the age assessment to documentation provided by the individual issued by their country of origin, and the medical assessment is considered the most authoritative method of determining age.⁷²

If an applicant's age was estimated to be over 18 years old following the medical examination, and the margin of error indicates that the applicant may in fact be a minor, the applicant will be treated as a minor.⁷³ If the medical examination does not yield a clear indication as to the applicant's age, he/she will be treated as a minor. If the individual or his statutory representative does not consent to medical examination, he/she is deemed to be of age.⁷⁴

2.3. Migrant children victims of trafficking

In accordance with the provisions of the Schengen Borders Code and the Border Guard's rules of procedure, Border Guard officers pay particular attention to minors entering Poland, regardless of whether they are travelling under the supervision of adults or alone, and of their country of origin.⁷⁵

The applicant (or any person covered by the application) is subject to screening by the Border Guard officer responsible for receiving and registering his/her application to specifically assess whether he/she may be a victim of human trafficking or a victim of torture using an internal algorithm on

⁷⁰ Article 397(5) Law on Foreigners

⁷¹ <https://emn.gov.pl/download/75/20855/MalolaciEN.pdf>

⁷² <http://www.asylumineurope.org/reports/country/poland/asylum-procedure/guarantees-vulnerable-groups/identification> accessed in July 2017

⁷³ <https://emn.gov.pl/download/75/20855/MalolaciEN.pdf>

⁷⁴ <https://emn.gov.pl/download/75/20855/MalolaciEN.pdf>

⁷⁵ <https://emn.gov.pl/download/75/20855/MalolaciEN.pdf>

dealing with vulnerable applicants, with the aim of ensuring access to medical and psychological personnel.⁷⁶

The Schengen Borders Code also compels the Border Guard to check whether the person(s) accompanying a minor has parental or legal custody over him/her. If the child has his/her own passport, but travels with an adult who is not a parent or legal guardian, it is acceptable for the adult to present a written authorization from the parents on the basis of which the minor is allowed to travel with a given person, or documentary proof of exercising guardianship over the minor akin to parental care, and the scope of such guardianship.⁷⁷ See also 3.2 below.

If the minor is travelling with one adult only and there is any reason to believe that the minor has been unlawfully removed from the custody of persons lawfully exercising such custody, the Border Guard will carry out additional investigations to determine the veracity of the claims made by the persons identifying themselves as the minor's parents. Such investigations may include running checks in national databases and the Schengen SIS database. For minors travelling alone without adult supervision, the Border Guard officer performing the check must ensure through an examination of the minor's travel documents and supporting documents, and through a database check whether the minor has left his/her country of departure against the will of his/her parental custodians. In accordance with the Schengen Borders Code, Poland and all EU member states have set up national contact points for consultations on minors, and any member state may use the list of contact points to obtain information, whether the minor is travelling alone or is accompanied by an adult.⁷⁸

Minors and victims of human trafficking applying for international protection also fall into the definition of vulnerable groups requiring special treatment in the application procedure for international protection and in respect of benefits, instituted by the 2015 amendment to the Law on Protection, along with disabled persons, pregnant women, persons suffering serious illness, including mental illness and victims of torture and violence. An initial assessment of this status is carried out by the Border Guard upon encountering the individual and a short preliminary interview by Border Guard personnel with the applicant (ordinarily at the border), although employees have stressed that methods of identifying vulnerable applicants are not standardised or effective.⁷⁹ The Head of the

⁷⁶ <http://www.asylumineurope.org/reports/country/poland> as updated in February 2018

⁷⁷ <https://interwencjaprawna.pl/docs/ARE-216-na-granicy.pdf>

⁷⁸ <https://emn.gov.pl/download/75/20855/MalolaciEN.pdf>

⁷⁹ <https://interwencjaprawna.pl/docs/ARE-216-na-granicy.pdf>

Office for Foreigners is required to carry out an assessment on receipt of the application for international protection or upon any change in circumstances thereafter, ordinarily through a medical or psychological exam, to determine whether an individual qualifies for special treatment with regard to granting international protection or the receipt of social assistance on grounds of such vulnerability; otherwise the applicant may arrange for such examination independently and at their own expense. If a person refuses to undergo an examination ordered by the Head of the Office for Foreigners, he is deemed to not require special treatment.⁸⁰

As a result of implementing the screening measures, authorities have trained police, border guards, consular officers and employees of crisis intervention centres, as well as officials who interview asylum-seekers on identifying victims of human trafficking. The Border Guard in particular has organized training on standard operating procedures for assisting child victims of trafficking for 2,065 of its officers. Furthermore, the Border Guard in cooperation with the Office for Foreigners and the International Organization for Migration in Warsaw has developed and implemented e-learning training on the “identification, protection and assistance of victims of trafficking in human beings” which it is recommended all its officers complete.⁸¹ However, NGOs have noted that the timing of the initial vulnerability assessment – upon lodging of the application, often at the national border – makes the conditions for carrying out an effective and accurate assessment difficult. Vulnerable applicants are also often detained even though legislation prohibits this, which constitutes evidence that the system is not functioning properly. According to the Helsinki Foundation for Human Rights, in general, the process for identifying minors who are victims of human trafficking or forced labor has not been effective.⁸²

Pursuant to the provisions of the Law on Foreigners, applying equally to adults and minors, when individuals who reside in Poland illegally are identified as victims of human trafficking, they are entitled to a temporary residence permit and the possibility of the right to permanent residence permit if they cooperate with law enforcement authorities.⁸³

⁸⁰ Article 68 Law on Protection

⁸¹ <https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271265.htm> and <https://emn.gov.pl/download/75/20855/MalolaciEN.pdf>

⁸² <http://www.asylumineurope.org/reports/country/poland/> as updated in February 2018 and <https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271265.htm>

⁸³ <https://emn.gov.pl/download/75/20855/MalolaciEN.pdf>

If the relevant authorities have grounds to believe that an individual has been a victim of human trafficking, and the individual is willing to cooperate with authorities, the individual may be issued with a certificate confirming such belief, and the individual's residence in Poland remains legal for the duration of validity of such certificate.⁸⁴ For minors, such certificate is valid for 4 months from the date of issue.⁸⁵ The recipients of such certificate may be granted temporary residence, provided that s/he reside in Poland, cooperate with authorities and have ceased contact with persons suspected of committing the criminal offence of human trafficking. Under Article 189a(1) of the Criminal Code, for no less than 6 months⁸⁶ and maximum 3 years they are released from the obligation to possess a work permit, entitled to education, receive certain benefits including shelter, meals, clothing, benefit allowance, as well as an immediate release from a guarded centre should he/she reside in and the revocation of any expulsion order made against them. The residence permit may be revoked when the individual ceases cooperating with the Polish authorities.⁸⁷ The individual may also eventually be granted permanent residence in Poland.⁸⁸

Despite training, e-learning, and internal policy developments within relevant authorities and administrative units, no effective standardized system of screening unaccompanied children as potential trafficking victims has been developed.⁸⁹ The legal status of children who have been victims of human trafficking is not clearly defined under Polish law, and procedures for handling such cases have for years been criticized for their insufficiency and lack of a clear institutionalized approach to the provision of specialized care for child victims of trafficking by NGOs and the UN Committee on the Rights of the Child.⁹⁰ NGOs with government funding continue to offer trafficking victims medical and psychological care, legal assistance, food, clothing, and employment-related training.⁹¹ The National Intervention-Consultation Center for Victims of Trafficking (KCIK), which is operated by two NGOs provides assistance to potential victims of human trafficking, including medical and psychological care, legal counselling, shelter referrals, and welfare support.⁹² Minors who have been

⁸⁴ Articles 170-171 Law on Foreigners

⁸⁵ Article 172(2) Law on Foreigners

⁸⁶ Articles 176-177 Law on Foreigners

⁸⁷ Article 180 Law on Foreigners

⁸⁸ <https://emn.gov.pl/download/75/20855/MalolaciEN.pdf>

⁸⁹ <https://www.state.gov/j/tip/rls/tiprpt/countries/2014/226800.htm>

⁹⁰ http://fdds.pl/wp-content/uploads/2016/05/Child_trafficking_in_Poland_views_of_professionals.pdf

⁹¹ <https://www.state.gov/j/tip/rls/tiprpt/countries/2014/226800.htm>

⁹² <https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271265.htm>

identified as requiring relevant assistance are ordinarily placed in youth care facilities, which are not equipped to cater to the particular needs of children victims of human trafficking as no specialist youth care facilities exist for minors victims of human trafficking. However, teenage girls between the ages of 15-17 who have been such victims may, by a decision of the Guardianship Court, be placed in a shelter of the National Consultation and Intervention Centre for Polish and international victims of human trafficking.⁹³ Faced with lack of support a number of unaccompanied minors who may have been victims of human trafficking have been reported as having disappeared from youth care facilities.⁹⁴ It had also been proposed in earlier reports that human traffickers use the international protection procedure to place minors in youth care facilities or foster families within Poland, and then plan the minors' escape from such facilities.⁹⁵

2.4. Application for international protection

Pursuant to the Law on Protection, a minor will be granted refugee status in Poland if, as a result of a well-founded fear of persecution (which is due to its nature or repetition constitute a serious violation of human rights or is an accumulation of various acts or omissions, including breaches of human rights, whose impact is as severe as such persecution) in his/her country of origin due to reasons of race, religion, nationality, political opinion or membership of a particular social group, he/she cannot or does not want to enjoy the protection of that country.⁹⁶ The child of an adult whose application for refugee status has been successful will also be granted such status.⁹⁷

Pursuant to the provisions of the Law on Protection,⁹⁸ on determining the causes of persecution consider:

1. The notion of "race" encompasses primarily skin color, origin or membership of a defined ethnic group;
2. The notion of "religion" encompasses primarily holding theistic, atheistic and non-theistic convictions, participation or lack of participation in religious ceremonies celebrated in public

⁹³ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/unaccompanied-minors/20._poland_national_report_on_unaccompanied_minors_final_version23_nov09_en.pdf and <https://emn.gov.pl/download/75/20855/MalolaciEN.pdf>

⁹⁴ <https://www.state.gov/j/tip/rls/tiprpt/countries/2014/226800.htm>

⁹⁵ [http://orka.sejm.gov.pl/WydBAS.nsf/0/1783DAABA26F9AEEC1257A30003B7711/\\$file/8_17.pdf](http://orka.sejm.gov.pl/WydBAS.nsf/0/1783DAABA26F9AEEC1257A30003B7711/$file/8_17.pdf)

⁹⁶ Article 13(1) Law on Protection

⁹⁷ Article 13(2) Law on Protection

⁹⁸ Article 14 Law on Protection

or in private, individually or collectively, and other acts of a religious character, expressed convictions of forms of individual or collective behaviour stemming from religious beliefs;

3. The notion of “nationality” is not limited to possession of citizenship or its absence, but instead includes, in particular, the membership of a group defined by cultural, ethnic or linguistic identity, shared geographical or political origin, or ties with the people of another country;
4. The notion of “political convictions” includes primarily the holding of opinions, thoughts or convictions about issues concerning persecution by state authorities, its politics and methods of operation, regardless of whether the applicant acted in accordance with such opinion, thought or conviction; and
5. The notion of “group”, which is defined as a social group. In particular the group can be defined as having a separate identity in one’s country of origin by being perceived as separate from surrounding society, and its members share common innate features which may not be altered, common past, or common shared characteristics or convictions of such importance to their identity and awareness that a member of the group may not be made to change them.

Depending on the circumstances prevailing in the country of origin, a particular social group may be a group whose members share a sexual orientation, so long as the manifestation of this does not include acts which are prohibited under Polish law.

A well-founded fear of persecution in the country of origin as detailed above may exist even if the foreigner does not have the characteristics causing such persecution on grounds of race, religion, nationality, political opinion or membership of a particular social group, if such characteristics are ascribed to him by the perpetrators of the persecution.⁹⁹

Otherwise, an individual may be granted subsidiary protection (*ochrona uzupełniająca*) if a return to their country of origin may expose them to a real risk of serious harm by death penalty sentence, execution to be carried out, torture, inhuman or degrading treatment or punishment, or a serious threat to the life or health of the individual as a result of common use of violence towards the civilians in a situation

⁹⁹ Article 14 Law on Protection

of an international or internal military conflict due to such risk the individual would not or does not want to enjoy the protection of their country of origin.¹⁰⁰

If the applicant does not possess evidence to substantiate claims made in the application, such claims will be considered substantiated broadly where the applicant has presented coherent and credible information about his situation, giving detail and reasons for the absence of documentation, in a way which does not contradict any evidence which has been collected, and he applied for international protection at the earliest possible opportunity.¹⁰¹

In the process of considering the application, the authorities consider especially the factual circumstances relating to the country of origin (*kraj pochodzenia*) of the applicant, including any laws and regulations prevailing in the country and the method of their application; whether due to the applicant's history, sex, age, or if the acts to which the victim was subjected to or could be subjected to constitute persecution or expose the applicant to the risk of serious harm. In addition, the authorities look at whether the applicant's actions until the departure from the country of origin were aimed solely or primarily at creating circumstances necessary for the claiming of international protection; and whether circumstances exist which would permit the applicant to take advantage of the protection of another state of which he is a citizen.¹⁰²

The concept of "safe country" is not applied in Poland. However, the Law on Protection prior to the 2015 amendment, anticipated the establishment of a common minimum list of safe countries of origin by the Council of the European Union, which would deem manifestly unfounded and subject to an accelerated procedure applications from certain countries considered safe.¹⁰³

The Law on Protection currently states that the Head of the Office for Foreigners may determine that an application for international protection is inadmissible when, among others:

- another member state had provided the applicant with international protection,
- a country not being a member state is considered a country of first asylum for the applicant,

¹⁰⁰ Article 15 Law on Protection and <https://emn.gov.pl/download/75/20855/MalolaciEN.pdf>

¹⁰¹ Article 42 Law on Protection

¹⁰² Article 43 Law on Protection

¹⁰³ <http://www.asylumineurope.org/reports/country/poland/asylum-procedure/safe-country-concepts/safe-country-origin>
accessed in July 2017

- no material changes to the applicant's circumstances have occurred since a previous application for international protection which would significantly increase the application's chances of success.¹⁰⁴

Proposed amendments to the Law on Protection discussed in section 9 seek to introduce a wording to Article 38 to the effect that a country not being a member state which is included on a list of safe third party countries determined in accordance with regulations to be published by the Council of Ministers pursuant to Article 39a is considered a safe third party country in relation to the applicant. The Law on Protection also currently states that a country which is not a member state is considered a country of first asylum if the applicant would be admitted by that state in the event that he/she is considered a refugee in that state and eligible for corresponding protection, or in another way enjoys protection in that state, including protection from expulsion or being turned away in accordance with Article 33 of the Geneva Convention.

2.5. Migrant children's access to justice

As mentioned in point 2.1 above and 3.2 below a legal representative is appointed to represent unaccompanied minors throughout the application procedure for granting international protection, as minors under the age of 18 do not have legal capacity to act on their own behalf.

When an unaccompanied minor's application to international protection is rejected and he/she is to be expelled from Poland, his/her legal representative may file an appeal on the minor's behalf.¹⁰⁵

Decisions of the Head of the Office for Foreigners in the regular procedure can be appealed to the Refugee Board within 14 days. The time limit set in law for the appeal procedure is 1 month, however, in 2017 the average processing time to issue a decision in appeal proceedings before the Refugee Board was 104.5 days, with the longest processing time being 350 days.¹⁰⁶ The decision can be appealed on points of law to the Voivodeship Administrative Court in Warsaw at no fee, and such decision may be appealed to the Supreme Administrative Court by lodging a cassation complaint. Nonetheless, a return decision is separate to the asylum procedure and may therefore be made prior to the Voivodeship Administrative Court's decision.

¹⁰⁴ Article 38 Law on Protection

¹⁰⁵ <http://refugee.pl/wp-content/uploads/2015/09/ja-w-procedurze.pdf>

¹⁰⁶ <http://www.asylumineurope.org/reports/country/poland/> as updated in February 2018

The majority of applications for international protection by minors are discontinued or pending because minors do not engage with the procedure further, usually due to their departure from the country.¹⁰⁷

The provision of translation services, the application, the interview procedure for minors, and the provision of legal assistance to unaccompanied minors by a court-appointed guardian is discussed in point 2.1 above.

In all other cases, a state legal aid system was introduced for individuals below a prescribed means threshold by the Law on Protection, as amended in 2015,¹⁰⁸ comprising (i) legal information provided by the employees of the Office for Foreigners in cases concerning revocation of protection and (ii) legal aid provided by advocates, legal counsellors and NGOs in the second instance, including for the preparation of appeals, applications and complaints and providing legal representation in cases concerning refusal of protection, discontinuance of the procedure, and refusal of reopening the procedure, Dublin regulations, inadmissibility of the application and revocation of protection. The legal aid system is co-ordinated by the Head of the Office for Foreigners, responsible for contracting advocates, counsellors and NGOs (currently the Association for Legal Intervention (LIA), The Rule of Law Institute and Centrum Pomocy Prawnej im. Haliny Nieć (Halina Nieć Legal Aid Centre)). In 2017, on average one in seven international protection applicants lodging an appeal against a decision made in their case benefited from free legal aid (in respect of 415 out of 2,785 appeals).¹⁰⁹

Funding for legal assistance provided by NGOs through projects financed from the Asylum, Migration and Integration Fund (AMIF) is endangered given that funding decisions have been severely delayed in recent months and in practice such funding has been suspended.¹¹⁰

In practice, legal representation is provided only in some cases, as the organizations offering legal assistance generally lack resources.¹¹¹ Representation before the courts must be provided by professional legal representatives, and asylum seekers are entitled to apply for cost-free professional legal representation on the same terms as Polish citizens. However, the application form is available in Polish only and in practice NGO assistance is often required to proceed. In most cases, NGOs

¹⁰⁷ [http://orka.sejm.gov.pl/WydBAS.nsf/0/1783DAABA26F9AEEC1257A30003B7711/\\$file/8_17.pdf](http://orka.sejm.gov.pl/WydBAS.nsf/0/1783DAABA26F9AEEC1257A30003B7711/$file/8_17.pdf)

¹⁰⁸ Article 69c-69m Law on Protection

¹⁰⁹ <http://www.asylumineurope.org/reports/country/poland/> as updated in February 2018

¹¹⁰ <http://www.asylumineurope.org/reports/country/poland/> as updated in February 2018

¹¹¹ <http://www.asylumineurope.org/reports/country/poland/> as updated in February 2018

assist asylum seekers not only in the asylum process, but also in other legal proceedings and in solving everyday issues. The organizations responsible for providing legal assistance to unaccompanied minors include: the Halina Nieć Legal Aid Centre, the Association for Legal Intervention, UNHCR, the Rule of Law Institute Foundation, university legal clinics (University of Warsaw and Jagiellonian University in Cracow), the Polish Ombudsman for Children, the Polish Ombudsman (*Rzecznik Praw Obywatelskich*), Helsinki Foundation for Human Rights, the Polish Migration Forum Foundation and the Polish Humanitarian Action (*Polska Akcja Humanitarna*).¹¹²

Legal assistance provided by NGOs consists mainly of individual consultations during office hours, which may be difficult to attend for applicants housed in centres in more remote areas. Further, the Committee Against Torture has in the past expressed concerns about the detention of children in guarded centres in prison-like conditions for the purpose of deportation, and the lack of access to qualified free legal assistance in such circumstances.¹¹³

3. Child protection system

3.1. Guardianship system

Minors deprived of parental care in Poland enter the youth care system and are ordinarily placed in foster care or youth care facilities providing round the clock care, of which there are four types depending on the needs of the child (*socjalizacyjna, interwencyjna, specjalistyczno-terapeutyczna, rodzinna*), including accommodation for siblings or children with individual needs including disability or special educational needs.¹¹⁴ Unaccompanied minors are not accommodated in reception centres.¹¹⁵

The Border Guard unit who receives the unaccompanied minor's application for international protection, or declaration of their wish to apply for international protection, or handles the minor's case following receipt from another member state on the basis of the Dublin Regulation, must ensure the minor is initially placed with an emergency professional foster family (*rodzina zastępcza zawodowa pełniąca funkcję pogotowia rodzinnego*) or emergency youth care facility (*placówka opiekuńczo-wychowawcza typu*

¹¹² <https://emn.gov.pl/download/75/20855/MalolaciEN.pdf>

¹¹³ <https://www.ecre.org/child-detention-and-lack-of-legal-assistance-for-asylum-seekers-in-poland-criticised-by-committee-against-torture/>

¹¹⁴ Article 101 Law on Family Support and the Foster Care System (Ustawa z dnia 9 czerwca 2011 r. o wspieraniu rodziny i systemie pieczy zastępczej (Dz.U. 2011 nr 149 poz. 887)). Available at: <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20111490887>

¹¹⁵ <http://www.asylumineurope.org/reports/country/poland> as updated in February 2018

interwencyjnego) until the Guardianship Court's ruling concerning the placing of the minor in the target foster care or permanently in a youth care facility.¹¹⁶ Following an amendment to legislation in 2012 and consequent termination of the agreement between the Office for Foreigners and the youth care facility no. 9 in Warsaw specialised in the reception of migrant children, there is no centralised system of placing unaccompanied children in designated fit-for-purpose (emergency) youth care facilities.¹¹⁷ Unaccompanied minors are cared for by foster home/youth care facility staff, who are considered to be their guardians. The minors may remain in the facilities as long as they are underage and in the asylum application process. The state is responsible for the costs of housing the asylum-seeking minors (as well as any medical expenses) during the review of their application.¹¹⁸

Any decision regarding the material reception conditions provided to a minor must take into account the need to safeguard his/her interests, with a particular focus on:

1. Family unity;
2. The minor's wellbeing and his social development;
3. Security and protection, particularly where there exists a risk that the minor is a victim of human trafficking; and
4. The minor's opinion, proportionately to his age and maturity.¹¹⁹

On arrival at the facility, the minor undergoes an assessment of his/her needs and development. Carers at the facilities assist the minors with daily tasks, including early acclimatization facilitating access to education, but a lot depends on the personal relationship they develop with the minor.¹²⁰ It has been reported that many minors flee the facilities.¹²¹

Even though foster care facilities can cooperate with NGOs, they cannot be subject to their control. The system of guardianship is subject to control only by county and local (voivodian - *województwo*)

¹¹⁶ Article 62 Law on Protection; Article 35(1) Law on Family Support and the Foster Care System

¹¹⁷ http://cejsh.icm.edu.pl/cejsh/element/bwmeta1.element.desklight-d26e83ba-b52c-4030-a635-9d9c28970da3/c/Wlodarczyk_J_Wojcik_S_2014_Dzieci_cudzoziemskie_bez_opieki.pdf

¹¹⁸ Article 63 Law on Protection

¹¹⁹ Article 69b Law on Protection

¹²⁰ http://www.iomvienna.at/sites/default/files/UAMAS_Synthesis_Report.pdf

¹²¹ http://www.iomvienna.at/sites/default/files/UAMAS_Synthesis_Report.pdf, http://www.canee.net/files/children-on-the-move%20in%20Poland_english.pdf and <https://emn.gov.pl/download/75/20855/MalolaciEN.pdf>

administration.¹²² Migrant children, just like Polish nationals using the foster care system, can make complaints to the person controlling the facility, during individual conversations.¹²³

3.2. Appointment of guardians for migrant children

Legal guardians with custodial competences over unaccompanied minors are appointed very rarely for those minors seeking refugee status. The appointment of a legal guardian for the unaccompanied minor usually requires the provision of a death certificate of both of his/her parents, or the decision of courts from their country of origin depriving the minor's parents of parental authority. Even if such documents are produced, if the minor has no relatives in Poland, it is in practice very difficult to identify a person who would agree to become a legal guardian due to the associated legal and financial responsibility for the child, and no clear regulation of the matter.¹²⁴

Minors may not be assigned a legal guardian if their parents simply reside in another country. If the minor's parents cannot be contacted for an extended period of time, the court will restrict their parental rights and at times assign a legal guardian (which may depend, among others, on any bilateral treaties between Poland and the minor's parents' country of origin, as well as the disposition of the judge hearing the case).¹²⁵ Because such procedures are lengthy and vary between courts, minors tend to reside in an emergency youth care facility for the duration of the proceedings. For children who for various reasons may not remain under the care of their parents, who are registered as foreign but born in Poland, depriving the minor's parents of parental authority before the courts is often so lengthy and complex, and court decisions so varied, that the minors remain in emergency youth care facilities for extremely long periods of time as well.¹²⁶

In respect of minors arriving accompanied by non-parental guardians, as discussed in 2.3 above, the adult must present a written authorization from the parents on the basis of which the minor is allowed to travel with a given person, or documentary proof of exercising guardianship over the minor akin to parental care, and the scope of such guardianship.¹²⁷ If such documents are provided, the adult should be able to file the application for international protection for himself and the minor, and the

¹²² Article 38b Law on Family Support and the Foster Care System

¹²³ Article 38b(8)(7) Law on Family Support and the Foster Care System

¹²⁴ <https://emn.gov.pl/download/75/20855/MalolaciEN.pdf>

¹²⁵ http://cejsh.icm.edu.pl/cejsh/element/bwmeta1.element.desklight-d26e83ba-b52c-4030-a635-9d9c28970da3/c/Wlodarczyk_J_Wojcik_S_2014_Dzieci_cudzoziemskie_bez_opieki.pdf

¹²⁶ [http://orka.sejm.gov.pl/WydBAS.nsf/0/1783DAABA26F9AEEC1257A30003B7711/\\$file/8_17.pdf](http://orka.sejm.gov.pl/WydBAS.nsf/0/1783DAABA26F9AEEC1257A30003B7711/$file/8_17.pdf)

¹²⁷ <https://interwencjaprawna.pl/docs/ARE-216-na-granicy.pdf>

minor would remain under such adult's guardianship. In practice, however, the Border Guard has tended to treat any minor arriving without a parent or with an adult who is not carrying a Polish court decision regarding their guardianship as an unaccompanied minor for the purposes of the procedure, which often leads to the separation of the minor from his/her legitimate, non-parental guardians and his/her placement in foster care. Close scrutiny of each case with a view to not separating minors from legitimate guardians has been encouraged by the Border Guard command.¹²⁸

Even if a child arrives with a relative that is not a parent as described above, that person does not automatically become the child's guardian. Even though blood relations are taken into consideration, the Guardianship Court ultimately decides on guardianship.

3.3. Other categories of persons /organs that may carry out guardianship functions

If the minor wishing to apply for international protection is unaccompanied, the Head of the Office for Foreigners must apply immediately to the relevant Guardianship Court which has jurisdiction over the minor's place of residence for the appointment of a legal representative who performs the limited role of representing the minor in the proceedings over granting international protection and the placement of the minor in a youth care facility or a foster family. The representative should be appointed within 3 days, although no information is available on the practical application of this deadline.¹²⁹ It has been noted that each court house in Warsaw now employs a judge responsible for international matters, which has facilitated the process slightly.¹³⁰

The representative's functions is in effect only during the process of the application procedure. The representative is not the legal guardian (*opiekun prawny*) of an unaccompanied minor.

The actual care of the minor, including living, healthcare, educational and legal support is provided by the employees of the youth care facility or foster family in which the minor is placed for the duration of the application procedure.¹³¹

¹²⁸ <https://interwencjaprawna.pl/docs/ARE-216-na-granicy.pdf>

¹²⁹ <http://www.asylumineurope.org/reports/country/poland/asylum-procedure/guarantees-vulnerable-groups/legal-representation> accessed in July 2017

¹³⁰ http://cejsh.icm.edu.pl/cejsh/element/bwmeta1.element.desklight-d26e83ba-b52c-4030-a635-9d9c28970da3/c/Wlodarczyk_J_Wojcik_S_2014_Dzieci_cudzoziemskie_bez_opieki.pdf

¹³¹ <https://emn.gov.pl/download/75/20855/MalolaciEN.pdf>

3.4. Responsibilities and duties of guardians for migrant children

Responsibilities and duties of guardians are defined in the Polish Family and Guardianship Code. A guardian is obliged to perform his/her functions with due diligence as required by the person under his/her care. The guardian has custody of the child as well as of the child's property.¹³² Even though, at the very beginning, the minor has a legal representative in the proceedings before the Guardianship Court, it is the guardian who is later appointed by the Guardianship Court who assists the child in all actions concerning his/her legal status and ensures the well-being of the child. The guardian can later appoint the child's lawyer to represent the minor before the Court, but essentially, the guardian is responsible for the child and is able to make declarations of will in child's name.

3.5. Profile of guardians

Legal representatives

The Law on Protection does not set out any special requirements or eligibility criteria for legal representatives of unaccompanied minors in the international protection application procedure; only the person responsible for the procedure for granting international protection to unaccompanied minors is required by statute to fulfil certain conditions (see 2.1 above). The representative should be an adult with legal capacity. The representative receives no remuneration for carrying out his/her duties.¹³³

In practice, the Helsinki Foundation for Human Rights has found in recent years that insufficient numbers of trained legal representatives were available to assist unaccompanied children, and therefore such representatives were often law students involved with the legal clinic at the University of Warsaw.¹³⁴ The Border Guard has informed the Helsinki Foundation for Human Rights that since December 2017, a list of NGO workers who have expressed readiness to act as legal representatives has been maintained and used.¹³⁵

¹³² Articles 154 and 155 Family and Guardianship Code

¹³³ <http://www.asylumineurope.org/reports/country/poland> as updated in February 2018

¹³⁴ <http://www.france-terre-asile.org/images/stories/mineurs-isoles-etrangers/dam27-pol.pdf>

¹³⁵ <http://www.asylumineurope.org/reports/country/poland> as updated in February 2018

Guardians

Carers in youth care facilities or individual people¹³⁶ can be appointed by the Guardianship Court.¹³⁷ When appointing the guardian, the wellbeing of a child is taken into consideration as well as potential conflicts of interest. The Court appoints a guardian as soon as it receives information about a minor without parental/guardian care.

A carer in a youth care facility must hold a higher education diploma in pedagogy, special pedagogy, social work, family studies or other discipline the curriculum of which includes resocialization, social work or pedagogy (or equivalent post-graduate qualifications), requisite vocational qualifications in the case of specialist workers, such as social workers, therapists or psychologists.¹³⁸

Guardians who are not workers of foster care facilities have to participate in mandatory pre-qualification training. Only after completing training can they legally become guardians.¹³⁹ Such guardians are obliged to continue training and improve their qualifications.¹⁴⁰ Training is organized by county administration.¹⁴¹

3.6. Child Bride

The legal age for marriage in Poland is 18, although in exceptional circumstances the court on the female's application may allow a female minor who has turned 16 to marry even in the absence of parental consent, if this will be in the best interest of the family being established.¹⁴² There is no guidance on what constitutes grounds for the grant of such permission, but this is ordinarily pregnancy, children shared with the intended spouse, or a long-term relationship. However, the entry into marriage may not be harmful to the female minor. The intended spouses, and in certain circumstances third parties such as parents, will be interviewed by the court prior to the decision.¹⁴³

¹³⁶ Articles 146 and 149 Family and Guardianship Code

¹³⁷ Article 145 Family and Guardianship Code

¹³⁸ Article 98 Law on Family Support and the Foster Care System

¹³⁹ Articles 44 and 45 Law on Family Support and the Foster Care System

¹⁴⁰ Article 51 Law on Family Support and the Foster Care System

¹⁴¹ Article 76 Law on Family Support and the Foster Care System

¹⁴² <http://www.endvawnow.org/en/articles/616-establishing-a-minimum-age-for-marriage.html> and Article 10 Family and Guardianship Code

¹⁴³ <http://www.infor.pl/prawo/malzenstwo/zawarcie-malzenstwa/261193,Kiedy-maloletni-uzyska-zezwolecie-na-zawarcie-malzenstwa.html>

As a direct result of marriage, a girl who is a minor (between 16-18 years old) becomes emancipated and cannot be deprived of this status (even if she divorces before turning 18).¹⁴⁴

The legalization of an individual's stay in Poland on the basis of marriage is only possible if such marriage is recognized as valid under Polish law, regardless of the laws of the individual's country of origin.¹⁴⁵ Polish law recognizes marriages between a man and a woman over 18 years of age (except in circumstances detailed above) who are, inter alia, not fully incapacitated (*ubezpiełasnowolniona całkowicie*)¹⁴⁶ or already married.¹⁴⁷

Broadly, even if marriage with minors is legal in the applicant's country of origin, they will not legally be able to marry a minor in Poland.¹⁴⁸ Marriage with a minor between 16-18 years of age might be recognized under Polish law (as there are provisions in the Polish Family and Guardianship Code allowing such marriages under certain, exceptional circumstances – see above),¹⁴⁹ but unions with children younger than 16 years old are not recognized. For this reason a minor, if accompanied solely by a spouse, will be considered an “unaccompanied minor”. The European Convention on Human Rights states that there cannot be any interference by a public authority in the exercise of family life, except such as is in accordance with the law, in prevention of disorder and in protection of morals. It is also stated that men and women of marriageable age (according to the national laws) have the right to marry.¹⁵⁰ In the Polish legal system, there is a public policy clause that states that if a foreign law regulation is in conflict with a fundamental rule of the Polish legal system, the foreign law does not apply.¹⁵¹ Under Polish law, men and women are allowed to marry only after turning 18 (in exceptional circumstances, women are allowed to marry after turning 16).¹⁵² Allowing to marry or recognizing marriages with minors below 16 years old would be an explicit violation of Polish law and moral values

¹⁴⁴ Article 10 Family and Guardianship Code; Commentary to Article 10 Family and Guardianship Code, W. Borysiak in: J. Wierciński, Family and Guardianship Code, Commentary, 2014

¹⁴⁵ <http://mam-prawo.org/opcje/jestem-cudzoziemcem-w-polsce/zagadnienia-ogolne/zawarcie-malzenstwa-przez-cudzoziemca/>

¹⁴⁶ Article 11 Family and Guardianship Code

¹⁴⁷ Article 1 Family and Guardianship Code

¹⁴⁸ <http://mam-prawo.org/opcje/jestem-cudzoziemcem-w-polsce/zagadnienia-ogolne/zawarcie-malzenstwa-przez-cudzoziemca/>

¹⁴⁹ See: Application of international law in domestic law of Poland, Child Bride

¹⁵⁰ Article 8 of the European Convention on Human Rights

¹⁵¹ Article 7 of the Polish Private International Law, Journal of Laws 2015, pos. 1792; Article 7 Commentary, M. Zachariasiewicz in: Private International Law, Commentary, M. Pazdan, 2018; See also Judgement of European Court of Human Rights No. 60119/12 of December 8, 2015 in which the Court stated that marriage between minor (14 years old) and an adult is invalid due to public policy clause.

¹⁵² Article 10 Family and Guardianship Code

recognized in Poland. Therefore such marriages, are not recognized in the Polish legal system and considered non-existent or invalid.¹⁵³

No data on the incidence of child marriage among applicants for international protection in Poland could be found.

4. Family reunification

4.1. Family tracing

Immediately following the receipt of an unaccompanied minor's application for international protection, the Head of the Office for Foreigners must commence procedures aimed at locating the minor's relatives, including informing the minor of the possibility of finding his/her relatives through international NGOs, and providing assistance to the minor with contacting the NGOs and initiating the search.¹⁵⁴ In practice, the Head of the Office for Foreigners will cooperate with the Polish Red Cross (PCK).¹⁵⁵

4.2. Reunification in Poland or resettlement

The Law on Foreigners regulates the procedure for family reunification¹⁵⁶, and addresses the reunification of family members of individuals with, among others, a permanent or temporary residence permit, refugee status or subsidiary protection.

“Family” broadly includes:¹⁵⁷

1. A spouse, as recognised under Polish law, i.e. excluding same-sex marriage, religious marriage or polygamous marriage;
2. The individual's minor children, and the minor children of his/her spouse (as recognised under Polish law), including adopted children. The law therefore does not provide for reunification with children over 18 years of age;

¹⁵³ Article 48 Private International Law Commentary, W. Popiołek, M. Wojewoda in: in: Private International Law, Commentary, M. Pazdan, 2018

¹⁵⁴ Article 61(6)-(9) Law on Protection

¹⁵⁵ <https://emn.gov.pl/download/75/20855/MalolaciEN.pdf>

¹⁵⁶ <http://www.asylumineurope.org/reports/country/poland> as updated in February 2018

¹⁵⁷ Article 159(3) Law on Foreigners

3. The individual's minor children, including adopted children, for whom he/she provides maintenance and has de facto parental control over. This covers children raised by a single parent, or one parent and his/her spouse, to whom their parents provide maintenance. De facto parental control applies where the child mainly lives with the parent and is provided by the parent with maintenance and parental care; and
4. The minor child of an individual's spouse (as recognised under Polish law), including an adopted child, to whom the spouse provides maintenance and over whom he/she has de facto parental control. This allows for the reunification of an individual with his/her stepchildren.

The definition therefore does not include siblings, parents, grandparents, adult children (over 18 years of age), cousins, aunts and uncles etc.¹⁵⁸

To apply for family reunification, the individual who has been granted international protection must lodge an application in Polish to the provincial governor (*wojewoda*) for granting temporary residence to family members (applying separately in respect of each family member with whom the individual wishes to be unified), including:

1. Three current photographs;
2. A certified copy of the travel document (certified by a Polish consulate);
3. Documents confirming family ties (such as birth certificates, marriage certificates or documents confirming adoption, which must be registered at a Polish registry office (*Urząd stanu cywilnego*));
4. Documents confirming the individual's status in Poland (such as a copy of the grant of refugee status or permanent residence);
5. Documents confirming residence in Poland;
6. Documents confirming the individual has a steady source of income; and
7. Documents confirming health insurance.

¹⁵⁸ http://programy.hfhr.pl/dacrade/wp-content/uploads/2016/08/INTERNET_PL_laczenie-rodzin.pdf

The family member must also provide a copy of his or her passport (certified by the Polish consulate in his country of residence) and four copies of a recent photo.¹⁵⁹

Persons granted refugee status or subsidiary protection may use the simplified procedure of applying for temporary residence for family members.¹⁶⁰ If an application is filed by the individual with the provincial governor within six months of being granted international protection in the territory of Poland, the individual does not need to comply with the usual requirements for providing proof of health insurance, stable source of income and place of residence in Poland. However, each family member with whom reunification is sought must still comply with requirements for being granted a visa, such as the possession of sufficient funds and insurance, and such procedures are prohibitively complex and expensive.¹⁶¹

The provincial governor would make a decision on family reunification based on the veracity of the documents provided and interests of minors, nature and durability of family ties, length of the individual's stay in Poland and the existence of family, cultural and social ties with the country of origin, and consultations with the Border Guard, Police and Head of the Internal Security Agency regarding whether allowing the family member's temporary residence in Poland would have consequences for defence or state security, or safeguarding safety and public order. The procedure should last one month or, in exceptionally complex cases, up to two months. Although in accordance with EU law the procedure should take no longer than nine months, in practice it is often extended beyond this limit.¹⁶²

Family members being reunited with beneficiaries of international protection are granted a 3-year temporary residence permit. Recipients are entitled to work and, in the case of minors, attend Polish schools, as well as receive social benefits.¹⁶³

4.3. Reunification with other relatives

With respect to unaccompanied minors (i.e. minors who do not have a guardian in Poland) who have been granted international protection, the definition of "family" for the purposes of reunification is

¹⁵⁹ http://programy.hfhr.pl/dacrade/wp-content/uploads/2016/08/INTERNET_PL_laczenie-rodzin.pdf

¹⁶⁰ <http://www.asylumineurope.org/reports/country/poland> as updated in February 2018

¹⁶¹ fra.europa.eu/sites/default/files/.../fra-january-2017-monthly-migration-report_en.pdf

¹⁶² http://programy.hfhr.pl/dacrade/wp-content/uploads/2016/08/INTERNET_PL_laczenie-rodzin.pdf

¹⁶³ <http://www.asylumineurope.org/reports/country/poland> as updated in February 2018

broad, and family members also include direct ascendants, such as parents or grandparents, as well as other adults deemed responsible for the minor in accordance with Polish law, i.e. exercising legal guardianship of the minor, such as siblings.¹⁶⁴

4.4. Grounds for refusal

The provincial governor makes the final decision on family reunification and ensures all criteria are met and no grounds for refusal arise. Such grounds for refusal include:

1. Where the family member who would be joining the individual residing in Poland does not fulfil the criteria for being granted a permit (as above) or the circumstances provided as justification for granting the application do not justify his residence in Poland for over 3 months (for example where the relative has indicated they would like to visit Poland for a limited amount of time);
2. Where the family member's data has been included on a register of foreigners whose presence in Poland is undesirable or in the Schengen SIS system for refusal of entry;
3. Where this is justified by reasons of defence or state security, or safeguarding safety and public order;
4. Where the family member provided inaccurate or false information during the course of the proceedings, attached falsified documentation or made false testimonies;
5. Where the family member refuses to treat an infectious disease contrary to requirements; or
6. Where the application was lodged during a time where the relative residing in Poland was residing there illegally.¹⁶⁵

Family reunification will also not be permitted if the individuals entered into marriage to circumvent the provisions of Polish legislation.¹⁶⁶

¹⁶⁴ Article 159(4) Law on Foreigners

¹⁶⁵ Article 164 and 100 Law on Foreigners

¹⁶⁶ Article 165 Law on Foreigners and http://programy.hfhr.pl/dacrade/wp-content/uploads/2016/08/INTERNET_PL_laczenie-rodzin.pdf

5. Placement of migrant children

5.1. Temporary shelter/1st reception center

Families with children

Upon receipt of the asylum application, the Border Guard informs the asylum seekers in a language understandable to them their rights and obligations during the asylum process, the address of the reception centre to which they must report within two days of filing their application (unless the applicant is placed in a guarded centre or, in the case of adults only, in detention), and the extent of material reception conditions to which they are entitled.¹⁶⁷ Certain individuals, including disabled persons, single parents and pregnant women, are guaranteed transportation to the centre, and in justified cases – food during transport.¹⁶⁸

There are 11 reception centres in Poland located throughout the country, of which two are first reception centres to which asylum seekers are directed after lodging their international protection application, and nine are accommodation centres. The Head of the Office for Foreigners has delegated the management of seven of the centres to private contractors, and retains management of the remainder.¹⁶⁹ Plans for further expansion of the centre infrastructure have been halted due to backlash from local residents and prevailing negative social attitudes towards issues surrounding international mobility and arrivals into Poland.¹⁷⁰

On arrival at the centre, the applicants are provided with centre rules and a guide for applicants published by the Office for Foreigners, which is available in English, Arabic, French, Georgian, Polish and Russian, and which includes information about procedures to be followed in case of violence, particularly against minors.¹⁷¹

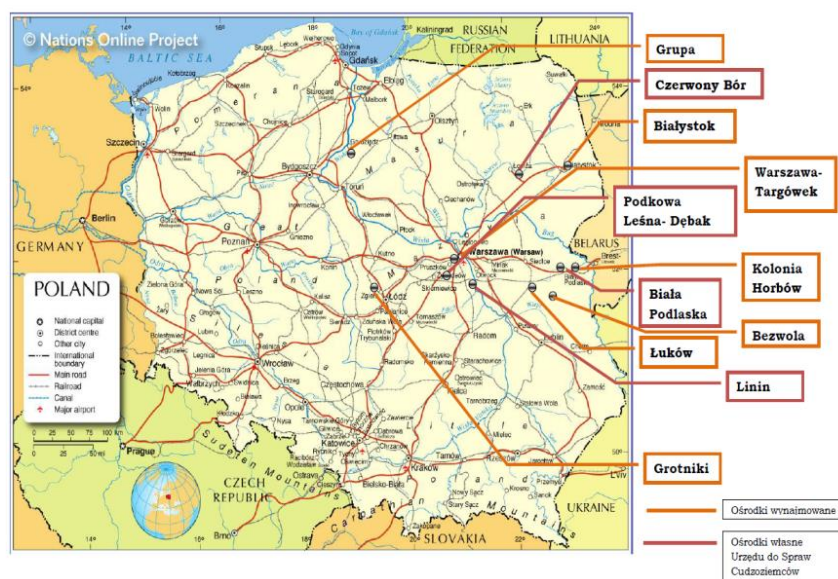
¹⁶⁷ Article 30(1)(5) Law on Protection

¹⁶⁸ Article 30(1)(8) Law on Protection

¹⁶⁹ Urząd do Spraw Cudzoziemców, Informator Departamentu Pomocy Socjalnej, 2017. Available in Polish at: <http://udsc.gov.pl/uchodzczy-2/pomoc-socjalna/informatory-do-pobrania/informator-departamentu-pomocy-socjalnej/>

¹⁷⁰ See for example <https://olsztyn.tvp.pl/22940131/osrodek-dla-syryjczykow-na-warmii-i-mazurach-sa-protesty>, <https://www.wprost.pl/kraj/527801/chca-utworzyc-osrodek-dla-uchodzcow-w-olecku-mieszkancy-protestuja.html>, <http://www.expressilustrowany.pl/lodz/a/protest-mieszkancow-przeciwko-osrodkowi-dla-uchodzcow-nie-chca-ich-u-siebie,9411757/>, <http://www.dzienniklodzki.pl/wiadomosci/zgierz/a/protest-w-grotnikach-mieszkancy-domagaja-sie-likwidacji-osrodka-dla-uchodzcow-zdjecia,9758552/>

¹⁷¹ “First steps in Poland”. Available at: <https://udsc.gov.pl/en/uchodzczy-2/pomoc-socjalna/informatory-do-pobrania/pierwsze-kroki-w-polsce-2/>



Location of reception centres, Urząd do Spraw Cudzoziemców, Informator Departamentu Pomocy Socjalnej, 2017

The Office for Foreigners allocates applicants to particular reception centres, taking into consideration family ties and the need to allocate related asylum seekers to the same centre as their families, vulnerability and the need to consider special needs, including allocating applicants only to the centres adapted to such needs, the continuation of any medical treatment and matters of safety. Nuclear families have reportedly had no problems with being housed in the same centre.¹⁷²

Individuals in reception centres are entitled to accommodation (ordinarily in 2- or 4-person rooms), three meals a day prepared by centre staff (kitchen facilities are also provided in all centres), pocket money, funds for personal hygiene items, one-off financial assistance for the purchase of clothing, as well as for transportation to hearings, medical assessments and other justified circumstances and Polish language classes and basic educational materials (see 6.1 below). Dietary requirements are ordinarily provided for, including special requirements for pregnant women and children and religious dietary restrictions.¹⁷³

¹⁷² <http://www.asylumineurope.org/reports/country/poland/reception-conditions/special-reception-needs-vulnerable-groups> accessed in July 2017

¹⁷³ <http://www.asylumineurope.org/reports/country/poland/reception-conditions/housing/conditions-reception-facilities> accessed in July 2017

Individuals who have applied to reside outside a reception centre are entitled to financial assistance¹⁷⁴ as follows:¹⁷⁵

Number of family members	Daily assistance per person	Monthly assistance per person
1 person	25 PLN (~ 6,25 EUR)	750 PLN (~ 187,5 EUR)
2 people	20 PLN (~ 5 EUR)	600 PLN (~ 150 EUR)
3 people	15 PLN (~ 3,75 EUR)	450 PLN (~ 112,5 EUR)
4 people	12.50 PLN (~ 3 EUR)	375 PLN (~ 93,75 EUR)

Conditions in reception centres vary, and are ordinarily superior in institutions managed by independent contractors, who must adhere to terms of contracts signed with the Office for Foreigners. Facilities ordinarily include separate common rooms for men and for women, kindergarten, areas for religious practice, areas for recreational use and classrooms.¹⁷⁶

The reception centres are in principle open, with free inbound and outbound movement for residents, although residents should report back to the centre by 11pm.¹⁷⁷

Access to centres for non-residents is controlled by either the Head of the Office for Foreigners or the director of the particular facility. Foreigners who have applied for refugee status and receive state benefits can enter the centre after obtaining a permit from the director of the facility. Anyone else has to obtain a permit from the Head of the Office for Foreigners, with exception of representatives of the United Nations High Commissioner for Refugees who may enter the premises of the facility after informing the director of the facility. Visits are permitted only during the week, and anyone willing to

¹⁷⁴ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/20b.poland_national_report_reception_facilities_september_2013_pl_final_en.pdf

¹⁷⁵ <https://udsc.gov.pl/uchodzczy-2/pomoc-socjalna/system-pomocy-socjalnej/rodzaje-przyznawanej-pomocy/>

¹⁷⁶ Office for Foreigners, Brochure of the Department for Social Assistance (Informator Departamentu Pomocy Socjalnej), 2014 and <http://www.asylumineurope.org/reports/country/poland> as updated in February 2018

¹⁷⁷ Paragraph 10.3 of the Regulation on rules of stay in the centre for asylum seekers as referenced in <http://www.asylumineurope.org/reports/country/poland/reception-conditions/housing/conditions-reception-facilities> accessed in July 2017

visit has to apply for the permit at least one day prior.¹⁷⁸ Normal visiting hours are 10am – 4pm but may be extended until 10pm following receipt of the facility director's permission. Visits take place in designated rooms. Representatives of NGOs providing legal assistance to individuals in the centre may be granted permission to enter the centre for the duration of the activities they are performing for the centre residents. NGOs have cited the remoteness of many centres as an additional obstacle to visitations, including by NGO representatives and legal advisors whose offices are ordinarily located in larger cities, with much communication occurring electronically.¹⁷⁹

Key complaints about the operation of the centres in 2012-2014 concerned, among others, separation of family members through placement in different centres, improper treatment by centre staff or provision of inadequate food and sanitation (including insect infestations), but a negligible proportion of such complaints has been found to have substance by the Supreme Audit Office.¹⁸⁰ NGOs have further indicated that some centres are inconveniently located far away from amenities or urban centres – the Warsaw reception centre for single mothers with children, for example, has been criticised for its location in a wooded area at a distance from the city centre and in proximity to industrial infrastructure,¹⁸¹ which may place the individuals at risk, and a number of reception centres are located in rural areas. Sanitation facilities have also been found by the Centrum Pomocy Prawnej im. Haliny Nieć NGO to not always adhere to gender segregation norms, and a number of the bathrooms are common for all asylum seekers and located in communal corridors, which may increase the risk of sexual-based violence.¹⁸²

Applicants are entitled to receive special treatment when determining their material reception conditions if they require accommodation in a reception centre e.g. adapted to the needs of people

¹⁷⁸ <https://udsc.gov.pl/uchodzczy-2/pomoc-socjalna/osrodki-dla-cudzoziemcow/kto-moze-wejsc-na-teren-osrodka/>

¹⁷⁹ <http://www.asylumineurope.org/reports/country/poland> as updated in February 2018

¹⁸⁰ <http://www.asylumineurope.org/reports/country/poland/reception-conditions/housing/types-accommodation> accessed in July 2017

¹⁸¹ <http://www.asylumineurope.org/reports/country/poland/reception-conditions/housing/conditions-reception-facilities> accessed in July 2017

¹⁸² Centrum Pomocy Prawnej im. Haliny Nieć, K. Przybysławska (ed.), Report: Sexual and Gender - Based Violence in Centers for Asylum Seekers 2012-2014, December 2014 as referenced in <http://www.asylumineurope.org/reports/country/poland/reception-conditions/housing/conditions-reception-facilities> accessed in July 2017

with disabilities, or designated only for women or women with children or persons with special medical conditions.¹⁸³

No separate accommodation centres for vulnerable groups or otherwise traumatised asylum seekers exist but some of them (including torture victims) can be placed in a single room where this is deemed necessary.¹⁸⁴ Only one reception centre, operated by a private contractor in Warsaw, is designed to accommodate single women, including single women with children.¹⁸⁵ Additional social assistance outside the centre is also available to vulnerable single women to ensure their safety.¹⁸⁶

Finally, the determination of material reception conditions to a minors must ensure safeguarding his/her interests, with particular regard to family reunification, the best interest of the child and the child's social development, security and protection, particularly if there is a risk that the minor is a victim of human trafficking, as well as the minor's opinion, proportionately to his/her age and maturity.¹⁸⁷

Unaccompanied minors

Unaccompanied minors are not placed in reception centres. The Border Guard unit which accepts an unaccompanied minor's application must request that the Guardianship Court places the minor in a foster family or youth care facility.¹⁸⁸

The Border Guard must escort the minor to an emergency youth care facility or emergency foster family where the minor shall remain until the completion of proceedings before the Guardianship Court concerning the placing of the minor in foster care or permanently in a youth care facility¹⁸⁹ - see 2.1 above. Following an amendment to legislation in 2012 and consequent termination of the agreement between the Office for Foreigners and the youth care facility no. 9 in Warsaw specialised

¹⁸³ Article 68(2) Law on Protection

¹⁸⁴ Procedure 1/2015 of the Office for Foreigners

¹⁸⁵ Urząd do Spraw Cudzoziemców, Informator Departamentu Pomocy Socjalnej, 2014. Available at: <http://udsc.gov.pl/uchodzczy-2/pomoc-socjalna/informatory-do-pobrania/informator-departamentu-pomocy-socjalnej/>

¹⁸⁶ Article 72(1)(1) Law on Protection.

¹⁸⁷ Article 69b Law on Protection

¹⁸⁸ Article 61(1)(3)(b) Law on Protection

¹⁸⁹ Article 62 Law on Protection

in the reception of migrant children, there is no centralised system of placing unaccompanied children in designated fit-for-purpose (emergency) youth care facilities.¹⁹⁰

NGOs, human rights institutions, research centres and academic institutions publish reports on the reception conditions in Poland. See for example the Helsinki Foundation for Human Rights and Centrum Pomocy Prawnej im. Haliny Nieć publications referenced throughout this report. It is unclear how regular such reporting is.

5.2. Placement of migrant children

The Guardianship Court must consider the request from the Border Guard as soon as possible, and within 10 days of receipt of the request must place the minor in a youth care facility (*placówka opiekuńczo-wychowawcza*) or a foster family.¹⁹¹ If, during the course of the proceedings for granting international protection it transpires that the applicant is an unaccompanied minor, the Head of the Office for Foreigners must file the request for the Court to place the minor in foster care.

Unaccompanied minors are currently placed in various facilities in Poland, instead of in a central institution. According to research by the Helsinki Foundation for Human Rights, in 2016 unaccompanied minors were mostly placed in the youth care facility in Kętrzyn (“because of the proximity to the guarded centre in Kętrzyn”) as well as in Przemyśl and Rzeszów. No information is available regarding whether the personnel of the facilities speaks foreign languages, as this is not a requirement,¹⁹² and it has been noted that minors often remain in the emergency facilities, which by definition are not suitable for long-term residence, for extended periods of time.¹⁹³

Unaccompanied minors may remain in youth care facilities from the moment of entry into Poland until they turn 18, although, in certain circumstances, remaining in a youth care facility or foster care may be possible for individuals up to 25 years of age if they continue with their studies.¹⁹⁴

¹⁹⁰ http://cejsh.icm.edu.pl/cejsh/element/bwmeta1.element.desklight-d26e83ba-b52c-4030-a635-9d9c28970da3/c/Wlodarczyk_J_Wojcik_S_2014_Dzieci_cudzoziemskie_bez_opieki.pdf and <http://www.asylumineurope.org/reports/country/poland> as updated in February 2018

¹⁹¹ Article 61(7) Law on Protection

¹⁹² <http://www.asylumineurope.org/reports/country/poland/asylum-procedure/procedures/regular-procedure> accessed in July 2017

¹⁹³ http://cejsh.icm.edu.pl/cejsh/element/bwmeta1.element.desklight-d26e83ba-b52c-4030-a635-9d9c28970da3/c/Wlodarczyk_J_Wojcik_S_2014_Dzieci_cudzoziemskie_bez_opieki.pdf

¹⁹⁴ <https://emn.gov.pl/download/75/20855/MalolaciEN.pdf>

If authorities refuse to grant international protection to an unaccompanied minor, and a decision on the minor's expulsion is issued, the minor should remain in foster care until he/she has been handed over to the authorities or the organisations of his/her country of origin whose statutory functions include issues related to minors.¹⁹⁵

The European Migration Network has evaluated the standard of accommodation provided to unaccompanied children positively, although the number of spaces in youth care facilities and foster families has been deemed insufficient.¹⁹⁶ It has however been noted that, due to the lack of specialised training and care, the facilities are often ill equipped to cater to the needs of foreign children.¹⁹⁷

For the duration of the application process for international protection, applicants (other than unaccompanied minors in foster care) are entitled to stay at reception centres, or receive state benefits to live independently (see 5.1 above), and are not entitled to any further material assistance from the state. The fact that adults are not permitted to undertake paid employment during the first six months of the application process may act to exacerbate their dependence on state benefits for independent living. However, such benefits are largely insufficient to cover the costs of renting accommodation of a reasonable standard, which leads many to seek black market employment and substandard housing, often with multiple families sharing the premises. Nonetheless, individuals living independently may at any time return to live in the reception centres. There are no national statistics regarding homelessness among asylum seekers, as though many live in substandard conditions, individuals are in principle always entitled to accommodation in the reception centres.¹⁹⁸

The situation is different for persons who have been granted international protection and are left to fend for themselves in society. The state does not provide housing to beneficiaries of international protection,¹⁹⁹ although some municipalities provide individual flats.²⁰⁰ Although there are no statistics on the number of homeless individuals as a proportion of those individuals granted international

¹⁹⁵ Article 332 Law on Foreigners

¹⁹⁶ <http://www.asylumineurope.org/reports/country/poland/reception-conditions/special-reception-needs-vulnerable-groups> accessed in July 2017

¹⁹⁷ http://cejsh.icm.edu.pl/cejsh/element/bwmeta1_element.desklight-d26e83ba-b52c-4030-a635-9d9c28970da3/c/Wlodarczyk_J_Wojcik_S_2014_Dzieci_cudzoziemskie_bez_opieki.pdf

¹⁹⁸ <https://interwencjaprawna.pl/docs/ARE-215-monitoring-warunkow-miekszaniowych-uchodzcow.pdf>

¹⁹⁹ <https://interwencjaprawna.pl/docs/ARE-215-monitoring-warunkow-miekszaniowych-uchodzcow.pdf>

²⁰⁰ <http://www.asylumineurope.org/reports/country/poland/> as updated in February 2018

protection or residing in Poland, a 2010 report²⁰¹ estimated there to be about a 100 homeless persons granted international protection in Warsaw as of September 2010, and, based on 7073 residence permits (*karta pobytu*) issued to asylum seekers at that time, it was estimated that 1400–2120 of the individuals were homeless. Social workers estimated in 2010 that 20-30% of all asylum seekers in Poland are homeless, and 10% are acutely homeless at any time.²⁰²

Following the grant of international protection, individuals are entitled to receive state benefits for another 2 months, and after such time all entitlements, including those to accommodation in reception centres, cease. Individuals are then entitled to participate in individual integration programmes run by local authorities, provided they apply for participation within 60 days of being granted international protection, and receive assistance with employment and financial assistance for housing, which exceeds the amount granted during the application procedure.

In principle, beneficiaries of international protection may both buy and rent accommodation on the open market. In practice, however, given the short duration of the individual integration programmes, individuals often do not possess the requisite language skills or employment to secure adequate housing, and prejudice of landlords against renting to foreigners. Often large families may be a factor hindering their access to accommodation.²⁰³ NGOs and local authorities often become liaisons between landlords and the individuals.²⁰⁴ There is very limited access to social housing, to which beneficiaries of international protection are entitled on par with Polish nationals, with those who have signed up to a waiting list often moving into their accommodation many years later.²⁰⁵

Those individuals who turn to social welfare centres (*ośrodki pomocy społecznej*) or NGOs for assistance are ordinarily directed to homeless shelters or to crisis intervention centres (*ośrodki interwencji kryzysowej*) or single mother homes (*domy samotnej matki*). Many individuals, particularly mothers with children unable to take up employment and large families, end up circling between such facilities for extended

²⁰¹ <http://www.isp.org.pl/uploads/pdf/246292626.pdf>

²⁰² <http://www.isp.org.pl/uploads/pdf/246292626.pdf>

²⁰³ <http://www.asylumineurope.org/reports/country/poland/> as updated in February 2018

²⁰⁴ <https://interwencjaprawna.pl/docs/ARE-215-monitoring-warunkow-miekszaniowych-uchodzcow.pdf>

²⁰⁵ <https://interwencjaprawna.pl/docs/ARE-215-monitoring-warunkow-miekszaniowych-uchodzcow.pdf>

periods of time. No institutionalised assistance exists for persons granted international protection to find adequate accommodation.²⁰⁶

The highest risk of homelessness occurs after the conclusion of integration programmes.²⁰⁷ Also beneficiaries of humanitarian protection, often families with children who were granted such protection to protect the best interest of the children who have integrated into their new surroundings during the lengthy application procedure, are in a particularly vulnerable position, with limited access to state benefits and no ability to participate in integration programmes in the first place.²⁰⁸

5.3. Detention/Retention

A foreign individual who has been detained on the territory of Poland will be placed in a guarded centre if, among others, there is a likelihood that an expulsion decision without a possibility of voluntary departure period²⁰⁹ will be made with regard to the individual in circumstances where reasons of state security or defence or the protection of public order necessitate this, or such decision has been made and its execution must be enforced,²¹⁰ the immediate expulsion of the individual to a third country on the basis of an international agreement is not possible, or the individual does not comply with the duties imposed on him in the context of the alternatives to detention or such alternatives are not available.²¹¹

There are the following alternatives to detention: (i) the obligation to periodically report to the Border Guard, (ii) a financial deposit, (iii) the deposit of travel documents or (iv) the obligation to reside in a designated location. These measures can be ordered if: (i) it is probable that a return decision without a possibility of voluntary departure period will be issued, (ii) such return decision without a possibility of voluntary departure period has been issued and its execution must be enforced, (iii) the individual has not left Poland within the voluntary departure period and his/her immediate deportation is not

²⁰⁶ <http://www.isp.org.pl/uploads/pdf/246292626.pdf>

²⁰⁷ <http://www.isp.org.pl/uploads/pdf/246292626.pdf>

²⁰⁸ <https://interwencjaprawna.pl/docs/ARE-215-monitoring-warunkow-miekszaniowych-uchodzcow.pdf>

²⁰⁹ An individual against whom an expulsion decision is made is ordinarily given 15-30 days to return voluntarily. However, no such period for voluntary return is offered where there is a risk of absconding, or reasons of national security or defense or the protection of public order necessitate this (Article 315 Law on Foreigners). A risk of absconding exists, among others, where the individual has declared he will not adhere to the expulsion decision, he does not possess identification documents, he crossed or attempted to cross Polish borders illegally, or his name appears on a register whereby his stay in Poland is undesirable, or the Schengen SIS database

²¹⁰ The grounds for issuing an expulsion decision are set out in Article 302 Law on Foreigners, and include the ending of the period of permitted stay in Poland or the unlawful crossing of Polish borders

²¹¹ Article 398a Law on Foreigners

feasible,(iv) it is necessary to ensure transfer based on the Dublin Regulation if there is a serious risk of absconding and an immediate transfer is not feasible, or (v) the individual does not comply with the duties imposed on him in the context of the alternatives to detention.²¹²

An individual will not be placed in detention (or arrest) if placing the him/her in the guarded centre in such circumstances could present a threat to his/her life or health, or his/her psycho-physical state suggests he/she may have been a victim of violence.²¹³ It is notable that there is no explicit safeguard against the detention of victims of trafficking.²¹⁴

A, unaccompanied minor who has been detained by the Police (i.e. their stay in Poland is illegal) must immediately be handed over to the Border Guard, who in turn must refer the minor to the relevant Guardianship Court for a determination of whether the minor should be placed in an emergency youth care facility or a guarded centre. In deciding on placing an apprehended unaccompanied minor in a guarded centre, the Guardianship Court must have regard to the level of his/her physical and psychological development, personality traits, circumstances of his/her apprehension and personal circumstances indicating he/she should be placed in a guarded centre.²¹⁵ Unaccompanied minors may be placed in guarded centres by the Guardianship Court only if they are over 15 years of age. However, unaccompanied minors whose legal status is not regulated, who are not applying for international protection in Poland, who are detained but willing to return to their country of origin are usually placed in emergency youth care facilities and may be placed in a guarded centres only in exceptional circumstances.²¹⁶

For individuals seeking international protection, following the 2015 amendments to the Law on Protection, upon the application by the Border Guard, asylum seekers may be placed in guarded centres by courts²¹⁷ only when it is necessary to establish or verify their identity, when there is a need to gather information connected with the asylum application which cannot be obtained without detaining them, when there is a serious risk of absconding, to make or execute a decision about the

²¹² Article 398 Law on Foreigners and <http://www.refworld.org/pdfid/5864d1934.pdf>

²¹³ Article 400 Law on Foreigners

²¹⁴ <http://www.refworld.org/pdfid/5864d1934.pdf>

²¹⁵ Article 397 Law on Foreigners and <https://emn.gov.pl/download/75/20855/MalolaciEN.pdf>

²¹⁶ <https://emn.gov.pl/download/75/20855/MalolaciEN.pdf> and <https://interwencjaprawna.pl/docs/ARE-211-monitoring-osrodki-strzezone.pdf>

²¹⁷ Article 88b Law on Protection

individuals' expulsion, when it can be substantiated that they have made an application for international protection merely in order to delay or frustrate the enforcement of the return decision, when state security reasons necessitate such treatment, when in accordance with the Dublin III Regulations there is serious risk of the applicants absconding and immediate transfer is not possible, and ²¹⁸ when the alternatives to detention such as periodic reporting, bail options or the obligation to stay in a designated place cannot be used. A risk of absconding exists particularly where the individuals do not hold identity documentation at the moment they apply for international protection, crossed or attempted to cross the border in contravention of Polish law from a territory unless their life and liberty were threatened by persecution or serious harm, they are presented reasonable grounds for such illegal crossing and they applied for asylum immediately after crossing the border, or their name is included on a register of undesirable arrivals, or the Schengen SIS database.²¹⁹ In practice, the Helsinki Foundation for Human Rights has found that alternatives to detention are not properly considered, justified and explained.²²⁰

As an exception, unaccompanied asylum-seeking minors (or asylum seekers whose psycho-physical state indicates that they are victims of violence or have a disability or whose detention would cause a serious threat to their life or health) may not be placed in guarded centres or detained.²²¹ In practice, detention is sometimes applied when there are doubts as to their age or if prior to their application for international protection they were placed in a guarded centre as irregular migrants,²²² because detention of unaccompanied minors who have not applied for asylum is not prohibited altogether by the Law on Foreigners, which merely prohibits detention of unaccompanied minors under 15 years of age (see above).

During the procedure of application for international protection, minors may also be placed in a guarded centre (but not deportation arrest) with their guardians on the same terms as adults.²²³ In 2017, minors were placed in detention centres in Kętrzyn, Biała Podlaska and Przemyśl.²²⁴ In

²¹⁸ Article 88a and 87(1) Law on Protection

²¹⁹ Article 87(2) Law on Protection

²²⁰ <http://www.asylumineurope.org/reports/country/poland/detention-asylum-seekers/legal-framework-detention/alternatives-detention>

²²¹ Article 88a(3)(3) Law on Protection

²²² <http://www.asylumineurope.org/reports/country/poland/> as updated in February 2018

²²³ <http://www.asylumineurope.org/reports/country/poland/detention-asylum-seekers/legal-framework-detention/detention-vulnerable>

²²⁴ <http://www.asylumineurope.org/reports/country/poland/> as updated in February 2018

considering whether to detain an adult with a minor to whom he is a guardian, the court must have regard to the minor's best interest.²²⁵ However, research by NGOs has found that when deciding on the detention of minors, courts often provide minimal reasoning, seldom take into account the impact of placing the minor in a guarded centre or the minor's best interest, and instead focus on the detention of the minors' guardians, with whom the minor is to be accommodated. Similarly, evidentiary proceedings are rarely conducted on torture victims. It has further been noted that due to limited availability of classes within the centres, minors have restricted access to education during the period of detention (see 6.1 below).²²⁶

In a recent decision of the European Court of Human Rights on this matter,²²⁷ the Court found that in placing a Chechen family with children in a guarded centre pending their expulsion, the best interest of the children was not taken into account pursuant to the Convention on the Rights of the Child. Ms Bistieva's husband applied for refugee status in Poland for himself and his family, which they were not granted and an order for expulsion was made. The family fled to Germany, where Ms Bistieva had another child, however under the Dublin Regulations Ms Bistieva and her children were soon sent back to Poland (while her husband remained in care in Germany), where they were detained in a guarded centre (due to the risk of fleeing the country again) pending expulsion on the basis of the original order for expulsion.

The living conditions in the centre were assessed as good.

Ms Bistieva appealed, arguing that the detention of herself and her children was unjustified and disregarded the fact that her husband had stayed behind in Germany, having been hospitalised when his family was sent back to Poland. The expulsion of Ms Bistieva's youngest child was halted, as the provincial governor held that the original expulsion order which remained in force was issued prior to his birth. Ms Bistieva applied for refugee status for herself and her children and a stay of the enforcement of the original expulsion decision. The court extended the detention of Ms Bistieva and her family in a guarded centre pending expulsion due to illegally crossing the border, holding that the fact she had minor children was not a sufficient reason to quash the original decision. The Head of the Office for Foreigners also did not grant the application to stay the enforcement of the original

²²⁵ Article 401(4) Law on Foreigners

²²⁶ Rzecznik Praw Obywatelskich. *Przestrzeganie praw cudzoziemców w Polsce*. Warsaw, 2012.

²²⁷ Case of Bistieva and Others v Poland, application no. 75157/14, judgment of 10 April 2018, available at <http://hudoc.echr.coe.int/eng?i=001-182210>

expulsion order, and considered that the new application was likely to fail because it was based on similar grounds as the previous one. The decision did not apply to Ms Bistieva's youngest child. The family's asylum proceedings were discontinued and their detention was extended. Ms Bistieva appealed, arguing that her youngest child was not an illegal alien and the family's detention was unjustified, but the decision was upheld on the basis that it sufficed that the mother herself was covered by the original expulsion decision and that her youngest child was in her care. The family lodged another asylum application, was eventually released from detention and promptly left to Germany. Ms Bistieva submitted, among others, that under Article 8 of the European Convention on Human Rights, the family's placement in detention had not been a necessary measure, and that it had constituted a disproportionate interference with her right to respect for her private and family life, as there had been no risk of absconding because Ms Bistieva would not have left Poland without her youngest, German-born child who was outside the scope of the expulsion order as his stay in Poland had not been illegal. The Polish Government argued, among others, that there had been no interference with Ms Bistieva's rights under Article 8 because she had not been separated from her children. The Court noted that whilst mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, it cannot be inferred from this that the sole fact that the family unit is maintained necessarily guarantees respect for the right to a family life, particularly where the family is detained. The Court found that, even though Ms Bistieva was not separated from her children, the fact of confining the family to a detention centre for almost six months, thereby subjecting them to living conditions typical of a custodial institution, can be regarded as an interference with the effective exercise of their family life. Further, where families are concerned, the authorities must, in assessing proportionality of taking measures such as detention, take account of the child's best interests. The Court pointed out that there is currently a broad consensus in support of the idea that in all decisions concerning children, their best interests must be paramount, and that that the protection of the child's best interests involves both keeping the family together, as far as possible, and considering alternatives so that the detention of minors is only a measure of last resort, which was not taken into account by the Polish courts. Accordingly, the Court held that, even in the light of the risk that the family might abscond, the Polish authorities failed to provide sufficient reasons to justify the detention and as a result violated Article 8 of the European Convention on Human Rights.

Further, in practice, many other vulnerable asylum seekers who do not fall into the excluded categories are detained,²²⁸ for example victims of trafficking are not explicitly protected from detention.²²⁹ Indeed, prior to the amendments to the Law on Protection in 2015, the law did not provide for methods of identification of vulnerable persons who ought to be afforded special treatment.

Detention is ordered by the District Court upon request of the Border Guard for up to 60 days for asylum seekers, and may be extended up to 90 days from the date of application if a previously irregular migrant applies for international protection during his period of detention and the conditions for detention are met, or for a maximum of 6 months if at the end of the period of detention the conditions for detention are still met but no decision concerning the grant of international protection has been issued in certain circumstances.²³⁰

In other cases, foreign individuals facing expulsion may initially be detained for a maximum of 90 days. Detention may be extended to 12 months where the detainee is not cooperating with authorities or there are delays in receiving documentation from another country, or up to 18 months where, among others, there are delays to executing a return decision or the individual has lodged an appeal against such decision.²³¹

Individuals are informed of the reasons of their detention, legal remedies and their rights.²³² Information on the reasons for detention is given in court, and translated into a language understandable to the applicant, and the court must hear the applicant before handing down its decision.²³³ However, often only general reasons for detention are provided which do not take into account the individual circumstances of the applicant. All decisions concerning placing an individual in a guarded centre or prolonging his detention may be appealed to the higher instance authority. The law provides for access to free legal assistance for the review of detention before the courts, but it is hardly ever exercised in practice. In practice, the individual's access to the appeal procedure is limited, as the Helsinki Foundation of Human Rights has found that courts have in the past ignored an

²²⁸ <http://www.asylumineurope.org/reports/country/poland/detention-asylum-seekers/legal-framework-detention/detention-vulnerable>

²²⁹ <https://www.globaldetentionproject.org/countries/europe/poland>

²³⁰ Article 89 Law on Protection

²³¹ Article 403 Law on Foreigners

²³² Article 402(2) Law on Foreigners, Article 88b(4) Law on Protection and
<http://www.asylumineurope.org/reports/country/poland/> as updated in February 2018

²³³ Article 401(1) Law on Foreigners and Article 88b Law on Protection

individual's requests to be present during examinations of his/her appeal, he/she is often not informed about applications for the extensions of his/her detention, and is often hindered from acting altogether as the appeal has to be prepared in Polish, forcing him/her to rely on NGOs for legal assistance, which is limited due to funding shortages. More generally, there are no statutory provisions guaranteeing a detained foreigner's access to legal aid.²³⁴

Minors of school age in detention are predominantly placed in the Guarded Centre for Foreigners in Kętrzyn or Biała Podlaska, and unaccompanied minors are placed only in the guarded centre in Kętrzyn.²³⁵ Families with children are ordinarily placed in separate wings, and in the same room as required by law²³⁶ and adhered to in practice, and persons who declare close ties with each other are, to the extent possible, placed in the same room as well. There is also a part for unaccompanied irregular migrant children, as the law requires the housing of unaccompanied minors in a separate part of the centre.²³⁷ In 2017, of the 113 unaccompanied children applying for international protection in Poland, 19 were placed in detention centres.²³⁸

The centres are in relatively good condition, the majority having been built over the last 10 years. Furniture consists of basics including a bed, wardrobe and small table. Rooms are not locked at night. Dietary requirements of detainees, such as Muslims or pregnant women, are respected. There are televisions, internet access, libraries and recreational and sporting facilities and there are no practical restrictions on participation in outdoor activities and competitions and concerts are organised for adults and children (e.g. in Kętrzyn). There are rooms for worship. However, there are serious issues with access to, and quality of, education in such centres (see 6.1 below).²³⁹

²³⁴ <http://www.asylumineurope.org/reports/country/poland/detention-asylum-seekers/procedural-safeguards/judicial-review-detention> accessed in July 2017

²³⁵ <http://www.asylumineurope.org/reports/country/poland/detention-asylum-seekers/legal-framework-detention/detention-vulnerable> accessed in July 2017

²³⁶ Article 414(3) Law on Foreigners

²³⁷ Article 414(4) Law on Foreigners

²³⁸ <http://www.asylumineurope.org/reports/country/poland/> as updated in February 2018

²³⁹ <http://www.asylumineurope.org/reports/country/poland/> as updated in February 2018

6. Access to fundamental rights

6.1. Education

All children in Poland, including asylum-seeking children, are constitutionally guaranteed a right to free education, and such education is mandatory until the age of 18. In accordance with the Constitution, “*Everyone* shall have the right to education. Education to 18 years of age shall be compulsory (...) Education in public schools shall be without payment”.²⁴⁰ Therefore the right to education and the compulsory nature of education until 18 years of age, applies to all persons under the jurisdiction of the Republic of Poland, including foreigners regardless of the legal basis on which they remain in the country.²⁴¹ Asylum-seeking children attend regular Polish schools,²⁴² and those staying in reception centres are entitled to additional Polish classes (with children usually divided into groups by age), basic school supplies and textbooks as well as financial assistance for meals. The Office for Foreigners and the Linguae Mundi Foundation created a comprehensive programme for teaching Polish language in reception centres.²⁴³ If children are unable to attend school with their peers, for example due to illness, the Office for Foreigners may make special arrangements for their education, such as by placing the children in special school, or enlisting the assistance of NGOs, who have in the past reportedly provided teaching assistance to disabled children in reception centres.²⁴⁴

In practice, however, asylum-seeking children face numerous obstacles in accessing education. Most importantly, most of the children do not know Polish, but are required to participate in classes taught in Polish. Foreign children who are required to attend a Polish school who do not speak Polish or do not possess the requisite fluency to benefit from education, are to be offered additional, free language classes, which must be organised by the authority managing the school which asylum seekers are attending, and entitled to support from a teaching aide fluent in their mother tongue, for up to 12 months. Such children are also entitled to participate in additional classes for 12 months aimed at

²⁴⁰ Article 70 and 71 Constitution of the Republic of Poland

²⁴¹ https://www.rpo.gov.pl/sites/default/files/RAPORT-RZECZNIKA-PRAW-OBYWATELSKICH-Realizacja-prawa-maloletnich-cudzoziemcow-do-edukacji%20.png_.pdf

²⁴² <http://www.asylumineurope.org/reports/country/poland/reception-conditions/employment-and-education/access-education> accessed in July 2017

²⁴³ <http://www.asylumineurope.org/reports/country/poland/> as updated in February 2018

²⁴⁴ <http://www.asylumineurope.org/reports/country/poland/reception-conditions/employment-and-education/access-education> accessed in July 2017

harmonising the asylum seekers' level of knowledge in taught subjects with that expected of their peer group.²⁴⁵

The above procedures are considered inadequate by education professionals. The Helsinki Foundation for Human Rights pointed out that in the past children were required to attend ordinary classes conducted in Polish regardless of their level of understanding of the language, and only then learn the language during limited, dedicated Polish language training after normal class hours.²⁴⁶

Since 2016, following legislative changes, schools have the ability to organise preparatory classes for foreign children with insufficient command of Polish, from 20-26 hours per week, where teachers of specific subjects must tailor the presentation of the curriculum to the developmental, educational and psycho-physical requirements of the foreign children, and may be assisted by native speakers of the language ordinarily spoken by the foreign children. In such cases, asylum seeking children are not required to participate in regular classes, although only three hours a week are dedicated to Polish as a foreign language classes. The solution has also been criticised by NGOs for creating exclusively-foreign classrooms and alienating foreign students further.²⁴⁷

Schools also often face issues with identifying the source of learning difficulties and problems with distinguishing when they originate from the minor's circumstances as a foreigner, and when other factors are involved, including dyslexia, ADHD, trauma, depression or PTSD.²⁴⁸ Lacking a systemic approach to targeting the needs and abilities of migrant children, support is largely dependent on the goodwill and initiative of school staff.²⁴⁹

An audit conducted by the Supreme Audit Office (*Najwyższa Izba Kontroli*) in 2015 concluded that the majority of surveyed schools attended by migrant children did not fulfil their statutory duties of providing teaching aides, additional classes or Polish language classes. It was found that only 3 out of 11 schools admitting asylum seeking children organized additional Polish language lessons and only one organized additional lessons in other subjects. Ordinarily schools organise two to ten hours of

²⁴⁵ <http://www.asylumineurope.org/reports/country/poland/> as updated in February 2018

²⁴⁶ <http://www.asylumineurope.org/reports/country/poland/reception-conditions/employment-and-education/access-education> accessed in July 2017

²⁴⁷ <http://www.asylumineurope.org/reports/country/poland/> as updated in February 2018

²⁴⁸ http://www.canee.net/files/children-on-the-move%20in%20Poland_english.pdf

²⁴⁹ <http://www.asylumineurope.org/reports/country/poland/reception-conditions/employment-and-education/access-education> accessed in July 2017

additional Polish language classes per week, with most schools providing an amount of hours of teaching closer to the lower end of this spectrum. Representatives of the schools indicated that no need for such additional training has arisen as migrant children adapt to Polish society, culture and language rapidly – an assertion that is contradicted by the accounts of NGOs and migrants consulted by the Helsinki Foundation for Human Rights themselves.²⁵⁰ Certain schools, notably in Biała Podlaska, however, did conduct additional training for its staff members on assistance for migrant children in schools.²⁵¹ It has also been found that a number of schools were not aware of the possibility of employing a teaching assistant, and some were denied funds for employing such assistant by the local authorities.²⁵²

Further, regardless of their level of educational attainment, all children were required to write a state exam in grade 6 of primary school – it is unclear what changes will be made to this requirement following recent educational reforms which have reshaped in its entirety the Polish educational system, including the liquidation of middle schools (*gimnazjum*) and the reintroduction of a two-tier, primary and secondary school system.²⁵³

The constitutional right to education is interpreted by some scholars as applicable to every minor remaining in Poland, without regard to the legal status of his/her stay.²⁵⁴ Furthermore, the Ministry of Education, on its official website, differentiates between the right to public education for persons aged below 18 and over. The Ministry points out that every foreigner aged below 18 has the right to attend Polish public kindergartens and schools.²⁵⁵ However, in practice it seems almost impossible for undocumented migrants to provide the documents required to register a child into a public school. Most commonly, the National Identification Number (PESEL) of the child would be needed during the admission process. In addition, directors of schools are verifying validity of information received

²⁵⁰ Najwyższa Izba Kontroli, Pomoc społeczna dla uchodźców. Informacja o wynikach kontroli, November 2015. Available in Polish at: <http://bit.ly/2lP90Z4>.

²⁵¹ <https://www.nik.gov.pl/plik/id,10216,vp,12539.pdf>

²⁵² <http://www.asylumineurope.org/reports/country/poland/reception-conditions/employment-and-education/access-education> accessed in July 2017

²⁵³ <http://www.dziennikustaw.gov.pl/du/2017/59/1> and <https://bip.men.gov.pl/pl/akty-prawne/projekty-aktow-prawnych>

²⁵⁴ Valentina Todorovska-Sokolovska, “Integracja i Edukacja Dzieci Imigrantów w krajach Unii Europejskiej – wnioski dla Polski”; Instytut Spraw Publicznych 2010; available at <http://www.isp.org.pl/publikacje,25,459.html>

²⁵⁵ <https://men.gov.pl/wspolpraca-miedzynarodowa/ksztalcenie-cudzoziemcow/informacja-o-ksztalceniu-cudzoziemcow-w-polskim-systemie-oswiaty.html>

about children's place of residency, by comparing them with census presided over by the local borough council (*urząd gminy*).

Minors who have illegally migrated to Poland and have been detained, on the other hand, are entitled to attend educational classes organized in guarded centres. They are rarely allowed to attend public schools. Issues regarding that matter have been described in the *Guarded Centres* section below.

Guarded centres

Minors staying in guarded centres are, like all other children in Poland, in principle subject to compulsory education until they are 18. The Law on Foreigners states that minors in guarded centres are entitled to attend educational classes and recreational and sporting activities adequately to their age and length of stay in Poland.²⁵⁶ However in practice, children resident in guarded centres do not regularly attend school, and instead teachers from schools in Kętrzyn and Biała Podlaska, where the centres housing minors are located, are delegated to work in the centres. Class time is limited to a few hours per week (such as 27 hours in Kętrzyn since September 2017, 16 hours per week in primary school and 10 for high school in Biała Podlaska),²⁵⁷ and teachers are often not sufficiently trained to lead classrooms of foreign children, and given the lack of statutory regulation, children often do not receive an education covering the entirety of the prescribed national curriculum. Classes are to be held in groups according to their age, level of education and fluency in Polish, but past NGO reports have indicated that many classes were organised without any age division of children.²⁵⁸

There are no legal regulations that specify the obligations of the Border Guard, educational authorities and schools themselves in relation to the education of children in guarded centres.²⁵⁹ The Helsinki Foundation for Human Rights reported that the Polish Ombudsman has been advocating for the Border Guard to ensure that classes are run by qualified teachers and that the national curriculum be implemented, including Polish as a foreign language classes.²⁶⁰ Although the Ministry of Education

²⁵⁶ Article 416(2) Law on Foreigners

²⁵⁷ <http://www.asylumineurope.org/reports/country/poland/> as updated in February 2018

²⁵⁸ <http://www.asylumineurope.org/reports/country/poland/detention-asylum-seekers/detention-conditions/conditions-detention-facilities> accessed in July 2017

²⁵⁹ <http://www.asylumineurope.org/reports/country/poland/detention-asylum-seekers/detention-conditions/conditions-detention-facilities> accessed in July 2017

²⁶⁰ Rzecznik Praw Obywatelskich, Realizacja prawa małoletnich cudzoziemców do edukacji. Raport RPO (PL) 2013. Available in Polish at: <http://bit.ly/1Hz4N4a>.

had in 2015 declared their readiness to draft laws regulating the education of minors in guarded centres, no progress has yet been made.

All guarded centres, except the centre in Biała Podlaska, organise Polish language courses for asylum-seeking children, and corresponding basic educational materials must be provided.²⁶¹ However, it was found that in the surveyed period 2012-2014, the number of asylum-seeking children who attended Polish language classes run by reception centres was extremely low (this was also true for adults). Additionally, the 2-5 hours of class per week offered by the centres was not deemed sufficient to gain fluency in the Polish language and effectively integrate into society.²⁶²

Results of research carried out in 2011-2013 by the office of the Polish Ombudsman confirmed that in most guarded centres, children were attending school regularly, with main irregularities arising from timing issues, e.g. children applying for admission to a school at the end of the school year, or due to ongoing admission and enrolment procedures.²⁶³

6.2. Health care

Legislation guarantees access to publicly funded health care for applicants for international protection from the date of their arrival in a reception centre or, in exceptional cases of threat to the individual's life or health, from the date of lodging the application²⁶⁴ to the same extent as for Polish nationals who have health insurance coverage.²⁶⁵ Similarly, unaccompanied minors applying for international protection residing in a foster family or youth care facility benefit from free health care funded from resources at the disposal of the Office for Foreigners, i.e. from the state budget. Unaccompanied asylum seeking minors living in foster families or youth care facilities have access to the medical care as asylum seekers from the date of filing their application for international protection.²⁶⁶ Other migrant children residing unaccompanied in foster care or youth facilities are provided with free medical care

²⁶¹ Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW, in <http://www.asylumineurope.org/reports/country/poland/reception-conditions/employment-and-education/access-education> accessed in July 2017

²⁶² Najwyższa Izba Kontroli, Pomoc społeczna dla uchodźców. Informacja o wynikach kontroli, November 2015.

²⁶³ Rzecznik Praw Obywatelskich, Realizacja prawa małoletnich cudzoziemców do edukacji. Raport RPO (PL) 2013.

²⁶⁴ Article 74 Law on Protection

²⁶⁵ Article 73(1) Law on Protection

²⁶⁶ Article 63 Law on Protection and <https://www.cir-onlus.org/images/pdf/france%20mi-an-consolide-web.pdf> and <https://interwencjaprawna.pl/docs/poza-systemem.pdf>

to the same extent as Polish children, with costs absorbed by the regional (*powiat*) authorities in the location of the relevant institution.

Basic health care is provided through designated medical offices within each of the reception centres, and, since 2015, medical assistance coordinated by Petra Medica, a private contractor, pursuant to a contract with the Office for Foreigners,²⁶⁷ whose services have been criticised by residents of reception centres.²⁶⁸

Diagnostic services, specialist medical assistance or hospitalisation are available upon receipt of a referral from a reception centre medical professional and provided at the MSWiA hospital in Warsaw free of charge.²⁶⁹

In April 2017, an “epidemiological” facility also began operations near the Belarussian border, which experiences the majority of refugee flows to Poland with the aim of reducing epidemiological risk by providing medical assistance for foreigners who have applied for international protection in Poland.²⁷⁰

Undocumented migrants do not have access to free medical assistance in Poland and must bear any costs of hospitalisation (which the individuals are often unable to do) except in case of compulsory treatment of certain contagious diseases, emergency services outside hospitals in the event of life threatening condition. In the latter case, the costs are in practice borne by the medical institution (which is therefore often reluctant to admit such patients). Migrants do, however, acquire access to health care whilst in guarded centres and detention facilities prior to expulsion. Children of undocumented migrants who attend school are entitled to free medical provisions restricted to prophylaxis (including compulsory vaccinations) and dental care provided within the school by resident doctors and nurses.²⁷¹

An audit by the Supreme Audit Office carried out in 2015 assessed the provision of health care to asylum seekers broadly positively. It was noted that the individuals had access to a general practitioner, specialists, hospitalisation and dental care, and in reception centres in 2012-14, medical doctors were available no less than 10 hours a week, nurses – no less than 20 hours, and psychologists – no less

²⁶⁷ <http://udsc.gov.pl/zmiana-swiadczeniodawcy-uslug-medycznych-dla-cudziemcow/>

²⁶⁸ <http://www.asylumineurope.org/reports/country/poland/reception-conditions/health-care>

²⁶⁹ <https://interwencjaprawna.pl/docs/poza-systemem.pdf>

²⁷⁰ <http://www.asylumineurope.org/reports/country/poland/> as updated in February 2018

²⁷¹ <https://interwencjaprawna.pl/docs/poza-systemem.pdf>

than 4 hours. Epidemiological testing of newly arriving individuals was operating effectively.²⁷² However, experts and NGOs have warned that specialist treatment for victims of torture or traumatised asylum seekers is not available in practice, and that psychological services are provided ad hoc in emergency situations rather than as part of structured psychological therapy, exposing particular inability of the system to deal with PTSD.²⁷³

In 2017, each medical doctor had 10 hours of duty per 120 asylum seekers, the same as in 2016.²⁷⁴

The Helsinki Foundation for Human Rights further notes that the lack of English language training among medical professionals is a significant obstacle to the provision of medical assistance to foreigners. No free translation services are provided by the state in such cases, although Petra Medica is contractually obligated to ensure the presence of a translator where necessary during medical examinations and psychological counselling. In practice, however, translation services are still seldom provided in a number of the centres, in particular with respect to French and Arabic, but professionals in some of the reception centres have generally sufficient command of Russian. Cultural awareness among medical professionals has also been reported as a significant issue.²⁷⁵ Certain medical facilities to which asylum seekers are referred are also far away from reception centres, which are frequently located at a distance from larger settlements or urban centres.²⁷⁶

7. Expulsion

7.1. Exclusion clauses

An individual is denied the right to receive refugee status if there is no substantiated risk of persecution in his/her country of origin, or if he/she is the beneficiary of protection or assistance from bodies or agencies of the United Nations, other than the UN High Commissioner for Refugees, provided that in the circumstances the individual has a practical and legal ability to return to the territory where such assistance is available without endangering his/her life, personal safety or freedom; there are serious reasons to believe that the individual committed a crime against peace, a war crime or a crime against humanity within the meaning of international law, or is guilty of actions contrary to the purposes and principles of the United Nations as laid out in the preamble and articles 1 and 2 of the United Nations

²⁷² <https://www.nik.gov.pl/plik/id,10216.vp.12539.pdf>

²⁷³ <http://www.asylumineurope.org/reports/country/poland/> as updated in February 2018

²⁷⁴ <http://www.asylumineurope.org/reports/country/poland/> as updated in February 2018

²⁷⁵ <http://www.asylumineurope.org/reports/country/poland/reception-conditions/health-care> accessed in July 2017

²⁷⁶ <https://interwencjaprawna.pl/docs/poza-systemem.pdf>

Charter. In addition, if he/she has committed a crime (other than a political crime) outside of Poland prior to the lodging of the application for international protection, or there are serious grounds to believe that he/she has incited or otherwise participated in such acts; or he/she is considered by the Polish state to be a person having the rights and responsibilities associated with holding Polish citizenship. An individual may also be denied refugee status if he/she has lodged multiple applications and the fear of persecution is founded on circumstances which the applicant purposefully engineered after departing from his country of origin.²⁷⁷

An individual is denied the right to subsidiary protection if there is no real risk of him/her suffering serious harm; there are serious reasons to believe that he/she committed a crime against peace, a war crime or a crime against humanity within the meaning of international law or is guilty of actions contrary to the purposes and principles of the United Nations as laid out in the preamble and articles 1 and 2 of the United Nations Charter, or he committed a crime on Polish territory or committed an act outside of Poland which would be considered a crime under Polish law, or is a threat to state security and that of society. An individual who committed certain of the above crimes prior to his arrival in Poland may also be denied subsidiary protection if he/she has departed from his/her country of origin solely to avoid punishment.²⁷⁸

The age of criminal responsibility in Poland is 17 (with exception of committing one of the serious crimes listed in Article 10(2) of Penal Code i.e. an assault on the life of the president of Poland; murder; causing heavy bodily harm or involuntary manslaughter; causing dangerous events which endanger massive loss of human life, health and property; causing a catastrophe; rape; assaulting a public servant with the help of other person or use of dangerous object; taking someone hostage; violent robbery, in which case the age of responsibility is 15).²⁷⁹ Article 20 of the Law on Protection lists the committing of an act outside of Polish borders which is recognized by the Polish law as a crime as a basis for denial of international protection. Article 10 of the Penal Code limits the criminal responsibility of a person who committed such act, but it does not annul the unlawfulness of the act itself. However, under Polish law, for an act to be qualified as a felony, it has to be culpable and intentional. The age limitation, expressed in Article 10 of the Penal Code, is a consequence of the belief that up until a

²⁷⁷ Article 19 Law on Protection

²⁷⁸ Article 20 Law on Protection

²⁷⁹ Article 10 Penal Code

certain age a person is not conscious enough to foresee the consequences of his/her actions and, as a result, acts committed by him/her do not bear the trait of culpability.²⁸⁰ Therefore, the age restrictions imposed by the Article 10 would be taken into consideration upon deciding on granting a minor international protection, as everyone aged below 17 would be, with certain abovementioned exceptions, unable to commit an act which is recognized by the Polish law as a felony, and as a result, unable to fulfil the premise of Article 20(1)(2)(b) of the Law on Protection. It also does not mean that an unaccompanied migrant who is less than 17 years of age cannot be ordered to leave Poland.

If an unaccompanied minor would not meet necessary requirements to be granted the right to international protection, he/she can be ordered to return to his/her country of origin only if in the country the minor was ordered to return to, care will be provided for him/her by parents, other adults or an institution providing guardianship in accordance with the standards of the United Nations Convention on the Rights of the Child, and during the return the minor will be escorted by a statutory representative or he/she will be handed over to the legal representative or state representative of the country the minor is ordered to return to.²⁸¹

7.2. Internal relocation/expulsion to country of origin

Non-asylum seeking minors may be returned to their country of origin on arrival in a simplified return procedure, or placed in a youth care facility or a guarded centre (for those over 15 years of age) pending conclusion of the return procedure. Unaccompanied minors apprehended in Poland may similarly be subject to an expulsion order.²⁸²

A guardian (i.e. a statutory representative whose rights and duties are within the scope of those of a legal representative from section 3) is appointed by the court for the duration of the return procedure (see further below).²⁸³

Where the minor had applied for international protection, on rejection of an application for international protection or the discontinuance of proceedings due to withdrawal by the minor, the authority issuing the decision informs the Border Guard about its decision, and return proceedings

²⁸⁰ A. Walczak – Żochowska, „Komentarz do Art. 10 Kodeksu Karnego”, paragraphs 1,2,4 and 16; (red. prof. R. Stefański) Kodeks Karny. Komentarz., 21st edition, 2018

²⁸¹ Article 332 Law on Foreigners

²⁸² <https://emn.gov.pl/download/75/20855/MalolaciEN.pdf>

²⁸³ <https://emn.gov.pl/download/75/20855/MalolaciEN.pdf>

are initiated.²⁸⁴ The unsuccessful applicant is required to leave Polish territory within 30 days of such decision being made and may be placed in a guarded centre whilst awaiting expulsion.

Expulsion orders ordinarily contain a 15-30 day period granted for voluntary return (which may in certain circumstances be extended).²⁸⁵

Minors who express a wish to return to their country of origin are provided with assistance of the Border Guard and International Organization for Migration to do so, if this is not contrary to the best interest of the child and his/her parents or legal guardians agree.²⁸⁶ The minors are interviewed to ensure it is their desire, rather than that of the facility in whose care the minors are, to return. The International Organization for Migration Poland runs the Voluntary Returns from Poland Project, which provides assistance to individuals, including children, wishing to return their origin country. Statements of the family and of the receiving family members are needed, and, if necessary, the minor is accompanied by a representative of the youth care facility who also confirms the identity of the receiving family members on arrival.²⁸⁷

Failed applicants who do not lodge such application and do not leave within the prescribed time limit may be issued with a ban from entering Poland or the Schengen zone for at least 6 months.²⁸⁸

Prior to the minor's return to his/her country of origin, the minor's guardians in that country is contacted. The decision to expel a minor to his/her country of origin or another country may be taken when in that country, the minor is guaranteed parental, adult or otherwise institutional guardianship in accordance with the UN Convention on the Rights of the Child. The minor may only be expelled under the supervision of a guardian appointed for the purpose of the return (often a member of the Border Guard or an employee of the relevant youth care facility), unless the minor is handed directly

²⁸⁴ It should also be noted that Poland is subject to the Dublin III Regulation, including procedures applied whenever there is evidence that another state may be responsible for examining the claim for granting international protection, and the Head of the Office for Foreigners is the responsible administrator. All individuals over 14 years of age seeking international protection are fingerprinted and checked in the Eurodac European identification system, and returns may be initiated also on the basis of Dublin III.

²⁸⁵ <https://emn.gov.pl/download/75/20855/MalolaciEN.pdf>

²⁸⁶ <https://emn.gov.pl/download/75/20855/MalolaciEN.pdf>

²⁸⁷ http://www.canee.net/files/children-on-the-move%20in%20Poland_english.pdf

²⁸⁸ <https://udsc.gov.pl/uchodzczy-2/uchodzczy/prawa-i-obowiazki/prawa/>

over to a legal guardian or representative of public authorities of his/her destination country.²⁸⁹ The individual escorting the minor on the return journey checks the identity of the recipient adults.²⁹⁰

In the case of minors, during the return procedure, grounds for granting tolerated stay or humanitarian protection are considered and, in particular, conditions resulting from the UN Convention on the Rights of the Child.²⁹¹ The Polish Ombudsman for Children has, in the context of recent expulsion orders, more frequently been resorting to lodging requests with the Border Guard to commence separate proceedings to grant minors the right to remain in Poland on humanitarian grounds in cases where entire families had exhausted the international protection procedure. The procedure is available where expelling the minor would require him/her to return to a country in which, among others, his/her right to life, freedom or personal safety would be imperilled, s/he could be tortured or subjected to inhuman or degrading treatment or punishment, s/he could be subjected to forced labor, his/her right to family and private life would be curtailed, or the rights of a child, determined in the UN Convention on the Rights of the Child would be breached to an extent materially compromising the minor's psycho-physical development.²⁹²

Applicants for refugee status or those applying for or granted residence or humanitarian protection, among others, cannot ordinarily be expelled until the application is processed, and will not be expelled if such protection is granted.^{293 294}

7.3. Resettlement to a third country

In principle, foreigners eligible for refugee status or subsidiary protection are eligible for resettlement or relocation to Poland on the basis of a decision of the Council of Ministers. Foreigners qualified for resettlement or relocation may lodge applications for international protection prior to their arrival in

²⁸⁹ http://ludzie.sektora.ngo.pl/files/openborders/public/publikacje_pl/Wydalenie_cudzoziemcow_pol_a5.pdf

²⁹⁰ http://cejsh.icm.edu.pl/cejsh/element/bwmeta1.element.desklight-d26e83ba-b52c-4030-a635-9d9c28970da3/c/Wlodarczyk_J_Wojcik_S_2014_Dzieci_cudzoziemskie_bez_opieki.pdf

²⁹¹ <https://emn.gov.pl/download/75/20855/MalolaciEN.pdf>

²⁹² Article 348 Law on Foreigners and <https://udsc.gov.pl/cudzoziemcy/obywatele-panstw-trzecich/zobowiazanie-do-powrotu/przeslanki-negatywne-zobowiazania-cudzoziemca-do-powrotu/zgoda-na-pobyt-ze-wzgledow-humanitarnych/przeslanki-pozytywne-do-udzielenia-zgody-na-pobyt-ze-wzgledow-humanitarnych/>

²⁹³ Article 330 Law on Foreigners

²⁹⁴ Under proposed amendments to the Law on Protection, it is proposed that Article 75 should no longer apply. New provisions allow the applicant to lodge a request for assistance with transfer to another member state responsible for considering his application for international protection with the Border Guard within 21 days of receipt of the final decision regarding his application.

Poland, and may be interviewed in the place of their stay prior to arrival in Poland.²⁹⁵ In practice, however, although in 2015 Poland declared readiness to accept the relocation of a number of asylum seekers from other European countries, particularly Greece and Italy,²⁹⁶ the procedure was ultimately halted. Following the coming to power of Prawo i Sprawiedliwość (Law and Justice), a nationalist conservative party with an anti-immigration agenda in 2015, all resettlement talks have ceased, with the reasons cited as the threat of terrorism in the wake of terrorist attacks across Europe, and the insufficient vetting of candidates for relocation,²⁹⁷ and no systemic relocations planned previously have taken place.²⁹⁸ On 15 June 2017, the European Commission launched infringement proceedings against Poland for failing to relocate asylum seekers.²⁹⁹

8. Data Collection

8.1. Data regarding migrant children on the move collected by the public authorities

Official statistics concerning internationally mobile persons are collected by the Office for Foreigners and published periodically, as well as in annual reports³⁰⁰ and on a regularly updated website.³⁰¹ Statistical reports were in the past also published by the Polish National Contact Point to the European Migration Network,³⁰² and certain data and reports are available through, among others, the Ministry of Labour and Social Policy, Border Guard, Central Statistical Office, Polish Ombudsman or Polish Ombudsman for Children. Such statistics include figures on applications for international protection filed by unaccompanied minors, unaccompanied minors in the care of public authorities, as well as minors detained to be expelled, and those returned to their country of origin, however no institution is individually responsible for the collection and publication of data regarding children on the move or unaccompanied minors.

²⁹⁵ Articles 86a - 86j Law on Protection and http://www.asylumineurope.org/sites/default/files/report-download/aida_pl_update.v_final.pdf accessed in July 2017

²⁹⁶ See for example <http://www.newsweek.pl/polska/to-juz-pewne-polska-przyjmie-2000-uchodzcow,artykuly,367240,1.html>

²⁹⁷ <http://www.asylumineurope.org/reports/country/poland/asylum-procedure/relocation> accessed in July 2017

²⁹⁸ See for example <http://www.rp.pl/Rzad-PiS/170519184-Beata-Szydlo-Polska-nie-przyjmie-uchodzcow.html>

²⁹⁹ <http://www.asylumineurope.org/reports/country/poland/asylum-procedure/relocation> accessed in July 2017

³⁰⁰ <https://udsc.gov.pl/statystyki/raporty-okresowe/>

³⁰¹ <https://migracje.gov.pl/statystyki/zakres/polska/typ/decyzje/widok/wykresy/rok/2017/wiekDo/18/>

³⁰² <https://emn.gov.pl/esm/publikacje/nasze-publikacje/roczne-raporty-statyst>

8.2. Data protection

No information on the confidentiality of data regarding children could be found.

9. International relations

9.1. Foreign aid that addresses root causes of migration of minors (in particular of unaccompanied minors) in countries of origin and transit countries.

No information on organised development/cooperation programmes targeting origin countries could be found.

9.2. Cooperation with civil society

Due to shortages of available funds, the Polish government provides only basic assistance to internationally mobile persons, including children, and cooperates with a number of NGOs on the provision of certain services, including the provision of information, legal assistance, integration assistance, psychological assistance, Polish language training and assistance for jobseekers (as illustrated by examples throughout this report), as well as collections of funds or necessary items, assistance within reception centres, assistance with medical matters or finding housing, or organizing activities for children, both during the procedure of application for international protection and upon granting of refugee status, subsidiary protection or stay on humanitarian grounds.

Prominent NGOs active in the field include the Helsinki Foundation for Human Rights, Centrum Pomocy Prawnej im. Haliny Nieć, Fundacja Centrum Badań Migracyjnych, Polskie Forum Migracyjne, Fundacja „Centrum Edukacji Obywatelskiej”, Fundacja na rzecz Różnorodności Społecznej, Fundacja Refugee.pl, Instytut Spraw Publicznych, Fundacja Ocalenie, Fundacja “Dzieci Niczyje”, Caritas Polska or Stowarzyszenie Interwencji Prawnej.³⁰³

9.3. Visa policies

Refugee status is granted for an unlimited period of time, and refugees obtain a 3-year residence card (*karta pobytu*) (as well as a travel document in accordance with the Geneva Convention, valid for 2 years), which may be renewed for another 3 years upon request.³⁰⁴

³⁰³ https://www.senat.gov.pl/gfx/senat/pl/senatpracowania/146/plik/ot-650_internet.pdf and <http://www.unhcr.org/pl/2498-plogolnpartnerzypartnerzy-ngo-html.html>

³⁰⁴ Article 89i(1) and (2a) Law on Protection

Subsidiary protection is granted for an unlimited period of time. An individual who has been granted subsidiary protection receives a 2-year residence card, which may be renewed for another 2 years upon request.³⁰⁵³⁰⁶

Persons who may not return to their country of origin for reasons of personal safety may be granted humanitarian protection or a tolerated stay in Poland.³⁰⁷

The right to remain in Poland on humanitarian grounds³⁰⁸ is available when expelling the individual would require him/her to return to a country in which, among others, his/her right to life, freedom or personal safety would be under threat, s/he could be tortured or subjected to inhuman or degrading treatment or punishment, s/he could be subjected to forced labour, or could be deprived of the right to a fair trial or punished without a legal basis; or his/her right to family and private life would be curtailed; or the rights of a child, determined in the UN Convention on the Rights of the Child would be breached to an extent materially compromising the minor's psycho-physical development.³⁰⁹ The latter reason means humanitarian protection is particularly of interest to minors seeking to remain in Poland. Humanitarian protection is issued for an unlimited period of time.³¹⁰ An individual granted humanitarian protection is issued a residence card valid for 2 years, renewed for a further 2 years on expiration.³¹¹

The right to tolerated stay³¹² arises when, upon issuing of the decision on expulsion, such expulsion could only be carried out to a country a person's right to life, freedom and personal safety would be under threat, when he/she can be subject to torture or inhuman or degrading treatment or punishment, could be subjected to forced labour or could be deprived of the right to a fair trial or punished without a legal basis, within the meaning of the European Convention on Human Rights, or when that individual is not eligible for humanitarian protection; or the expulsion is unenforceable

³⁰⁵ Article 89i(2) and (2a) Law on Protection

³⁰⁶ <http://www.asylumineurope.org/reports/country/poland/> as updated in February 2018

³⁰⁷ https://www.senat.gov.pl/gfx/senat/pl/senatopracowania/140/plik/ot-642_internet.pdf

³⁰⁸ Article 348 Law on Foreigners

³⁰⁹ <https://udsc.gov.pl/cudzoziemcy/obywatele-panstw-trzecich/zobowiazanie-do-powrotu/przeslanki-negatywne-zobowiazania-cudzoziemca-do-powrotu/zgoda-na-pobyt-ze-wzgledow-humanitarnych/przeslanki-pozytywne-do-udzielenia-zgody-na-pobyt-ze-wzgledow-humanitarnych/>

³¹⁰ <http://www.asylumineurope.org/reports/country/poland/> as updated in February 2018

³¹¹ Article 243(1)(4) and 243(2)(3) Law on Foreigners

³¹² Article 351 Law on Foreigners

for reasons outside the relevant authority's and the individual's control; or the expulsion would be carried out to a country the expulsion to which would be unenforceable on the basis of a court's judgment or on the basis of the decision of the Minister of Justice on refusing to extradite the individual.³¹³ The document issued to confirm the right to tolerated stay is valid for 2 years.³¹⁴

Residence cards must be received in person, or in the case of minors under the age of 13, they should be received in person by their legal representative.³¹⁵ At the time of issuing the card, fingerprints will be taken³¹⁶ and photographs must be supplied.³¹⁷

Note minors residing in Poland illegally may also apply for the grant of a temporary residence permit if their departure from Poland would violate the rights of the child as defined in the UN Convention on the Rights of the Child to the extent that could significantly adversely affect the minor's mental and physical development.³¹⁸ Similarly unaccompanied minors who are victims of human trafficking residing in Poland illegally may be entitled to a temporary residence permit if they cooperate with authorities (see 2.3 above).

Individuals granted refugee status, subsidiary protection or residing in Poland on the basis of a residence permit for humanitarian reasons may apply for permanent residency after 5 years³¹⁹ (in the case of refugee or subsidiary protection applicants, this includes the period of residence during the application procedure, even if they were placed in detention), and for Polish citizenship thereafter. A minor's guardian will apply for permanent residence on the minor's behalf.³²⁰

10. Additional Remarks

Proposed changes to the Law on Protection discussed in 1 above stipulate that a country not being a member state but listed as a safe third party country is considered a safe third party country in relation to the applicant where a relationship exists between the applicant and such country (of which he is

³¹³ <https://udsc.gov.pl/cudzoziemcy/obywatele-panstw-trzecich/zobowiazanie-do-powrotu/przeslanki-negatywne-zobowiazania-cudzoziemca-do-powrotu/zgoda-na-pobyt-tolerowany/przeslanki-do-udzielenia-zgody-na-pobyt-tolerowany/>

³¹⁴ Articles 273-275 Law on Foreigners

³¹⁵ Article 248(1)-(2) Law on Foreigners and <http://www.asylumineurope.org/reports/country/poland/> as updated in February 2018

³¹⁶ Article 246(2) Law on Foreigners

³¹⁷ <http://www.asylumineurope.org/reports/country/poland/> as updated in February 2018

³¹⁸ Article 187(7) Law on Foreigners

³¹⁹ Articles 195 and 211 Law on Foreigners

³²⁰ <https://emn.gov.pl/download/75/20855/MalolaciEN.pdf>

not a citizen) that the applicant's return to that country would in consequence be reasonable for the applicant, and where the applicant's life and freedom in that country are not threatened by reasons of race, religion, nationality, political beliefs or membership of a social group, there is no risk of serious harm to the applicant, the rules of Article 33 of the Geneva Convention are being followed, no expulsions may be carried out where this would violate the freedom from torture or cruel, inhuman or degrading treatment, and the option to apply for refugee status exists, and its grant would result in protection in accordance with the Geneva Convention. The accelerated procedure for reviewing applications for international protection would also be applied among others where the applicant is from a safe country of origin (a list of safe countries of origin to be determined in accordance with regulations published pursuant to Article 39a by the Council of Ministers), and a country not being a member state but listed as a safe country of origin in this case is considered a safe country of origin where the applicant is a citizen of that country, or he/she is not a citizen of any country but was ordinarily a resident in that country and did not present any serious reasons relating to his situation and his request for international protection for which the country should not be treated as a safe country of origin.³²¹

Further the proposed changes seek to introduce a wider use of the border procedure to expedite the assessment of (ineligible) applications, including the introduction of the concepts of "safe country of origin" and "safe third party country", and the placement of arrivals from such countries subject to the border procedure in detention centres for the duration of the application's determination. They seek to provide that applications for international protection shall be heard at the Polish border when the applicant who has filed an application at a border crossing does not fulfil the requirements to remain on Polish territory and, among others, has provided other reasons for filing the application than fear of persecution on the basis of race, religion, nationality, political beliefs or membership of a social group or the risk of suffering serious harm or has not provided any information about the circumstances substantiating such fears of persecution or suffering serious harm, provided incoherent, contradictory or improbable explanations of persecution or the risk of suffering serious harm which do not accord with known facts regarding his/her country of origin, or if he/she arrives from a safe country of origin or a country not being a member state which is considered a safe third party country in relation to the applicant (see further 2.4 below).

³²¹ Own translations.

However, applications may not be heard at the border in accordance with the above proposed procedure in the case of unaccompanied minors, the handicapped, where the individual's psycho-physical state merits the assumption that he was a victim of torture or other cruel, inhuman or degrading treatment or punishment, or where his/her placement in a guarded centre or detention centre could endanger his life or health.³²²

The proposed expansion of scope of the border procedure, and enhanced use of detention envisioned by the proposed legislation, has been criticised by NGOs, including the Helsinki Foundation for Human Rights, which raised concerns about such legislation violating applicants' rights under the Geneva Convention. It has been pointed out that the Geneva Convention does not contain the requirement to apply for protection in the first safe country which the individual reached following departure from his/her country of origin, and the automatic refusal of applications from applicants arriving from countries considered "safe third party countries" places an undue burden on the applicant to prove that his return to such country is not possible, and precludes thorough assessment of the specific individual's situation, which appears particularly alarming to the Foundation given the lack of effective legal assistance to foreigners in Poland. Similarly, and further, such refusal for arrivals from "safe countries of origin", according to the Foundation, lends itself to discrimination on the basis of origin. The detention of individuals subject to the border procedure would exacerbate issues surrounding limited access to legal assistance and inefficient processes for identification of vulnerable individuals, such as victims of violence. The narrowing down of the group of persons who may not be placed in detention from "victims of violence" to "victims of torture (...)" also exposes many vulnerable individuals whose treatment did not amount to torture to repeat trauma.³²³

In the opinion of the Ministry of Interior and Administration, the Law on Protection has to be changed to provide safety of Polish citizens, as the Ministry believes that the current procedure of granting international protection to immigrants is being exploited by those who do not deserve it. However, it is impossible not to notice that in fact, this kind of legislative activity on behalf of the Prawo i Sprawiedliwość (Law and Justice) Government, is politically motivated and above all aimed at consolidating their support of conservative, strongly anti-immigrant, parts of Polish society.

³²² <https://bip.mswia.gov.pl/bip/projekty-aktow-prawnyc/2017/24478.Projekt-ustawy-o-zmianie-ustawy-o-udzielaniu-cudzoziemcom-ochrony-na-terytorium-.html>

³²³ <https://bip.mswia.gov.pl/bip/projekty-aktow-prawnyc/2017/24478.Projekt-ustawy-o-zmianie-ustawy-o-udzielaniu-cudzoziemcom-ochrony-na-terytorium-.html>

Currently the draft of the bill changing the Law on Protection, has become stagnant in the legislative procedure. The draft was reviewed by the Legal Department of the Ministry of Interior and Administration on 9 January 2018, no changes have been made and the draft has been deemed fit to be reviewed by the Council of Ministers. No further actions regarding the draft have been made as of today.