

ASYLUM SEEKERS IN POLAND - CURRENT TRENDS

HNLAC FOCUS REPORT - AUGUST 2017



This brief Focus Report is aimed at providing key statistics and explaining the relevant background concerning asylum seekers in Poland as well as indicated recent trends and developments.

GENERAL BACKGROUND

In 2017, similarly to previous years, the overwhelming majority of all asylum applications in Poland are made while crossing the land border, with the **Terespol Polish-Belarussian border crossing point remaining the predominant entryway for foreigners seeking protection.**

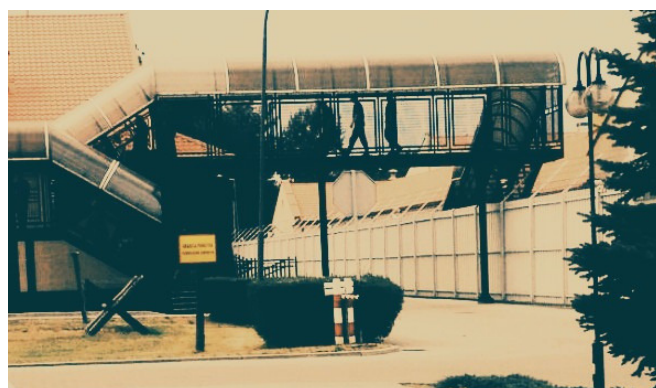
Due to a still considerably high **turnout of persons absconding** the asylum procedure initiated in Poland, Terespol traditionally remains also the main gateway of all Chechen (and other North-Caucasus originating) asylum seekers on their way to other EU countries.

It is important to notice however that the **percentage of persons absconding the refugee procedure** (resulting in formal discontinuation of the administrative proceedings) is **much smaller in 2017 (51%) than in 2016 (73%)**. Interestingly, the rate of absconding is also different in different nationality groups; **78% of decisions** on discontinuation of proceedings due to the so called implied withdrawal of the application for granting international protection in 2017 concerned Russian citizens (1 437 persons) while only **8% Ukrainians**, indicating that as a general rule, Ukrainian applicants are more likely to stay in Poland and wait until the completion of the protection procedure.

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**IN THE PERIOD OF 1 JAN - 27 JULY 2017,
A TOTAL OF 3360 PERSONS
APPLIED FOR PROTECTION IN POLAND.**

86% of all applications were made by foreigners originating from one of the 3 countries neighboring Poland to the east: **The Russian Federation (2375 persons, 71% of the total number), Ukraine (462 persons, 14% of the total number) and Belarus (38 persons, 1% of the total number)**. Applications from Central Asia: **Tajikistan** (89 persons, 3%) and **Kirgizstan** (31 persons, 1%) accounted for a further 4% of the total. Other notable nationality groups were from **Armenia** (64 persons, 2%) and **Georgia** (52 persons, 2%). Asylum seekers from **Syria, Iraq and Turkey** amounted to 1% each. Applicants from various African countries amounted to **less than 1%**, similarly to applicants from South Asia (India, Pakistan, Bangladesh).



Consistently with well established trends, also in 2017, the overall percentage of minors in asylum proceedings in Poland was very high. **47% of all persons covered by asylum applications were (accompanied) children.**

A significant change in the dynamic of asylum applications can be observed so far in 2017. In comparison to previous year, **the total number of asylum applications made in Poland was 2.5 times lower in 2017 than in 2016**. When broken down in relation to different nationality groups this considerable decrease proves to be varied and indicates:

- a 62% drop in Russian applications

- a 44% drop in Ukrainian applications

- a 87% drop in Tajik applications

- a 69% drop in Armenian applications

- a 37% drop in Georgian applications

- a 33% drop in Turkish applications

- a 33% drop in Kirgiz applications

- a 32% drop in Vietnamese applications

The number of applicants from Syria and Iraq remained the same, while a visible increase in the number of applications from Iran and Belarus can be observed.

DIFFICULTIES IN SUBMITTING APPLICATIONS AT THE BORDER

There is a continuous tension at the border crossing in Terespol which is the main gateway of asylum seekers into Poland. This protracted crisis concerns broadly reported difficulties in filing asylum applications at the border. Persons attempting to enter Poland coming predominantly from the Northern Caucasus (Chechnya) and quoting asylum needs as their reason for travel **are often not qualified as asylum seekers and thus receive decisions denying them entry**. Many of them undertake multiple attempts at entry, often remaining in orbit between Belarus and Poland for months.

The Border Guard's response to NGO inquiries in individual cases is invariably invoking the fact that such persons are **not explicitly asking for asylum** and are mentioning other, invalid reasons for entering Poland. A high rate of absconding indirectly contributes to this strict policy of the Border Guard, who tend to undermine the credibility of statements made in support of asylum claims, seen only as means of abusing the procedure and finding an easy way to enter the Schengen zone.

The protracted crisis in Terespol is also linked to the problem of lack of official written protocols documenting the course of initial interviews made at the second line of border control. Foreigners denied entry at the border often claim that they explicitly asked for asylum and were dismissed but in such cases evidentiary difficulties come into play. As a result, **cases of multiple attempts of crossing and filing a refugee application are common**, and the courts are willingly applying detention based on the assessment that such repeated attempts at crossing without explicit will to seek protection indicate **lack of credibility or attempt at abuse of proceedings**.



The HNLAC records consistently show a **concerning number of complaints** from persons not allowed to submit their asylum claim at the Terespol border crossing. There is an **estimated group of some 500 persons** (as of end of June 2017) in orbit between the Belarussian border town of Brest and the Terespol BCP repeatedly trying to submit applications. HNLAC has records of a number of persons who succeeded in filing their asylum applications only after multiple (**often 10-15 times**) attempts in crossing.

As already indicated, the statistical comparison between the first 6 months of 2017 with the corresponding period of the previous year shows that the number of asylum applications in Poland dropped by 2,5 times. Based on these statistics, the HNLAC engaged in a research that would provide a viable explanation of this dramatic change. To meet this end, the HNLAC begun short interviews with asylum seekers whose motions were accepted at the border as well as those remaining on the Belarussian side, in Brest, who were unable to enter Poland and file their asylum applications, NGO workers and the Border Guard.



Preliminary findings allow for making several tentative conclusions:

1) The decrease of applications is varied in relation to different nationalities.

In the period of Jan-Jun 2017, a 61% decrease of applications made by Russian citizens was reported (mainly from Chechnya), a 46% decrease in relation to applicants from Ukraine, 87% - from Tajikistan, 73% - from Armenia, 44% from Georgia. The numbers of applications made by Syrians and Afghanis remained the same. It is assumed that to some extent these changes may be attributed to the changing situation in countries of origin but the ineffectiveness of application process at the Polish border undoubtedly is an important factor.

2) The daily intake of applications at Terespol border remains on the same level, irrespective of the number of persons attempting to enter and usually does not exceed 1 – 2 families

Some of the persons undertaking multiple attempts at entering Poland are thus discouraged and proceed to see alternative ways of entering Europe and submitting their applications.

3) There are considerable difficulties in entering even in case of persons in relation to whom the ECHR has issued a relevant Interim Measure.

In several similar cases concerning this practice of refoulement brought before the European Court for Human Rights, Interim Measures were ordered. According to NGO reports, in some instances, the Border Guard officers at the Terespol border crossing, failed to acknowledge their legal effect, dismissing them during border control as an unacceptable foreign-language document. Though the ECHR admittedly noticed the difficulties that asylum seekers may face at the Polish-Belarussian border, the implementation of the Interim Measures thus remains problematic. A number of applications to ECHR in relation to difficulties at the border and the risk of refoulement are pending.

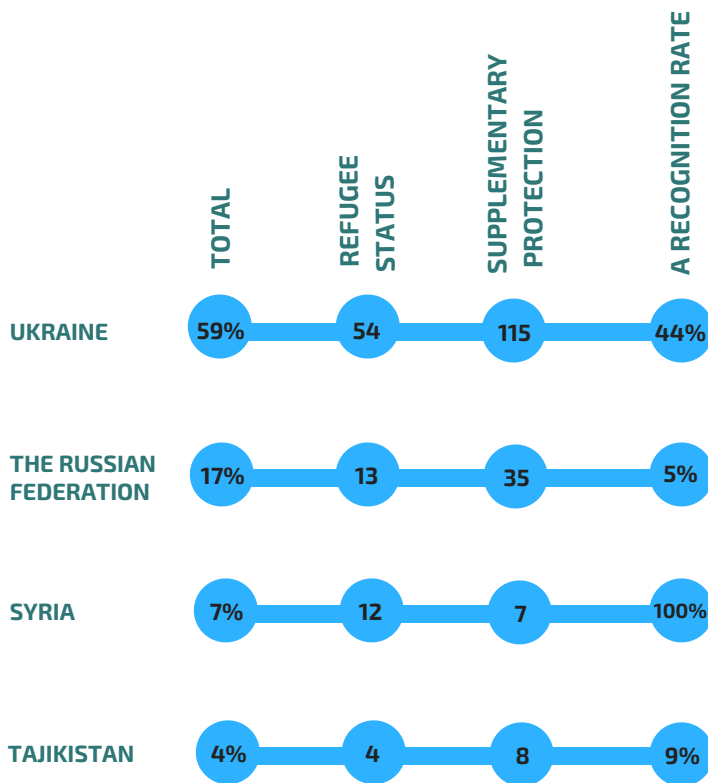
RECOGNITION RATE

01.01.2017 - 27.07.2017 r.



In the reported period the Head of the Office for Foreigners acting as the 1st instance authority in the protection proceedings issued **3 546 decisions**. Various forms of protection were granted to **286 persons, constituting 8%** of the total number of applicants. **1424 persons (40%)** received a negative decision, while **1836 cases** were discontinued.

Most positive decisions in this period were delivered in relation to applicants originating from the following states:



One of the most notable changes in the levels of recognition rates is **the unprecedented increase in the number of positive decision issued in relation to Ukrainian asylum seekers** coupled with a 44% drop in the number of Ukrainian applications. A statistical comparison of the same periods in 2016 and 2017 shows an astounding disproportion: **169 positive Ukrainian decisions delivered in 2017 and only 10 in the corresponding period of 2016.**

DUBLIN III PROCEEDINGS

In 2017 Poland already received **3605 Dublin III "in" applications** from other states, most of which was based on finger prints identification in the Eurodac system. The overall number of such applications made in **2016 amounted to 9 501**. The largest number of 2017 applications came from Germany, Austria, Belgium and Sweden. **58%** of all Dublin applications concerned Russian citizens while **10%** concerned Ukrainian citizens. Tendencies, nationalities and statistics concerning the implementation of Dublin III proceedings follow the general patterns of previous years. It should be noted however, that the rate of actual transfers vis-à-vis to the number of Dublin applications increased from 9501/1408 (14,8%) in 2016 to 3605/991 (27,4%) in 2017.



DETENTION OF ASYLUM SEEKERS

As a matter of general principle, a foreigner who requests granting the refugee status at the border, and who did not enter or did not try to enter illegally the territory of the European Union and did not present false documents and in case there is no Schengen ban against him/her, shall be directed to the open reception centre for the refugees.

Asylum seekers may be placed in the guarded centre or in an arrest for foreigners only in certain conditions:

- ▶ if there's need to establish his/her identity or nationality (for example he/she does not have a passport or his/her passport is false);
- ▶ in order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant
- ▶ in order to prepare the return and/or carry out the removal process, provided that the foreigner already had the opportunity to access the asylum procedure, that there are reasonable grounds to believe that he or she is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision;
- ▶ he/she may constitute a threat to other people safety, health, life or property
- ▶ when protection of national security or public order so requires

- ▶ he/she does not fulfill his/her obligations stipulated in the decision on applying alternatives to detention
- ▶ in accordance with Article 28 of Regulation (EU) No 604/2013 in case of a serious risk of absconding

If there reasonable grounds to believe that a foreigner will not obey the rules of stay in the guarded centre, he/she can be placed in the arrest for foreigners. Placement in detention of any form can only be effectuated following a court decision.

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IN 2016, 603 FOREIGNERS APPLYING FOR GRANTING INTERNATIONAL PROTECTION WERE APPREHENDED AND PLACED IN GUARDED CENTERS OR ARRESTS FOR FOREIGNERS, WHICH IS TWOFOLD AS COMPARED TO 2015 (THEN 256 PEOPLE WERE APPREHENDED AND DETAINED).

Statistics for 2017 have not been received yet, but the numbers for previous years suggest a worrying general tendency of more frequent instances of detention in relation to asylum seekers. Court practice indicates a consistently restrained application of alternative measures instead of detention in such cases, especially vis-à-vis asylum seekers in relation to whom the Dublin III procedure has been enforced.



AVAILABILITY OF LEGAL AID

A 2015 amendment to the Act on granting protection established **a state sponsored legal aid system** directed to asylum seekers. This system is formally operational since January 2016 but in practice it is still not full-fledged and it remains to be seen whether it can effectively ensure assistance to all those in need.

According to these new provisions **asylum seekers are entitled to legal assistance and advice** at the administrative level from NGO legal counsels and from lawyers hired by state. At the judiciary level the courts usually accept requests for free legal assistance and ex officio lawyers are appointed by the Bar Associations.

As this system is limited to the appeal stage specialized Polish legal-providing NGOs are of the opinion that their services are still necessary. In practice a prevailing majority of asylum seekers prefers to turn to NGO lawyers rather than corporate lawyers who usually lack any training in the field of refugee law.



SOURCES:

<http://udsc.gov.pl/en/statystyki/raporty-okresowe/raport-roczny-ochrona-miedzynarodowa/2015-2/>
<https://udsc.gov.pl/en/statystyki/raporty-okresowe/raport-roczny-ochrona-miedzynarodowa/2016-2/>

Simultaneously to these developments the accessibility of free legal assistance in Poland has noticeably decreased in the course of 2017. The overall number of NGO-based lawyers rendering free legal assistance to asylum seekers has dropped, as has the number of visits to detention centers. These limitations are the direct effect of the suspension of distribution of the AMIF and dire financial situation of many refugee-assisting NGOs in Poland. The last call for AMIF projects aimed at asylum seekers and refugees has been announced in May 2016. The planned projects were due to start their implementation in September 2016. After months of waiting and postponing the announcement of the call results it has been unofficially communicated that **the AMIF funds for refugee aid, including legal assistance, are suspended till further notice on the Polish Migration Policy, causing many NGOs to scale down their operations.**

The Halina Nieć Legal Aid Center (HNLAC)

is a non-profit non-governmental organization established in 2002 in Kraków and UNHCR's implementing partner in Poland. HNLAC's main objective is to protect human rights by providing free legal aid to persons at risk of social exclusion and discrimination, including the poor, victims of domestic violence, foreigners, asylum seekers and refugees.

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