

Country Report: Poland

Updated May 2007

Introduction

1. Current situation in the country

It was not until the community of socialist states had collapsed at the beginning of the 1990s that Poland gradually became a receiving country for refugees. In the ensuing years, the Polish government signed the corresponding international conventions and agreements. Polish legislation on asylum and aliens has not yet been fully adjusted to EU legislation. The asylum laws, which entered into force as recently as October 2003, were amended in April and October 2005. Because of the EU Directives transposition obligation further changes in the law are being discussed now in the Parliament and are planned to take effect in winter 2007. This is however the very early stage of the process so no formal drafts are available for NGOs to consult.

In the early 1990s Poland established a refugee and asylum administration as well as accommodation, closed accommodation and deportation custody facilities. That time saw the setting up of the first non-governmental organisations that acquired competences in the areas of legal advice and care of asylum seekers. This process was strongly influenced by the European Union, especially by the neighbouring state of Germany.

Over recent years, the majority of asylum seekers has used Poland as a transit country to western EU states: in the 1990s, between 80 and 90 percent of asylum claims were not concluded because asylum seekers had left the country before the decision was known. Still, at the fall of 2006 many asylum seekers do not wait for the decision on their application but continue fleeing to Germany, the Czech Republic, or other countries of Western Europe. One reason for this could be the fact that it is sometimes difficult for asylum seekers to integrate into society.

The number of asylum applications in Poland has decreased in recent years. In 2006 3134 applications, covering 7093 people were made, comparing to 6860 in 2005 and 8079 in 2004. It needs to be noted that 3875 applications were ceased or left without proceeding in 2006. This decrease could be caused by various reasons but most probable is the knowledge among the asylum seekers about functioning of the Dublin II system. Most of them prefer not to have Poland as the country of their first asylum application. Poland is still considered mostly as a transit country.

In 2006, same as in the previous years, the great majority of asylum seekers came from the Russian Federation (6405), mainly from Chechnya. Nevertheless, in comparison to the previous year (2005 – 6248 applications) the 2 % increase could be noticed, though, taking into consideration numerous subsequent applications, it does not show any clear trend.

On 1 October 2003, the visa obligation for citizens of the eastern neighbouring countries was introduced in order to limit immigration, among other things. This also applies to Russian citizens, including, at present, refugees from Chechnya.

EU accession on 1 May 2004 resulted in a fundamental change for Poland as the Dublin II Regulation has now become effective: under this Regulation, Poland is responsible for the asylum procedures of all refugees who entered EU territory for the first time when they entered Poland. Also, 1 May 2004 marked the introduction of the European fingerprint system EURODAC in Poland, helping to produce relevant proof in a simple and quick manner.

The acts regulating asylum procedure and other alien's issues were introduced in September 2003: the Act on Aliens and the Act on Granting Protection to Aliens. The latter introduced "tolerated

stay" (stay of deportation) as a subsidiary protection in Poland. It is granted to asylum seekers who do not fulfil the conditions for the granting of refugee status but, on humanitarian grounds, cannot be deported (*subsidiary protection*). Asylum seekers who are granted "tolerated stay" are issued with a one-year residence permit, however, automatically recurring on annual basis through unlimited period of time. While the tolerated stay is granted for an indefinite period, the alien has to apply for a document proving his status every year. Currently, in 2006 and 2007, it gives cause for serious concern that asylum seekers who are granted a tolerated stay must leave the accommodation centres and receive only symbolic social benefits (at present about 50 PLZ) a month. The latest (April 2006) improvement by the Government brought a change in the budget with the sum reserved for the needs of persons granted tolerated stay. Some social assistance that shall be granted to them was however postponed for the winter 2007/2008. Instead of this, an amendment in law since September 2006 bereaved asylum seekers who were granted tolerated stay social assistance and benefits in case of subsequent application or even during the appeal procedure (if denied refugee status and granted tolerated stay).

There are various reasons for asylum seekers with subsidiary protection to leave Poland and continue on to western EU member states: persons receiving subsidiary protection are excluded from a number of social benefits. They are not allowed to participate in integration programmes for recognised refugees but may register with the job centre. Adult asylum seekers with subsidiary protection do not receive free language classes (Polish) but have the same access to the medical care as Polish citizens. The practical access to medical procedures is unfortunately mediocre, as the polish health care is in constant crisis.

Also, the Act on Aliens introduced detention for all asylum seekers who enter or have entered the country without valid travel documents, except for unaccompanied minors, as well as disabled people and victims of torture and violence, provided their health condition prevents any detention means to be imposed. Out of the five new EU members, Poland is making the most restrictive use of the possibility of detaining asylum seekers during the procedure. All asylum seekers who had no right to enter Poland or were crossing the border illegally, or were intercepted inside the territory of Poland without visa or travel document must be detained regardless of their wish to seek protection. The possible duration of detention may last up to 12 months.

2. Statistics

Applications

1. *Total number of individual asylum seekers who arrived (with variation in %):*

| 2006 | 2005 | Variation +/- (%) |
|------|------|-------------------|
| 7093 | 6860 | +3,39 % |

Source: www.uric.gov.pl

2. *Breakdown according to country of origin/nationality:*

| Country of origin / nationality | 2006 | 2005 | Variation +/-(-%) |
|---------------------------------|------|------|-------------------|
| Turkey | 17 | 11 | +154,54 % |
| Serbia and Montenegro | 6 | 2 | + 300 % |
| Iraq | 35 | 2 | 1750 % |
| Russian Federation | 6405 | 6248 | +102,51 % |
| China | 5 | 9 | - 55,55 % |
| Vietnam | 27 | 23 | + 117,39 % |
| Iran | 2 | 2 | 0 |
| India | 19 | 36 | - 52,77 % |
| Afghanistan | 17 | 6 | +283,33 % |
| Azerbeidjan | 8 | 18 | -44,44 % |
| Somalia | 8 | 4 | + 200 % |
| Georgia | 35 | 47 | -74,46% |
| Algeria | 8 | 2 | + 400 % |
| Bosnia and Herzegovina | 0 | 0 | 0 |

Source: www.uric.gov.pl

3. *Unaccompanied minors (only children under 16) according to country of origin/nationality:*

| Country of origin (2005) | Total |
|--------------------------|-------|
| Russia/Chechnya | 55 |
| Afghanistan | 17 |
| India | 13 |
| Pakistan | 10 |
| Ukraine | 7 |
| Somalia | 4 |
| Other | 7 |
| Total | 113 |

Source: UNHCR – Poland

In 2006, 19 unaccompanied minors were granted social benefits, but we did not obtained the data about theirs nationality. Nine of them was later unified with their families in Western European countries, according on Dublin II regulations

Recognition Rates

4. *Total number of applications decided and the statuses accorded:*

| Statuses | 2006 | | 2005 | |
|--|-------------|--------------|-------------|--------------|
| | Number | % | Number | % |
| Refugee status | 423 | 5,80 % | 312 | 3,54 % |
| Tolerated stay | 2048 | 28,12 % | 1832 | 20,77 % |
| Other decisions (negative and withdrawals) | 4811 | 66,06 % | 6677 | 75,69 % |
| Total decisions | 7282 | 100 % | 8821 | 100 % |

Source: www.uric.gov.pl

5. Decisions and decision rates 2005 according to country of origin:

| Citizenship | 2006 | | | | 2005 | | | |
|----------------------------|----------------|------------------------|----------|------------------------------|----------------|------------------------|----------|------------------------------|
| | Status granted | Tolerated stay granted | negative | Dec. Left without proceeding | Status granted | Tolerated stay granted | negative | Dec. Left without proceeding |
| AFGANISTAN | 3 | 3 | 3 | 15 | 3 | 12 | 13 | 2 |
| ALGERIA | --- | --- | 8 | 1 | --- | --- | 5 | --- |
| ANGOLA | --- | --- | 2 | --- | --- | --- | --- | --- |
| ARMENIA | --- | 1 | 24 | 9 | --- | 3 | 22 | 14 |
| AZERBAIJAN | 7 | --- | 1 | 8 | --- | 3 | 7 | 1 |
| BANGLADESH | --- | 2 | 9 | 2 | --- | --- | --- | --- |
| STATELESS | --- | --- | 4 | 11 | 1 | 1 | 8 | 5 |
| BELARUS | 18 | 5 | 31 | 25 | 9 | 5 | 31 | 16 |
| BOŠNIA-HERZEGOVINA | --- | --- | --- | --- | --- | --- | --- | 8 |
| BULGARIA | --- | --- | 1 | 2 | --- | --- | 12 | 3 |
| BURUNDI | --- | --- | 4 | --- | --- | --- | --- | --- |
| CHINA | --- | 2 | --- | 1 | --- | 2 | 6 | 4 |
| COMOROS | --- | --- | 1 | --- | --- | --- | --- | --- |
| EGYPT | --- | --- | 6 | 4 | --- | --- | 3 | --- |
| ETHIOPIA | 1 | --- | --- | 1 | --- | --- | --- | --- |
| GHANA | --- | --- | --- | 1 | --- | --- | --- | --- |
| GAMBIA | --- | --- | 1 | --- | --- | --- | --- | --- |
| GREECE | --- | --- | --- | --- | --- | --- | 1 | --- |
| GEORGIA | --- | --- | 15 | 27 | 1 | --- | 46 | 15 |
| GUINEA | --- | --- | 5 | 1 | --- | --- | 10 | 1 |
| GUINEA BISSAU | --- | --- | 1 | --- | --- | 1 | --- | --- |
| INDIA | --- | 1 | 9 | 8 | --- | 1 | 18 | 23 |
| IRAQ | 1 | 9 | --- | 10 | --- | 2 | 5 | 9 |
| IRAN | --- | --- | --- | 2 | 3 | --- | 5 | 2 |
| JORDAN | --- | --- | 1 | --- | --- | --- | --- | 1 |
| CAMEROON | --- | --- | 5 | 4 | --- | 2 | 3 | --- |
| KAZAKHSTAN | --- | 1 | 6 | 19 | --- | --- | 24 | 18 |
| KENIA | --- | --- | 2 | 1 | --- | --- | --- | --- |
| KYRGHISTAN | --- | --- | 11 | 28 | --- | --- | 14 | 5 |
| CONGO | 1 | --- | 2 | 2 | --- | 3 | 3 | --- |
| CONGO, DEMOCRATIC REPUBLIC | --- | --- | 2 | 3 | --- | --- | 2 | --- |
| CUBA | --- | --- | --- | --- | --- | --- | 2 | --- |
| LAOS | --- | --- | --- | --- | --- | 1 | --- | --- |
| LEBANON | --- | --- | --- | --- | --- | --- | --- | 4 |
| LIBERIA | --- | --- | 2 | 1 | 1 | --- | --- | --- |
| LIBYA | --- | --- | --- | 2 | --- | --- | 1 | --- |
| LITHUANIA | --- | --- | 1 | 4 | --- | --- | --- | --- |
| MAURITANIA | --- | --- | 1 | --- | --- | --- | --- | --- |
| MOROCCO | --- | --- | 2 | --- | --- | --- | --- | --- |
| MOLDOVA | --- | --- | 10 | 6 | --- | --- | 15 | 11 |

| | | | | | | | | |
|------------------------|-----|------|-----|------|-----|------|------|------|
| MONGOLIA | --- | --- | 10 | 1 | --- | --- | 1 | --- |
| NEPAL | --- | 1 | 4 | 4 | --- | 2 | 4 | --- |
| NIGERIA | --- | --- | 9 | 3 | --- | 2 | 8 | 1 |
| PAKISTAN | --- | --- | 28 | 28 | 1 | 2 | 61 | 32 |
| SOUTH AFRICA | --- | --- | --- | 2 | --- | --- | 1 | --- |
| RUSSIA | 384 | 2015 | 631 | 3593 | 285 | 1768 | 1862 | 4158 |
| ROMANIA | --- | --- | --- | --- | --- | --- | 4 | --- |
| SENEGAL | --- | 2 | 1 | 1 | --- | --- | --- | --- |
| SERBIA & MONTENEGRO | --- | --- | 2 | 1 | --- | --- | --- | 18 |
| SIERRA LEONE | --- | --- | 2 | 2 | --- | --- | 1 | --- |
| SLOVAKIA | --- | --- | --- | --- | --- | --- | 1 | 1 |
| SOMALIA | 2 | --- | 1 | 2 | 5 | 8 | 1 | 3 |
| SRI LANKA | --- | 4 | 1 | --- | 2 | 1 | 2 | --- |
| USA | --- | --- | --- | --- | --- | --- | --- | 1 |
| SUDAN | --- | --- | 2 | --- | --- | 2 | --- | --- |
| SYRIA | --- | 1 | 5 | 2 | 1 | --- | 3 | 1 |
| TAJIKISTAN | --- | --- | 1 | --- | --- | --- | --- | --- |
| TOGO | --- | 1 | --- | 2 | --- | 2 | 3 | --- |
| TUNISIA | --- | --- | 2 | 1 | --- | 1 | --- | --- |
| TURKEY | 6 | --- | 5 | 6 | --- | 6 | 2 | 3 |
| TURKMENISTAN | --- | --- | --- | 1 | --- | --- | --- | --- |
| UGANDA | --- | --- | --- | --- | --- | --- | 1 | --- |
| UKRAINE | 1 | --- | 39 | 18 | --- | --- | 52 | 46 |
| UZBEKISTAN | 2 | --- | --- | --- | --- | --- | 4 | 2 |
| VIETNAM | --- | --- | 22 | 6 | --- | --- | 16 | --- |
| IVORY COAST | --- | --- | 2 | 1 | --- | --- | 1 | 1 |
| WEST BANK & GAZA STRIP | --- | --- | --- | 3 | --- | 1 | --- | 4 |
| ZIMBABWE | --- | --- | --- | --- | --- | 1 | --- | --- |
| TOTAL: | 423 | 2048 | 936 | 3875 | 312 | 1832 | 2284 | 4413 |

Deportations / Removals / Repatriation within Assisted Return Programmes

6. Persons readmitted and expelled

EU external border 3346 – persons (4897 in 2005)

EU internal border 235 – persons (431 in 2005)

Source: Border Guards statistics - <http://www.strazgraniczna.pl/stat>

7. Deportations of rejected asylum seekers (via air):

no data found

8. Dublin II Convention practice:

| | Total number of requests presented by Poland to other Dublin States | Total number of requests addressed to Poland by other Dublin States |
|--------------------|--|--|
| Requests presented | | 3188 |
| Requests accepted | 134 | 1196 |
| Requests refused | | |

Source: Central registration of Dublin cases – data of 2005.

Transfers by country:

Transfers out:

134 persons were transferred from Poland from other EU states on the basis of Dublin II, including:

- 58 persons transferred to Austria,
- 17 persons transferred to Belgium,
- 16 to France,
- 14 to Czech Republic,
- 10 to Latvia,

19 – to other states (Norway, Germany, Sweden, Netherlands).

9. Airport procedure:

No airport procedure in Poland.

A. Legal and structural conditions

1. Ratifications

| | Ratified | In force since |
|--|------------------|-----------------------|
| Geneva Convention on Refugees | 2 September 1991 | 26 December 1991 |
| European Convention on Human Rights | 15 December 1992 | 19 January 1993 |
| UN Convention on the Rights of the Child | 30 April 1991 | 7 July 1991 |
| UN Convention against Torture | 21 October 1989 | 6 June 1990 |

2. Legal basis

The right to asylum has been included in the Polish Constitution (Article 56(1) and (2)) since its amendment of 2 April 1997:

Article 56

1. *Foreigners shall have a right of asylum in the Republic of Poland in accordance with principles specified by statute.*
2. *Foreigners who, in the Republic of Poland, seek protection from persecution, may be granted the status of a refugee in accordance with international agreements to which the Republic of Poland is a party.*

1 September 2003 two basic for the aliens acts came into force:

- Act on Aliens of 13 June 2003
- Act of 13 June 2003 on Granting Protection to Aliens within the Territory of Republic of Poland¹

Previously, the asylum procedure in Poland had been carried out on the basis of the Act on Aliens. The first version of this law came into force in 1997, replacing the 1963 regulation; the first amendment entered into force in 2001 to adjust the Act to the demands of the EU accession process.

The following forms of protection exist under the Act on Granting Protection to Aliens:

- Refugee status (Art. 13.1) is granted to asylum seekers fulfilling the conditions of the Geneva Refugee Convention;
- Asylum (Art. 90) is granted to political asylum seekers in need of protection; the grant of asylum being, at the same time, in the interest of the Republic of Poland;
- Permit for tolerated stay (Art. 97) is granted if a person cannot be deported because in the country concerned he/she would be subject to torture or inhuman treatment, may be forced to work, punished without due process of law or have not right to heard his case before impartial court or may be deprived arbitrary form freedom²;
- Temporary protection (Art. 106) is granted exclusively by a decision of the Council of Ministers in such cases where civil wars or ethnic conflicts cause a mass exodus.

According to the *Act of 13 June 2003 on granting protection to aliens within the territory of the Republic of Poland* decisions on granting and withdrawing of the refugee status shall be rendered at I instance by the President of the Office of Repatriation and Aliens (PRAO – org. URiC).

The refugee status in the Republic of Poland shall be granted to an alien who fulfils the conditions for being recognized as the refugee, specified in the Geneva Convention and the New York Protocol. The refugee status shall also be granted to a spouse and a minor child of the alien, if the application for granting the refugee status is related to them, and to an alien's minor child born on the territory of the Republic of Poland.

¹ Hereinafter: Act on Granting Protection to Aliens

² This stay of deportation cannot be compared to the German *Duldung*.

An alien shall be refused the refugee status, if he/she does not fulfill conditions to be recognized as the refugee, referred to in the Geneva Convention and the New York Protocol, has been granted the refugee status in another country, which provides him/her with real protection.

An alien shall be refused the refugee status for the reason of manifestly unfounded nature of the application, if this application: does not contain any grounds to recognize that there is well-founded fear of persecution referred to in art. 1A of the Geneva Convention, aims to mislead the authority or to abuse the procedure for granting the refugee status, indicates, that an alien has arrived from a safe country of origin or a safe third country to which he/she has the right to return to or gives reasons to ascertain, that another state-party to the Geneva Convention is responsible for examining the application for granting the refugee status, on the basis of an international agreement binding the Republic of Poland.

In the decision on refusal of granting the refugee status an alien shall be: granted the permit for tolerated stay or ordered to leave the territory of the Republic of Poland within the time limit specified in the decision, not exceeding 30 days. If an alien appeals against the decision on refusal of granting the refugee status, the appeal authority shall specify the new time limit, not exceeding 14 days, for leaving the territory of the Republic of Poland by him/her.

The proceedings for granting the refugee status shall be initiated upon an application submitted personally by the alien to the President of the Office for Repatriation and Aliens.

The authority admitting the application shall inform an alien in a language understandable to him/her about procedures and principles of the proceedings for granting the refugee status as well as about rights vested to him/her, his/her obligations, and legal effects of non-performance of his/her obligations.

An alien applying for the refugee status may contact freely a representative of the United Nations High Commissioner for Refugees as well as any organizations dealing statutorily with the refugee matters. Information and personal data obtained from an alien and from the authorities carrying out the proceedings for granting or withdrawing the refugee status may be used only for the purposes referred to in art. 35 of the Geneva Convention

The authority admitting the application for granting the refugee status shall: verify whether the application has been filled in correctly and whether an alien has indicated his/her name and surname as well as his/her country of origin, determine the identity of the alien, take photographs and fingerprints of the alien, determine information related to: an alien's country of origin, data of the alien's spouse and minor children staying on the territory of the Republic of Poland, visas or residence permits issued to the alien by the authorities of foreign countries, route of travel to the border and the place of border crossing, the fact of applying for granting the refugee status in another country.

Prior to sending the application for granting the refugee status to the President of the Office for Repatriation and Aliens, the authority admitting the application shall determine, whether: at the moment of submitting the application an alien was authorized to enter the territory of the Republic of Poland or he/she has legally stayed therein; the circumstances referred to in art. 1 sec. F of the Geneva Convention have arisen; shall provide for the performance of medical examinations and necessary sanitary treatments of alien's body and clothes. An application for granting the refugee status shall be immediately send to the President of the Office, no later however than within 48 hours from the moment of submitting an application by the alien.

An alien applying for the refugee status is obliged to report at summons of the President of the Office in order to submit testimonies and explanations, make available all evidence to prove the circumstances that justify granting the refugee status, inform about each change of his/her place of residence, stay on the territory of the Republic of Poland until the day of delivery of the final decision on the refugee status. An alien shall be heard by the President of the Office and provided with a copy of record of such a hearing, upon demand.

An alien who submits the application for granting the refugee status shall be obliged to deposit his/her travel document as well as travel documents of minor children accompanying him/her and of the spouse referred to in the application, to the President of the Office through the authority admitting the application. The President of the Office shall store travel documents deposited until the final decision on granting the refugee status is rendered, and then shall return them to the alien.

An alien who has submitted an application for granting the refugee status shall be issued the provisional identity certificate of an alien, hereinafter called "the identity certificate", for the period of validity of 30 days. The identity certificate confirms an alien's identity and entitles him/her to stay on the territory of the Republic of Poland. When the validity of first identity certificate has expired, the successive identity certificates may be issued to an alien, for the periods of validity not exceeding 6 months until the completion of the proceedings for granting the refugee status.

An alien, in relation to whom the proceedings for granting the refugee status has been initiated, shall be provided, upon his/her request, with the assistance for the period of the proceedings and for the period of 14 days from the date of delivery of the final decision in this case. The assistance shall include: accommodation in the centre or granting to an alien the financial benefit to cover on his/her own the costs of stay on the territory of the Republic of Poland, granting the medical care. The assistance may also include granting assistance in voluntary repatriation from the territory of the Republic of Poland.

Instances

An alien shall submit an application for granting the refugee status through the commanding officer of the Border Guard division, which territorial scope of activity includes the city of Warsaw or through the commanding officer of the Border Guard checkpoint. An alien who is not authorized to enter the territory of the Republic of Poland shall submit an application for granting the refugee status during the border control upon entry to the Republic of Poland, through the commanding officer of the Border Guard checkpoint.

There are two instances for decision-making at the administrative level in the Polish asylum recognition process: the President of the Office for Repatriation and Aliens (PRAO) and the Refugee Council (RC – org. RdU) - an independent Board in which at least half of the members must have a relevant legal qualification. Following these two instances are the Voievodship Administrative Court and the Supreme Administrative Court; two legal instances to which asylum seekers can have recourse. The second one is an extraordinary appeal that must be presented by barrister.

The decision on granting or refusal to grant the refugee status should be rendered within the time limit of 6 months from the date of the submission of the application. The decision on the refusal to grant the refugee status for the reason of manifestly unfounded application should be rendered within the time limit of 30 days from the date of submission of the application.

Reception conditions

Reception conditions for asylum seekers are set out in the Act on Granting Protection to Aliens and the Act of 29 November 1990 on Social Assistance. Further regulations concerning the reception of asylum seekers are set forth in the

- Act of 23 January 2003 on Public Insurance in National Health Fund
- Act of 14 December 1994 on Employment and Combating Unemployment
- Act of 1 December 1994 on Family, Nursing and Upbringing Benefits
- Act of 7 September 1991 on the Education System.

In addition, there are several **Regulations** complementing the above mentioned Acts.

3. Competences

The competent authority for the entire asylum procedure is (RAO, org. URiC) (Office for Repatriation and Aliens), which comes under the Ministry of the Interior Affairs.

4. Societal context

Polish citizens receive benefits from the state's Social Insurance Institution, applying to the areas of health care, unemployment benefits and general social assistance. Benefits are granted if the conditions set out in a number of Acts are present or if the income is lower than a set minimum level.

Benefits are divided in imperative and additional assistance. There is a legally enforceable right to imperative assistance. Additional assistance depends on several external facts, including the official in charge.

Benefits for asylum seekers are granted by the state as benefits in kind. Art. 57 of the Act on Granting Protection to Aliens stipulates that asylum seekers in private accommodation may receive a certain amount of cash for accommodation and food. However, practice shows that this is only possible for persons with special needs, mainly disabled asylum seekers or personally endangered by inhabitants of refugee camps.

Persons granted subsidiary protection or stay of deportation only receive the minimum amount of state benefits (see introduction and B.11). Since September 2006 they must leave the premises (refugee camps) within 3 months even though their subsequent asylum procedure or appeal procedure is pending.

5. Access to the asylum process: conditions of entry and making application

Making application

In practice, a lot of asylum seekers are detained at the beginning of the asylum procedure. This applies to both asylum seekers who apply for asylum during a border check trying to enter Poland without the necessary travel documents (visa, passport) (Art. 40 Act on Granting Protection to Aliens) and asylum seekers who have entered Poland irregularly, even though they apply for asylum directly after having crossed the border (Art. 40).

Asylum claims are directed to PRAO where the procedure is carried out. If the application is made at the border it is up to the responsible Border Guard officer to pass it to the Office for Repatriation and Aliens, where the application is processed further.

If the application is rejected the asylum seeker can lodge a complaint with the Refugee Council (see A.2, Instances) within 14 days. In this case, the suspensive effect of such a complaint is legally disputed.

Protection from deportation during the procedure

The average duration of an asylum procedure is approximately 8 months. During this period there is a deportation ban up to the last instance of administrative procedure. If the asylum application is rejected in the last instance the complaint to the Administrative Courts, does not have a suspensive effect on deportation. Nevertheless the Administrative Court may decide to suspend the deportation

order if there could be the “irreversible result” for the plaintiff. Unfortunately the claim is put through the Refugee Council that have 30 days to pass the files and its response to the claim to Court. This gives little time to court to suspend the deportation order.

"Safe third country" rule

An application may be dismissed as "manifestly unfounded" if the asylum seeker has arrived from a safe country of origin or a safe third country to which he/she has the right to return (Art. 14.1 (3) Act on Granting Protection to Aliens). A state is considered a "safe third country" if it has ratified and applies the following conventions:

- Geneva Convention on Refugees and the New York Protocol of 1967
- European Convention on Human Rights of 1950

In addition, the state must allow asylum seekers access to the asylum procedure, also allowing NGO's to play sufficient role in it and giving them free access to those asylum seekers. The country must also obey the rule of “non refoulement” and respect freedom from inhuman and degrading treatment. The Council of Ministers was supposed to adopt a list of "safe third countries" but this has not happened yet (June 2007).

6. Special procedures

There are no special border or airport procedures in Poland.

7. Distribution/accommodation

In Poland, there are three different kinds of accommodation facilities for asylum seekers:

- An open first reception centre in Dębak (near Warsaw)
- a closed *guarded center* (accommodation centre) in Lesznów (near Warsaw)
- 17 *open centers* (accommodation centres, see list below) with a capacity totalling 3,958 places. These facilities are not spread over the whole country but are located in three of the 16 Polish *voievodships* (provinces): Mazowieckie, Lubelskie and Podlaskie
- 12 deportation custody facilities (arrests for purpose of expulsion) (2 guarded centre is to be open in fall 2007: Przemyśl and Biała Podlaska, and additional 2 in winter 2008: Kętrzyn and Białystok) of which some are operated by the Border Guard and others by the Police. (see map attached in the end)

The three *voievodships* with *open centres* are situated in the centre of the country (near Warsaw) as well as close to the borders with Ukraine and Belarus. Due to the distance, it was not possible for the ICF team to visit reception or accommodation centres in Poland and report on accommodation conditions. However, the delegation was allowed to visit one of the biggest deportation custody facilities in western Poland: Krosno Odjansk (see B.8e). In summer 2006, a number of NGO's under the auspices of UNHCR made a complex monitoring of reception centres in Poland. Bellow are the conclusions of the report that was published short after:

The inhabitants of reception centres:

In refugee camps, subjective to its capacity, lives 131 to 441 asylum seekers. Majority of them are of Chechen origin. There is in fact the only one centre, which is more international (for aliens out of Caucasus origin) – Warszawa Siekierki. The average length of stay exceeds 6 months, but some asylum seekers stay in these premises even several years. Social workers claim that some of them are in the need of mental or psychological assistance.

Accommodation conditions:

The visits showed that room space creates sufficient living conditions in the camps. The families and close relatives are placed together on their request. Women lives together with men only in these mentioned circumstances. All rooms has access to electricity and aliens may possess their own audiovisual equipment. The rooms are clean, bright and fine furnished. The temperature in one of the centres (in Wolomin) was firmly too low, causing many colds. In „Jachranka“ refugee camp due to saving policy hot water was cut off during the daylight (the centre was closed in the end of 2006). Every reception centre has well-equipped schooling room and day-room, as well as ambulatory. In most centres there is no equipment to maintain more specific medical procedures (especially gynaecological). The centres do not have libraries and existing playgrounds are devastated, what affects the living conditions. All premises have praying room which is in most cases the tidiest and best maintained room. Only in Linin such place was not yet organised. In “Jachranka“ the owner limited access, again due to saving policy (heating costs). In view of aliens the living conditions are good.

Staff:

Every centre employs one or two social workers, general practitioner, nurse, teacher and logistic workers and security guards. Totally there is 35 social workers in the camps.

Medical Assistance:

Every reception centre employs general practitioner and enables psychological consultations. The nurse is always present. The most common problems are skin diseases and tineas (mycosis). Many people are in need of psychological treatment; however, PTSD was not diagnosed in single case, despite observed symptoms (sic!). Tuberculosis is quite common. Persons in need of special treatment are hospitalised immediately if prescribed. Refusals of hospital admittance were rare. Medical personnel speak fluent Russian and some may communicate in English.

Security and human trafficking.

Two security officers are employed in each refugee camp. Despite this police interventions are quite common. During 2006 438 persons were seized or arrested for criminal charges. There were also 3 rape attempts. The family violence exists, but is usually not notified to reception centre staff. This considers women and children. No human trafficking cases were noticed but no sufficient help is available in this matter. Aliens claimed they feel safe, regardless of rare fights and quarrels.

Schooling:

In most refugee centers children goes to school whenever their language abilities enables that. Refugee camps provides language classes but adults might be excluded from attendance. Aliens do not have access to press and books owned by centers. The poor language skills is the main obstacle

in mass schooling. In 2006, totally 619 children were attending to primary schools, 44 to gymnasiums and only 6 to secondary schools.

Right to information:

In most centres the written information about the NGO's and UNHCR, authorities and Embassies is published in English and Russian on bulletin-board. In Wolomin and "Jachranka" centres no such information were provided. In all centres, despite Linin, aliens may use public self-charging phones to communicate.

Social benefits supply:

In most centres there are no financial resources to provide inhabitants with clothes, shoes and other sufficient goods.

Employment opportunities:

Aliens may do cleaning works which are praised with higher pocket money. This is the only employment opportunity in centres.

Nutrition:

All centers provide religious diets, as well as equivalents for food if necessary.

Basic problems:

Lack of sufficient financial resources is the most important problem in refugee camps. The others are: no adequate medical equipment, no adequate office equipment, limited access to internet, lack of libraries. The initiatives within the EQUAL projects in 2006 brought some changes. The libraries are in the stage of creation, as well as vocational workshops are carried out in Linin. Some playgrounds for children were renewed.

General evaluation:

Accommodation conditions differ in each refugee centre. In some, bad heating, leaky windows or limited access to hot water cause serious diseases. The rooms are bright and spacey furnished sufficiently. Personal contacts between aliens and administration are good, although the big problem is saving policy due to which some media are limited, what worsens living conditions.

Accommodation centres

CENTRES FOR ASYLUM SEEKERS IN POLAND

| Adres Ośrodka | Adres Ośrodka |
|--|---|
| <u>Dębak</u> – Ośrodek URiC Podkowa Leśna – Dębak 05 - 805 Otrębusy tel. 0 22 729-80-19, 729-80-71,729-80-73, fax 729-80-87 | <u>Białystok</u> – Hotel IGA ul. Antoniuk Fabryczny 40/48 15 - 741 Białystok tel/fax 0-85 653-48-29 |
| <u>Czerwony Bór</u> – Ośrodek URiC Czerwony Bór 24/1 18 - 408 Wygoda tel. 0-86 215-00-49 | <u>Łomża</u> Zajazd „Zacisze”ul. Wesoła 117 18 - 400 Łomża tel. 0-86 216-35-98 |
| <u>Linin</u> – Ośrodek URiC 05-530 Góra Kalwaria tel. 0-22 73616-14, 736-27-98 | <u>Łuków</u> Hotel „Polonia” Al. Kościuszki 29 21 - 400 Łuków tel. 0-25 798-25-43 |
| <u>Białystok</u> Zajazd „Budowlani” ul. Armii Wojska Polskiego 7 15–102 Białystok tel. 0-85 675 00 91 fax 662-31-61 | <u>Niemce k/Lublina</u> 21-025 ul. Leonów 30 tel 0-81 756 19 39 |
| <u>Lublin</u> Wrońska 5 D 20-327 Lublin tel/fax 0-81 745-70-48 | <u>Wołomin</u> Hotel Wołomin ul. Sasina 7 05 - 200 Wołomin tel. 0-22 77-63-395 |
| <u>Radom</u> 26-611 Hotel Ustronie ul. Jodłowa 2/3 tel/fax 0-48 366-46-18 | <u>Moszna</u> 49 A 05- 840 Brwinów tel fax o-22 758 20 53 |
| <u>Warszawa-Siekierki</u> ul. Antoniewska 1D 02-981 Warszawa tel/fax 0-22 334 54 54 | <u>Smoszewo Reception Centre</u> Smoszewo 4 05-170 Zakroczym tel. 022 7853427 |
| <u>Warszawa – Bielany</u> Zajazd „Lipsk” ul. Improvizacji 7 01-992 Warszawa tel. fax 0-22 835 88 33 | <u>Puste łąki</u> ul. Loretańska 8 07-200 Wyszaków 0-29 743 34 80 |
| <u>Warszawa „na Ciołka”</u> ul. Ciołka 14 01-443 Warszawa tel. 0-22 836 02 41 | Leonów (could not find the address) |
| <p><i>Children’s home</i> Ul. Korotyńskiego 13 02-121 Warszawa tel. 822 14 28</p> | |

8. Dublin II

Since 1 May 2004, the Dublin II Regulation and, in conjunction with it, EURODAC have been applied in Poland. According to official announcements, the necessary technical prerequisites have been created, such as the purchasing of 13 fingerprint scanning devices. These machines are used in Warsaw (1), at the border check point Terespol (1) and at several Border Guard units (11). Under Dublin II, PRAO is responsible for determining the member state responsible.

Poland entered into agreement with Germany to carry out returns in keeping with Dublin II at the border check points Kolbaskowo, Olszyna, Swiecko and Zgorzelec. Since 1 May 2004, about 600 readmission requests under Dublin II have been made to Poland, mostly from Germany.

There are no special accommodation facilities for Dublin cases in Poland. Asylum seekers who are returned under Dublin II are treated like other asylum seekers as far as both accommodation and receiving social benefits are concerned, unless they were previously granted tolerated stay. These are excluded from social benefits since September 2006.

Upon arrival in Poland after having been transferred according to Dublin II (in 2005):

- 378 persons applied for asylum in Poland
- 147 persons applied for asylum while in detention.
- 630 persons did not apply for asylum because their asylum procedure was still pending and reopened after they reappeared in Poland.
- 189 persons did not apply for protection, in majority of cases the reason being that they already possessed a tolerated status or refugee status.

B. Details

1. Information (CD Art. 5)

Under the law, the institutions where asylum seekers file their asylum claims must also inform them of the asylum procedure, the legal basis and their rights and obligations during the procedure. However, it is mainly NGO staff who provide asylum seekers with information. Only in January 2006 Border Guards introduced a unified document providing detailed information about rights and obligations of asylum seekers, which is given to alien in the language he/she understands.

In principle, asylum seekers are provided with the following information in writing: the house rules of their accommodation, information on legal advice and support as well as on the possibilities of appeal following a negative decision. Information boards at the centres are designed to inform asylum seekers about the UNHCR and non-governmental organisations (NGOs) offering social assistance and counselling.

In addition, asylum seekers are informed verbally and also in written form of their current rights and obligations at each stage of the asylum procedure. By law, this information must be given in "a language that the asylum seeker understands". However, this provision is only complied with during the filing of the asylum application and when asylum seekers are informed of possible access to the UNHCR and NGOs. During the following procedural steps it sometimes occurs that court decisions or decisions of other instances are not translated even though this is obligatory. In determination

decisions given by PRAO only substance and the rules of appealing is translated into three foreign languages: Russian, English and French.

2. Documentation (CD Art. 6)

Directly after the application for asylum has been made, asylum seekers are issued with a document serving as proof of identity and the ongoing asylum procedure, and which is generally recognised.

3. Legal assistance, legal protection, social counselling, NGO access (CD Art. 14)

There is entitlement to social benefits. Asylum seekers can lodge complaints against the withdrawal or denial of material reception conditions. The complaints are free of charge for asylum seekers. Such decisions are always accompanied by information on the possibilities of appeal.

Asylum seekers can lodge a complaint against their remand to deportation custody and request their dismissal from deportation custody by appealing to Art. 44(1) of the Act on Granting Protection to Aliens. This Article sets out that the President of URIC may dismiss them from detention if the particular case "appears to show that the alien fulfils the conditions for recognition as refugee under the Geneva Convention and the New York Protocol or to obtain tolerated stay".

These rights and conditions only partially apply to refugees with convention status and persons seeking subsidiary protection. In the event of a rejection the state is obliged to examine whether or not the asylum seeker is to be granted subsidiary protection status (*i.e. tolerated stay*). If the asylum seeker is granted subsidiary protection status in this way, the same rights and conditions apply, during the entire procedure, as for refugees with convention status. If the asylum seeker is granted subsidiary protection at another procedural stage, the rights and conditions differ from those of refugees with convention status.

Legal advice

In Poland, legal advice is mainly given by a small group of qualified lawyers belonging to the legal clinics connected to universities or NGOs. They receive further training at seminars, conferences and training sessions. Legal advice by NGOs is free of charge. This area of NGO work was not state-financed by the end of 2005. Since then NGOs received funds from ERF that are distributed by government. If asylum seekers are represented by other lawyers, they must bear the costs from their own resources. Every NGO whose constitution includes refugee work has access to the accommodation facilities for refugees. NGOs must file a request for access to the institution responsible for the respective facility and are issued with an access permit on the basis of the house rules (concerning visiting hours, etc.) therefore being able to establish contact with all asylum seekers. The employees of the reception centres and the NGO workers have expressed their desire for co-operation.

4. Residence and freedom of movement (CD Art. 7)

Every person "legally" staying in Poland has, under the law, the right to freedom of movement. However, their place of residence must be registered. In special cases it is possible for the President of RAO to restrict an asylum seeker's freedom of movement to one city or region until the final decision on the asylum claim has been given (Art. 45 Act on Granting Protection to Aliens). However, the Act does not set forth any restrictions concerning the accommodation conditions if the person concerned leaves the assigned region.

Furthermore, the Act does not contain any provisions protecting the inalienable sphere of private life, as stipulated by the Directive.

5. Families (CD Art. 8)

Family unity is maintained under the law. This applies both to parents making a joint application for asylum, which automatically includes the children, and to parents making two separate asylum claims. In the last case, they are allowed to stay at the refugee facility, together with their children, until a final decision for both applications has been given.

6. Medical screening (CD Art. 9)

After the asylum claim is made, a medical screening of asylum seekers is stipulated by law (Art. 26 and Art. 58). Both Articles also provide for asylum seekers and their clothing to be washed, "if necessary". Only then are asylum seekers allowed to move into the accommodation.

Obligatory medical tests, such as HIV or DNA tests, are not carried out. However, asylum seekers can be subjected to medical screening and treatment at any time during their asylum procedure - on grounds of "public health". The examinations are carried out by the Polish Health Care. After so called "Simon Mol scandal"³ government is planning to implement the obligatory HIV/HCV/HBs tests for all asylum seekers.

There is no quarantine for asylum seekers after their asylum application has been made.

7. Schooling and education of minors, access to employment, vocational training (CD Art. 10, 11, 12)

7a. Schooling (CD Art. 10)

Under the law, children of asylum seekers have access to primary and secondary schools. For Polish citizens, school attendance is compulsory until the age of 18 years. Even though Polish legislation does not forbid children of asylum seekers to attend school after the age of 18 *expressis verbis*, it does not grant them the right, regardless whether or not they have completed their secondary education at that point in time. In this matter, Polish legislation does not meet the demands of the Directive.

Children attend public schools. In addition, (Polish) language classes are taught at the accommodation facilities. It is mainly NGO staff who helps children with their homework and supports them in different ways. In the autumn of 2004, a request within the framework of an EQUAL project was granted, aimed at providing education for minor and adult refugees from January 2005 onwards. School equipment is financed by the Polish state (Art. 61 Act on Granting Protection to Aliens).

No regulation exists prescribing unambiguously when schooling shall end - upon deportation being announced or upon deportation being carried out. In practice, many children are affected by this precarious lack of clarity: these children are arrested, together with their parents, on grounds of irregular stay in Poland; they are immediately notified of the decision to deport the family and are then detained. This decision is usually not carried out until the final decision on the asylum procedure is given which means that these children are not entitled to schooling during this period.

³ In December 2006 Simon Mol, a leader of refugee movement in Poland and anti-racist activist was arrested and accused for intentional infecting at least 8 Polish women with HIV. Even knowing about his positive status from 1997 he insisted on unsafe sex conduct with those women and in case of resistance blamed them for racism.

In practice, only very few children of asylum seekers or minor asylum seekers attend school. According to a survey - which has not been documented to date - only eight percent of them actually attend school. One reason for this is the isolated location of accommodation facilities. For the 2006 data see A.6 (Schooling)

7b. Employment (CD Art. 11)

At present, asylum seekers have access to the labour market on the grounds mentioned in The Directive (access to employment if the asylum procedure takes longer than one year); however, such person is still obliged to achieve the work permit, which may be problematic

Asylum seekers are not forced to take up illegal work due to insufficient benefits - at least, there is no real need to do this.

Recognised refugees and asylum seekers granted tolerated stay have free access to employment.

7c. Vocational training (CD Art. 12)

There are possibilities, offered mostly by the organizations participating in the EQUAL projects to attend some vocational training. Such workshops are carried out in Linin for hairdressing, use of computer, sewing.

8. (Material) reception conditions

8a. Modalities of provision (CD Art. 13 /14)

Social benefits provided by the state during an asylum procedure are set forth in Art. 56 of the Act on Granting Protection to Aliens. These social benefits are only granted upon request, and payments do not continue for more than 14 days after the final decision on the asylum procedure has been given. However, asylum seekers may apply for a prolongation of this period of 14 days up to a maximum of three months after the final decision on the procedure.

Bureau of organizations of centers for asylum seekers (unit of URiC) is responsible for granting social assistance to asylum seekers. This assistance consists of:

- **accommodation in the centres**

Aliens who have been granted social benefits are successively transferred from the reception centre in Podkowa Leśna - Dębak to the other centres, where they can stay until the end of the procedure.

- **benefits concerning:**

- alimentation – full board in the canteen
- tickets for public transport: for the purposes related to refugee status determination proceedings, medical visits, vaccinations and in other particularly justified cases
- permanent monthly financial assistance for purchase of toilet articles and “pocket money”
- providing asylum seekers with clothing and shoes
- Polish language lessons

In all the centres children and adults have an opportunity to attend Polish language classes. Children who have been classified by the teacher can go to primary or secondary schools. Moreover, in some centres there are kindergartens run by asylum seekers.

- access to public schools, school materials and books as well as covering of the expenses arising out of charges for education in schools

Furthermore, an asylum seeker placed in the centre can receive:

- an equivalent in money in return for food for children under 7 years of age, children going to school and ill persons who cannot be provided by the centre with an appropriate diet
- one-time financial assistance for purchase of clothing and footwear.⁴

Art. 57 of the Act on Granting Protection to Aliens sets out the possibility for asylum seekers in private accommodation to receive cash for accommodation and food. The state continues to provide health care for these individuals. If asylum seekers have their own resources to pay for private accommodation they do not receive the social benefits) from the state.

The amount of social benefits does not depend on the duration of stay but on the status of the individual.⁵ Some obligations are linked to receiving these social benefits, such as medical screening (which is obligatory for people in accommodation facilities, see B.6).

As state care is insufficient in some areas, organisations such as Polska Akcja Humanitarna or Caritas offer material aid in the form of clothing and food. NGOs are competent for these additional social benefits as well as for social work and legal advice - a situation which has resulted in conflicts between NGOs and the state about competences for social benefits. The state leaves some of the tasks for which it is responsible to NGOs.

Accommodation facility standards are monitored by the state's Sanitary Inspection, inspecting the nutritional value of food, the organisation of accommodation at the centres and detention facilities, etc. However, NGOs pay regular visits to these facilities as well, publishing their respective findings afterwards.

8b. Facilities / living conditions

All of the residents are either asylum seekers or relatives of asylum seekers. Their average stay at the accommodation centres is 12 months. The main countries of origin are at present the Russian Federation, Afghanistan, India and Pakistan.

The average capacity of these centres is 200 places. Most of them are easy to reach. The facilities are state-run, some of them have been built only recently. However, the Act on Granting Protection to Aliens also provides that the President of RAO may delegate running a facility to charitable organisations, foundations, associations and natural or legal persons. In this case, the operator of the facility must provide the necessary financial means. This possibility is not made use of, with one exception: Polska Akcja Humanitarna runs and finances a facility in Warsaw. All other centres are state-run or state - paid.

Room occupation depends on their size. However, there is a minimum space per person, determined by law. Sanitary facilities are common but separated by gender. It is the responsibility of the residents to keep the rooms tidy - occasionally, there are some deficits. Asylum seekers helping to maintain and clean the facility are usually paid for their work (50 PLN extra for each family member).

⁴ source: www.uric.gov.pl

⁵ Recognised refugees must leave the accommodation after two weeks and receive financial aid from the "family centres" (facilities operated by the local authorities or Voievodships) for up to one year. Maximum financial aid is 1,000 PLZ (about €240) per person and month. For comparison, the rent for an apartment with two rooms in Warsaw (where most refugees live) is about 1,200 PLZ a month. The situation is even worse for non-recognised asylum seekers with a tolerated stay after leaving the state accommodation facility they only receive symbolic state benefits (currently 20 PLZ, which is about €4 a month).

At most facilities, there is a phone in the corridor - asylum seekers must pay for their own calls. In the event of an emergency concerning the asylum procedures or to contact their legal advisors, the facility's staff phone can be used free of charge. Most asylum seekers own a mobile phone.

Often, there are problems because of different nutritional habits, as facilities are generally not able to offer more than two different dishes - which is insufficient in view of the diversity of residents.

There is no special child care at the facilities. At some centres there are playgrounds, sports fields, TV rooms, common rooms and libraries.

Residents have free access to the centres; they must present their asylum seeker ID at the entrance. Other persons do not have free access, "for security reasons". There are official visiting hours when persons with a visitor's permit are allowed inside the centre.

On the premises, accommodation staff ensures the security of asylum seekers. In some centres security guards are employed for this purpose.

According to the UNHCR, the existing centres are overcrowded. In December 2004, a total of 2,768 persons were accommodated there - the capacity being 2,700 - and an unknown number of asylum seekers must wait for a place in one of the centres. In 2006 the capacity of centres increased by 300 and it still grows while new centres are built and the old objects are being renewed. (At present there is 3958 places in the camps). As the number of asylum seekers decreased the problem of capacity was resolved. In 2007 625 persons receives social benefits outside the refugee camps, and 4137 (on 6th of June 2007) receive social benefits.

8c. Socio-cultural environment

Asylum seekers in open accommodation centres may, theoretically, participate in cultural and social activities outside the centre. However, there is no actual integration into the community or neighbourhood. Living side by side with asylum seekers is not a topic openly discussed at the local level. To a certain extent, there are rather critical public debates on migrants, such as public discussions in the media on the refugee situation and its problems, especially concerning the situation of Chechen refugees. Public opinion on the latter is cautiously positive. Over the last months of 2006, the government has contributed several official statements to the discussion on adjusting the Act on Granting Protection to Aliens to the EU Directive.

Festivals and picnics are sometimes held especially for asylum seekers. Refugee Day is also celebrated. These activities are organised by NGOs and are attended by a large number of people.

8d. Staff (CD Art. 14(5))

In many areas, the facilities' staff is not sufficiently trained; language qualifications pose a particular problem.

Despite existing criticism of the qualifications of staff members - mainly voiced by NGO staff - people do recognise that the staff knows the existing legal provisions and also the basis for the asylum procedure. Members of staff who receive further training share the knowledge acquired with their colleagues. At present, NGOs prepare training programmes within the EQUAL project framework.

At the centres, staff members are responsible for the daily work such as handing out letters to the asylum seekers. Basic care for asylum seekers is provided by employed staff; additional voluntary work is offered and done by NGOs, in most cases.

Overall, there is not enough staff to provide care for asylum seekers. At the Dębak facility, one social worker is in charge of 150 asylum seekers.

8e. Exception arrangements, detention, restriction of freedom of movement (CD 14(8) and 16)

Art. 40 and Art. 42 of the Act on Granting Protection to Aliens set out the reasons for detention and the duration of deportation custody.

Art. 40:

“An alien applying for granting the refugee status shall not be detained unless he/she:

1) submits an application for granting the refugee status:

a) during the border control, not having the right of entry on the territory of the Republic of Poland,

b) staying on the territory of the Republic of Poland illegally;

2) prior to submission of an application for granting the refugee status:

a) crossed or attempted to cross the border contrary to the laws,

b) obtained the decision on obligation to leave the territory of the Republic of Poland or the decision on expulsion;

3) there is legal grounds for rendering him with the decision on expulsion after the submission of an application for granting the refugee status”.

Art. 42:

*“1. The ruling on placement an alien in the guarded centre or in the arrest for the purpose of expulsion shall be rendered by the court, for the period of **30 days**.*

*2. In case when an application for granting the refugee status is submitted by an alien placed in the guarded centre or in the arrest for the purpose of expulsion in consequence of execution of the court’s ruling, rendered on the basis of the Act of 13 June 2003 on Aliens, the court shall extend the period of alien’s stay for **90 days**. The day of submission of an application for granting the refugee status shall be regarded as the first day of the period of extended stay.”*

In practice this means that the majority of aliens illegally entering the territory of Poland are placed in the detention facilities. As the NGO’s constantly postulate to limit the scope of the detention at least as if it comes to the maximum time introduced by the latest regulation – 1 year of placement there aren’t any changes so far. Polish law provides other types of preventive measures that could be introduced when it comes to aliens unfortunately those are imposed very rarely.

There are two types of detention facilities - guarded centers (by the June 2007 the only one such place) and arrests on the purpose of expulsion. Due to art. 41 of the Act on granting protection the arrest for the purpose of expulsion shall be applied if the circumstances determined by the Border Guard indicate that it is necessary for the reason of state security and defense as well as for the public security and policy. In practice, currently there is only one guarded center in the Lesznów (near Warsaw) with 132 places, and if there are no free places aliens are placed in the deportation arrests which constitutes the law infringements.

Both facilities can be run either by Border Guards or by the Police. Both have the same competencies and obligations. The differences arise only when it comes to the sources of funding and the way of organizing the facilities (Police has usually parts of the criminal arrests separated

and provided for aliens). The rights and obligations of aliens are to be provided in accordance with the relevant provisions which are the same for both SG and Police.

The proceedings for placing an alien in the guarded center or in the arrest for the purpose of expulsion shall be carried out on the basis of the provisions of the Code of Criminal Procedure, with reservation that the function of the public prosecutor may be exercised by the Voievod representative or by the officer of the Border Guard or the Police.

The supervision of the execution of the ruling on placing an alien in the guarded center or in the arrest is within the competencies of district court competent with respect to the location of the guarded center or the arrest for the purpose of expulsion, in which the alien has been placed.

While rendering the ruling on placing an alien in the guarded center or in the arrest for the purpose of expulsion, the court shall undertake the necessary measures to protect an alien's property. The court shall also notify of the ruling rendered:

- 1) the appropriate diplomatic mission or consular office - upon the consent of the alien concerned;
- 2) the guardianship court, if there is a need to provide care for his/her children, being under his/her care;
- 3) a social assistance agency, if there arises the need to take care of an infirm or ill person of whom the alien has taken care,
- 4) the person indicated by an alien.

An alien shall be informed by the court, in a language he/she understands, of activities undertaken, orders rendered and the rights he/she is granted during the procedure before the court.

TIME LIMITS:

Due to the art. 42 of the Act on granting protection the ruling on placement an alien in the guarded center or in the arrest for the purpose of expulsion shall be issued by the court, for the period of 30 days. The period of stay in the guarded center or in the arrest for the purpose of expulsion may be prolonged for a specified period necessary to execute the decision on expulsion, if that decision was not executed due to the alien's fault.

In case when an alien files an application for granting the refugee status during his/ her stay in the guarded center or in the arrest for the purpose of expulsion the court shall extend the period of alien's stay for 90 days. The day of submission an application for granting the refugee status shall be regarded as the first day of the period of extended stay. If the decision on refusal to grant the refugee status is delivered to the alien prior to the expiry of such period of 90 days the period of stay in the guarded center or in the arrest for the purpose of expulsion may be extended for a specified period of time, necessary to conclude the appeal stage. This regulation creates a danger of issuing the decision on the refugee status within shorter – just three months period (instead of six months period) to avoid the release of an alien from the facility.

The period of stay in the guarded center or in the arrest for the purpose of expulsion may not exceed one year. After such time it should be consider that the expulsion cannot be executed and the body responsible for deportation should file the motion for granting such alien a tolerated stay. In any case after one year an alien should be released immediately after one year time.

The ruling extending the period of stay in the guarded center or in the arrest for the purpose of expulsion shall be rendered, upon request of the President of the Office, the agency of the Border

Guard or of the Police, by the district court, competent with respect to the seat of the requesting authority. It is the alien's right to complaint on such decision within 7 days since receiving it.

RELEASING FROM THE DETENTION FACILITY:

An alien may be released from the detention facility if:

- The ruling on release an alien from the guarded center or the arrest for the purpose of expulsion shall be rendered, because:

- 1) the reasons justifying application of those measures ceased to exist;
- 2) The ruling on placing an alien in the guarded center or in arrest for the purpose of expulsion shall not be rendered if it may cause a serious threat to his/her life or health.
- 3) application of those measures is not possible because of the circumstances other than mentioned in p. 2
- 4) the decision on expulsion of the alien from the territory of the Republic of Poland has been reversed or invalidated;
- 5) an alien has been granted the refugee status or asylum;
- 6) an alien has been granted the permit for tolerated stay;
- 7) an alien has been preliminary detained or if any other legal measure resulting in deprivation of liberty has been imposed on him/her

- the evidence of the case indicates on the probability that an alien meets the conditions for being recognized as the refugee, specified in the Geneva Convention and the New York Protocol or to obtain the tolerated stay (decision of the President of the Office rendered ex officio or upon request of an alien)

An alien may not be released even the mentioned above circumstances exist, if residence of the alien on the territory of the Republic of Poland constitutes a threat to the state security or defense or to the public security and policy or if the circumstances referred to in Art. 1 sec. F of the Geneva Convention have arisen.

An alien may appeal against such decision on refusal to accept a request for release from the guarded centre or from the arrest within the time limit of 3 days from the date the decision has been delivered. The appeal shall be submitted to the district court competent with respect to the seat of the President of the Office, through the head of the guarded centre or through an officer responsible for functioning of the arrest for the purpose of expulsion.

Asylum seekers in detention pending deportation do not receive social benefits (as other asylum seekers do) or spending money.

Asylum procedures during detention

The asylum procedure interview takes place in the detention centre. A complaint against a negative first-instance decision has a suspensive effect. To date, no asylum seeker has been deported during the procedure, the commanding officer stated. He also reported that some of the detained asylum seekers had been recognised. No data is available to the ICF delegation on this matter.

9. Health care (CD Art. 15)

Art. 67 sets forth that asylum seekers are to receive the same health care benefits as Polish citizens. This means, among other things, that the first doctor may refer the asylum seeker to a specialist, if necessary.

At most refugee centres, health care is provided by a doctor who offers regular consulting hours at the centre. Nurses are also present. At some of the centres, there are special infirmaries; if this is not the case, asylum seekers are hospitalised, when necessary. The chronically ill receive the same health care benefits as Polish citizens.

Just like Polish citizens, asylum seekers are issued with a *health card*, which contains records of all illnesses and treatments. Health care benefits for asylum seekers are paid by the National Health Fund.

Medical service for asylum seekers in Poland is co-ordinated by Central Hospital of the Ministry of Internal Affairs and Administration in Warsaw.

In Dębak centre, as well as in the other centres, there is a dispensary, where 2 doctors, dentist and a nurse give medical help to asylum seekers. The dispensary has at its disposal a basic supply of medicines. Remedies prescribed by the doctor are refunded. If there are well-founded reasons patients may be sent to hospital. Some asylum seekers may obtain money for covering expenses of the medical treatment outside the centres.

10. Reduction and withdrawal (CD Art. 16)

10a. Procedure

Withdrawals of state benefits are set out in Art. 56 of the Act on Granting Protection to Aliens:

Art. 65:

"The President of the Office, by means of a decision, shall withhold in the whole or in part the assistance based on placing an alien in the centre or granting the financial benefit, if an alien:

- 1) is in possession of his/her own financial means sufficient to cover his/her needs;*
- 2) after being granted the assistance, has crossed or attempted to cross the border contrary to the law*
- 3) was arrested temporarily due to criminal charges or was punished with imprisonment.*

2. Withholding of the assistance based on placing an alien in the centre shall also take place in case this alien has grossly violated the rules of social coexistence therein or left the premise without notification for the period exceeding 3 days.

3. When assistance is withheld due to reasons referred to in sec. 1 pt 2 or sec. 2 the President of the Office may, upon request of the alien, by means of a decision to restore once the assistance on the hitherto existing conditions."

Asylum seekers are to be informed in writing of benefit withdrawals ordered. Furthermore, they must be able to request the re-introduction of these benefits. In practice, decisions on benefit withdrawal are only communicated in Polish; the possibility of appeals is not translated into a language that the asylum seeker understands.

A violation of the residence obligation or a lack of cooperation during the asylum procedure and follow-up applications are not grounds for a reduction in benefits.

10b. Form

Art. 65 of the Act on Granting Protection to Aliens lists all cases when benefits *must* be withdrawn, whereas Art. 16 of the Directive contains a "*may*" provision.

In the event that an asylum seeker grossly violates the rules of social coexistence at the centres, his/her benefits are reduced to a third of their original size. Emergency health care is still provided. There is no data available on the duration of reductions.

No data is available either on application of the provision in Art. 16(2) of the Directive, setting out that an asylum claim is to be "made as soon as reasonably practicable".

11. Persons with special needs (CD Art. 17)

To present, there are no regulations stipulating who is able to establish whether an asylum seeker is a person with special needs, in which cases or according to which criteria. Also, there is no appropriately trained staff able to carry out such examinations.

Art. 54 of the Act on Granting Protection to Aliens sets forth the reception conditions for persons with special needs. Under this Article, they can be accommodated in private apartments should their state of health demand this. In practice, this situation rarely occurs. Appropriate health care is provided to most disabled persons or pregnant women.

11a. Minors (CD Art. 18) and 11b. Unaccompanied minors (CD Art. 19)

At the age of 18, teenagers have come of age as far as the procedure is concerned. The age of asylum seekers is determined through the documents they carry with them or in the framework of their first medical examination - should there be any doubt about their age. Minors receive special accommodation conditions and mental health care. Their procedure is carried out by specially trained persons.

There are a number of special regulations for the reception of unaccompanied minors, such as special demands of the accommodation facilities, the asylum procedure is carried out under observance of special rules, all measures concerning these procedures are carried out by professionally trained persons, etc.

Under Art. 47 of the Act on Granting Protection to Aliens, the asylum authority is allowed to accommodate unaccompanied minors from the age of 13 in accommodation centres for adults. This provision is not in keeping with Art. 19 of the Directive, which sets a minimum age of 16 for accommodation in adult centres. In practice they are placed mostly in the orphanages where the conditions are sufficient.

There are two forms of legal representation for the child: the guardian, representing the child in the asylum procedure and supporting the interests of the child, and the custodian, who takes care of the child. In most cases, custodians are social workers or NGO volunteers.

11c. Victims of torture and violence (CD Art. 20)

State:

All accommodation facilities are state-run or state-paid. At present, there are 6 psychologist (according to UNHCR sources) working at the centres (employed after phasing out of the MSF mission in Poland – 4 of them are employed by BOC) The employment of a psychiatrist is planned for the fall 2007 and he will be responsible for all 17 accommodation centres.

Polish NGOs:

Of all refugee aid organisations working in Poland in 2005, only Caritas employed two psychologists available for asylum seekers and refugees in Poland. One of them worked in Lublin

(eastern Poland, Lubelskie Voievodship) and offered free mental health care and therapy for asylum seekers and refugees. In the fall of 2006 he left Caritas for A-venir Foundation, an ERF partner of Halina Niec Legal Aid Centre. The other offers free mental health care in Warsaw twice a week, in the context of a European Refugee Fund project that will run until July 2005. This help is available to recognised refugees only. Should therapy be necessary, the psychologist would need to refer her clients to specialists. PAH also co-operates with psychologists. Until 2006, psychological help was provided by MSF doctors (Médecins Sans Frontiers), but the mission quitted.

Double qualification is necessary for this work - an education in therapy and an excellent knowledge of the Russian language. In view of this, it took Caritas three months to find a psychologist for mental health care and diagnosis within this project, which is designed for recognised refugees. A specialised therapist has not been found.

Clinics and specialists in private practices

In Poland, there is a centre for the treatment of victims of political persecution called "Ambulatorium dla Osob Przesladowanych ze Wzglechow Politycznych". The centre is linked to the Institute for Psychiatry at Jagiellonian University in Krakow and specialises in the treatment of holocaust victims and victims of political persecution under the communist regime in Poland. At present, it is the only centre for the treatment of victims of torture and political persecution in Poland.

Due to the high demand of the Centre's main clients, alien refugees can only be treated in exceptional cases - if they are refugees with convention status. There were individual cases where a medical diagnosis for recognised alien refugees was made by the Centre for Victims of Political Persecution. In these individual cases, therapies were not carried out and could only be carried out, on principle, for refugees in the Krakow area (Malopolska Voievodship).

Meeting the costs for asylum seekers:

Due to the tight state budget for asylum seekers' health care, the Office for Repatriation and Aliens - which manages the budget - has, to date, not undertaken to pay therapy costs for treatment by specialists in private practices and clinics.

12. Training staff of authorities and organisations (CD Art. 24)

Seminars, conferences and training are held for persons working in the asylum authority, offered by the government, local authorities and NGOs. Furthermore, supervision and in-service training are offered. Training for staff of the asylum authority URIC is mainly provided by the German Federal Office for Migration and Refugees, in the framework of the PHARE-Twinning project.

C. Actions needed in order to transpose the Directive

Art. 8 Families

Family unity is not constantly maintained in all cases. At the Krosno Odjansk detention facility, for example, men and women are accommodated separately. There is a need for action in this matter.

Asylum seekers must not, in addition to the fact that they are in custody, be disadvantaged through separation from their family.

Art. 14(2a) is not fully implemented either. Families should live in accommodation facilities designed specifically for families, in order to provide an appropriate environment.

Art. 10 Schooling and education of minors

Contrary to the provisions in national law and in the Directive, the majority of minor asylum seekers or children of asylum seekers does not attend school, which is mostly due to the language difficulties. Furthermore it is often due to the fact that the school is not within walking distance and transportation is not organised in every camp. This point of the Directive must be implemented immediately.

Art. 5 Information

The asylum authorities do not provide enough information for asylum seekers on their rights and obligations during the asylum procedure, including on reception conditions. Nevertheless most of the legal decisions are translated, together with the information on appeal procedures.

Art. 13 General provisions on material reception conditions and health care

Art. 13(2) of the Directive stipulates that member states shall ensure a standard of living "adequate for the health of applicants and capable of ensuring their subsistence". This is not the case in every accommodation facility. There is an urgent need for action in order to provide refugees with the assistance which the state is obliged to give.

Art. 14(5) Staff

Border Guard officers working in deportation custody facilities do not receive adequate training. As a result, they are not able to establish which of the asylum seekers are persons with special needs (traumatised persons, victims of torture and violence).

Provisions for persons with special needs

Art. 18 Minors

The best interests of the child are not a priority. Many children are not able to attend school as schools are not within walking distance and transportation is not organised in every centre. Child care is not provided at the centres. There is an urgent need for action.

Art. 19 Unaccompanied minors

Unaccompanied minors in Poland are placed mostly in the Orphanages where they get sufficient care and assistance. These include full-board accommodation, access to education, custodian and legal advisor, as well as psychological consultations.

Art. 20 Victims of torture and violence

Asylum seekers do not have sufficient access to therapeutic treatment or care. There is no state-provided psychologist available to them for such therapy. Only consultations are provided within the time limits. An A-venir psychologist works in Lublin (eastern Poland) and offers free mental health care and therapy for asylum seekers and refugees. There is also a PAH psychologist. After the quit of MSF psychologists mission in Poland in 2006 some of their psychologists were hired by PRAO. There are probably six of them working in all reception centres in Poland.

Detention facility staff is not trained in the area of establishing a need for mental health care. In RSD procedures from time to time interviewers are using trauma detection test, but designed only for Chechen asylum seekers, not other nationalities. However, even if persons with special needs were established, there would still be a lack of treatment and care. According to Polish NGOs, trauma is not considered in most asylum procedures.

The situation for traumatised persons and victims of torture and violence is intolerable and not in line with the Directive's provisions.

Chapter V

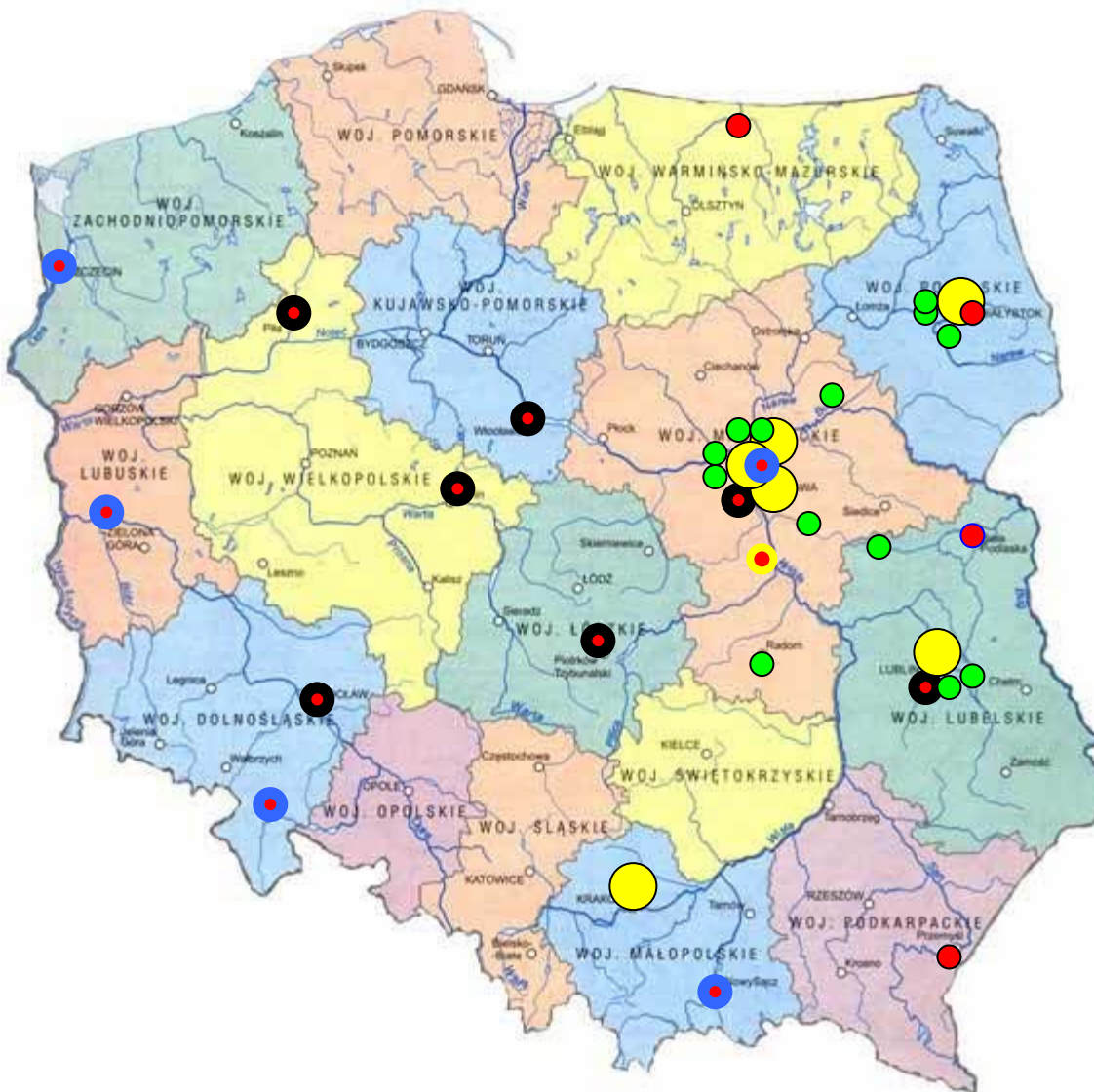
Appeals

Art. 21 Appeals

The Directive does not set out which of the persons involved should provide legal advice. These provisions are part of the Asylum Procedure Directive. Still, we would like to point out one shortcoming: free legal advice during the asylum procedure is not provided by the state but, in most cases, by NGOs and members of legal clinics linked to universities. As a result, the number of NGOs and legal clinics focussing their work on asylum seekers is constantly increasing. The UNHCR supports this development but not longer than end of 2007.

The state must assume responsibility and, instead of remaining passive, take some of the financial burden off NGOs, enabling them to continue their work. This is desirable.

Reception and detention centres in Poland:



- location of NGO's working in the field of asylum seekers aid
- guarded centers to be opened
- reception centers for asylum seekers
- deportation arrests ran by police
- deportation arrests ran by border guards
- guarded centre in Lesznowola