



Situation of Dublin Returnees in Poland

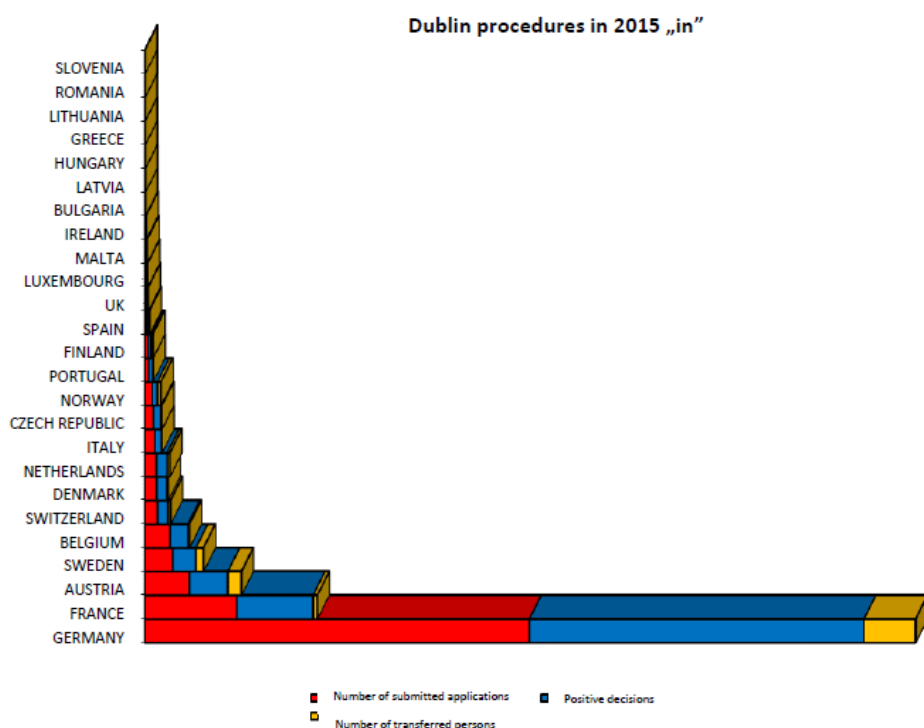
HNLAC Information Note - July 2016

This information note is aimed at providing relevant background information concerning the legal and factual situation of Dublin returnees coming to Poland.

Statistics

Poland is still perceived by asylum seekers primarily as a transit state. Recent statistics¹ confirm that **over 71% of asylum proceedings** initiated in Poland are **discontinued** which in most cases is caused by applicants' **absconding** and going to other EU states.

In 2015 Poland received **6395 Dublin III "in" applications** from other states, most of which was based on finger prints identification in the Eurodac system. The largest number of applications came from **Germany – 3 775** applications, **France – 901** applications, **Austria – 438** applications and **Sweden – 272** applications. **5 445** applications were examined positively (approximately **85%**). In 2015 Poland received **899** foreigners².



¹ This figure is to be treated as approximation. It comes from the comparison between the number of asylum seekers vis-a-vis the number of decisions on the merits and decisions on discontinuation of proceedings in 2015.

² Information of the Head of the Office for Foreigners (...) March 2016, available at: <http://udsc.gov.pl/en/statystyki/raporty-okresowe/raport-roczny-ochrona-miedzynarodowa/2015-2/>

Asylum Procedure

Poland applies the so called uniform asylum procedure meaning that each application for protection filed within its territory initiates proceedings verifying the fulfillment of criteria for granting refugee status as well as grounds for subsidiary (supplementary) protection.

If a foreigner is not granted protection in the form of the refugee status or supplementary protection he or she is obliged to leave Poland within 30 days. In case a failed asylum seeker does not leave Poland within this period, a return decision is issued by a Commander of the responsible Border Guard Unit and a re-entry ban can be issued. Within the procedure aimed at issuance of return decision the Commander of a Border Guard Unit shall verify if there are grounds for ordering one of the two additional protection statuses withholding return: residence permit for humanitarian reasons or tolerated stay.

Residence permit for humanitarian reasons is granted to persons if return to a country of origin could:

1. violate their right to life, freedom and personal security, or
2. violate their right to be free from torture or inhumane or degrading treatment or punishment, or
3. violate their rights to a fair trial or result in subjecting them to arbitrary punishment, or
4. result in subjecting them to forced labor, or
5. violate their right to family or private life as defined in the Convention for the Protection of Human Right and Fundamental Freedoms drawn up in Rome on 4 November 1950, or:
6. violate the rights of a child in a way that would threaten the psychosocial development as defined in the Convention on the Rights of the Child of 20 November 1989.

Tolerated stay permit is granted to persons, if return to a country of origin could:

1. violate their right to life, to freedom and personal security, or
 2. violate their right to be free from torture, inhumane or degrading treatment or punishment, or
 3. violate their rights to a fair trial or result in subjecting them to arbitrary punishment, or
 4. result in subjecting them to forced labor
- or:
5. if expulsion is not possible due to circumstances independent from the authority executing the return decision and from the foreigner

Tolerated stay permit on the grounds mentioned in points 1-4 is given in case the permit for humanitarian reasons cannot be granted because a person is guilty of committing serious crimes or activities contrary to the principles of United Nations or he/she has instigated or otherwise participated in the commission of those crimes or offences, or poses threat to the defense, national security or safety and public order.

Return decisions, as well as decisions on granting residence permit for humanitarian reasons and tolerated stay permit are issued by a Commander of the Border Guard Unit.

In case grounds for granting residence permit for humanitarian reasons or tolerated stay appear after the return decision has been issued by the authorities of the last resort a separate procedure with regard to granting the aforementioned permits shall be instituted *ex officio*.

Re-opening of asylum procedure after Dublin

Absconding during the duration of asylum procedure results in a decision on discontinuation of the process. In such cases the procedure may be reopened upon a motion from the asylum seeker who is returned to Poland under Dublin. Until November 2015 the statutory time limit to reopen the procedure amounted to 2 years. The Law amending the Law on Protection relating to transposition of the recast Asylum Procedures Directive which entered into force on 13 November 2015 shortened this deadline to 9 months. In practice it means that if the asylum seeker is returned before the elapse of this period, he should express his wish to continue the procedure (re-open it). If the transfer takes place after the elapse of this period the returnee may still file a new (subsequent) application for asylum upon his return and hence start a new procedure. It should be noted however that as this new application is considered to be a subsequent one, it is subject to an admissibility procedure.

It should be noted that in case of decisions on discontinuing the procedure issued under the previous legal framework, the deadline of 2 years for reopening the procedure is still applicable.

The right to work during asylum procedure

If a first instance decision has not been issued within **six months from the date of submission of an application** for granting the refugee status, and the proceedings were prolonged for the reason beyond the applicant, the Head of the Office for Foreigners, **upon the applicant's request**, shall issue the certificate, which with a temporary certificate of foreigner's identity constitutes a basis for an applicant and his/her spouse, on whose behalf he/she made an application, to perform the work on the territory of the Republic of Poland.

A foreigner may take up work without any additional permissions after obtaining international protection in Poland.

Social assistance

Persons who apply for granting the refugee status are entitled to social assistance and medical care. Social assistance (apart from full board and accommodation) cannot be granted, however, to foreigners who are placed in the guarded centers or in an arrests for foreigners.

Social assistance in open centers includes:

- ▶ accommodation,
- ▶ full board, or its equivalent
- ▶ pocket money for personal expenses,
- ▶ regular financial help for purchase of cleansers and personal hygiene,
- ▶ one-time financial help or vouchers for purchase of clothes and footwear,
- ▶ course of Polish and basic materials necessary for learning,
- ▶ didactic equipment for children enjoying education and care of public institutions, primary schools, gymnasia or grammar schools,
- ▶ covering, as far as possible, expenses of extracurricular classes and recreational and sports classes of children,
- ▶ financing the travel by means of public transport:
 - in order to take part in the proceedings for granting the refugee status,
 - in order to attend medical examinations,
 - in other particularly justified cases.

Social assistance may be also granted in the form of financial benefit (allowance) for covering the costs of living by a foreigner who decides to live on his/her own, outside the open centers for asylum seekers. Such a solution may be justified by the necessity to:

- ▶ ensure safety to a foreigner, with particular focus on the situation of single women,
- ▶ protect public order,
- ▶ protect and maintain family relations,
- ▶ prepare a foreigner for conducting independent life beyond the centre, after receiving decision on granting the refugee status or decision refusing granting the refugee status, in which the supplementary protection shall be given

Decision on granting social assistance in form of financial benefit shall be provided by the Head of the Office for Foreigners, on foreigner's request or ex officio.

During proceedings for granting the refugee status (from application until final decision of the Refugee Council), a foreigner is entitled to receive social assistance (see above). After receiving a final decision on granting the refugee status from the Refugee Council, the applicant is entitled to social assistance and medical care for the period of 2 more months (after this period, he/she has to leave a reception centre), and, if the refugee status procedure was discontinued, the period of social assistance expires 14 days after the receipt of a final decision on discontinuing the procedure. However, if the foreigner submitted an application for assistance in assisted voluntary return, the period of assistance will be extended until the day of leaving.

In case the applicant expresses their will to return voluntarily when their refugee procedure is ongoing or before the elapse of the 30 day period since the final decision on refusal to grant protection was delivered, he/she is entitled to social assistance and medical care until the end of the period within which he/she may remain in Poland.

Integration assistance

Refugees and persons, who are granted the refugee status or benefit from the supplementary protection, have a right to integration assistance for the period of maximum **12 months after the positive decision**.

Application for this integration assistance shall be submitted through poviast centre for family support in the period of **60 days** from the day of being granted the refugee status or supplementary protection.

A foreigner who was granted the refugee status shall enclose to the application copies of the decision on granting him/her the refugee status or supplementary protection, a travel document provided for in the Geneva Convention (concerns the refugee status), a residence permit issued in consequence of granting him/her the refugee status or supplementary protection.

Free information and legal advice

An applicant in refugee procedure is entitled to free legal information in the first instance proceedings. Free legal information consists of informing the applicant about the applicable law and the procedures.

Furthermore, the applicant has the right to free legal advice that includes:

- preparation of an appeal against the decision on: refusal to grant the refugee status or subsidiary protection, discontinuance of the international protection proceedings, transferring the applicant to

the member state responsible for examination the application for granting international protection and discontinuance of the proceedings, recognition of the application for granting international protection as unacceptable, refusal to consider the applicant's statement on intention to renew the application for refugee status in case the procedure was previously discontinued

- legal representation in appeal proceedings concerning international protection, transfer the applicant to the member state responsible for examination the application for granting international protection

Free legal advice is provided to the applicant who acts without a lawyer or legal adviser. Before obtaining legal advice, the foreigner is obliged to submit written statement claiming that he/she has appointed neither the lawyer nor legal adviser in the refugee procedure. Moreover, the foreigner is obliged to submit the letter of authorization to the lawyer, legal adviser or a lawyer from a non-governmental organization (NGO) in order to receive free legal advice.

Detention of asylum seekers

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 have 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.

A foreigner shall be placed in a guarded centre or in an arrest for foreigners on the basis of a **Court decision**. Such decision is very often delivered only in Polish, and after a few days is translated into language which is understandable for a foreigner. A foreigner has a right to appeal against the decision on placing him/her in detention guarded centre or in an arrest for foreigners within the period of 7 days. In case the Courts decision was delivered only in Polish the 7 day period opens anew once the translation is delivered. Moreover, in certain circumstances stipulated in law alternatives to detention may be applied instead of placing foreigner in a guarded centre or an arrest for foreigners.

Submitting an application for the refugee status of a foreigner placed in a guarded centre or in an arrest for foreigners will not automatically effect in his/her release. If an application for the refugee status is submitted in the guarded centre/an arrest for foreigners, the Court may prolong his/her stay in the centre or in the arrest for period of 90 days, starting with a date of submission of an application by a foreigner. After lapse of this period, the period of stay in the Guarded Center may be prolonged based on individual circumstances of the case, when the procedure for granting protection was not finished and the grounds for placing an applicant in the Guarded Center are still valid. Overall period of stay in the centre during the refugee procedure **cannot exceed 6 months from the date of submitting an application for granting the refugee status in the guarded centre.**

Commander of the Border Guard Unit may release a foreigner from the guarded centre. Premises of releasing a foreigner from the guarded centre are stipulated in the law. The foreigner may be released if:

- ▶ the reasons justifying application of detention ceased to exist (for example his/her identity has been confirmed);
- ▶ stay in the centre may cause a serious threat to his/her life or health;
- ▶ foreigner's psychophysical state raises a presumption that he/she has been subjected to violence;
- ▶ he/she received a confirmation that there is a presumption in favor of considering him/her as a victim of trafficking;
- ▶ the decision on expulsion of the foreigner has been reversed or invalidated;
- ▶ foreigner has been granted the refugee status, supplementary protection, asylum, permit for tolerated or humanitarian stay;
- ▶ another legal measure resulting in deprivation of liberty has been imposed on him/her;
- ▶ because of legal or factual reasons, enforcement of the obligation to return is not possible;
- ▶ repeal or invalidation of a return decision;
- ▶ there are other serious circumstances which make a foreigners' stay in the centre difficult.

During the refugee procedure, on no account should unaccompanied minors, disabled, victims of violence and people whose health or life would be endangered due to detention be placed in guarded centers and arrests for foreigners. A woman, above fourth month of pregnancy cannot stay in an arrest for foreigners.

Alternatives to detention

Since 1st May 2014 the new Foreigners Act implemented provisions concerning alternatives to detention both in the migration and asylum context, in form of an obligation to surrender a travel document; reporting to immigration authorities at regular intervals; an obligation to stay at a particular address; and release on bail.

The Court decision to detain should always be based on the individual circumstances and personal history of each person applying for refugee status in Poland. Justification of a detention decision should also contain clear reasons why other non-custodial measures would be inadequate for the purpose and, in the light of existing alternative measures, there should be clear proportionality between the detention and the end to be achieved. Statistical data confirms a growing use of alternative measures parallel to the decrease in application of detention. Nevertheless, court jurisprudence is still diverse and in some cases justification rests on the assumption that a returned asylum seeker has no stable accommodation or means of subsistence which are necessary to apply the alternative measured effectively. This assumption may be easily contested however as asylum seekers are entitled to accommodation and social assistance from the State.

Risk of detention after Dublin transfer

Dublin returnees transferred to Poland are either directed by the Border Guard to a reception center or detained for a maximum of 48 hours during which the BG may request the court to place them in detention (in one of 6 guarded centers).

If the asylum seeker is returned under Dublin III Regulation to Poland, it is very probable that they will be placed in detention due to the fact that they left Poland contrary to the binding laws. Furthermore, absconding may have an indirect adverse effect on the asylum procedure as it may be considered as an indication that the applicant is seeking to improve his economic situation rather than genuinely in need of protection from persecution.

Additionally, Polish authorities may qualify illegal border - crossing committed contrary to Dublin III Regulation as an offence punishable with fine. Additionally, the foreigner may be charged with costs of transfer by another EU member state.

Availability of legal aid

A recent amendment to the Act on granting protection (November 2015) 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 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.

Separation of families

Over the course of recent years Polish NGOs have been recording cases of a troubling practice during the implementation of transfers of separated families. These were instances where only some members of the foreigners' family, who have been initially under one, common asylum application in the territory of the Republic of Poland were sent back. Such practice was most commonly used in cases of foreigners who lodged an asylum application to the Head of the Office for Foreigners in Poland and after that travelled on to Germany.

Another point of concern are recurring returnee's testimonies indicating that they were transferred while their state of health deemed them unfit for such travel and as a result the process exposed them to distress and suffering. Further analysis showed that in a number of cases appropriate medical documentation concerning sick or vulnerable transferees was not processed from Germany to Poland and that German authorities failed to inform the Polish Border Guard beforehand about the special needs of the person in question.

Medical and psychological assistance

Access to health care for detained foreigners is guaranteed by the law and is provided under the same conditions as for Polish nationals. According to the law, a detained foreign national is provided health care under the system of mandatory public health insurance which is paid for by the state. Initial medical examination is conducted immediately after a foreigner is placed in detention. The medical personnel in all detention centers consist of a nurse and a doctor, who provide health care to all detainees requesting medical assistance.

If the health condition requires care which cannot be provided within the detention facility or in cases where surgery is required, the BG provide the foreigner with transportation to a hospital or other medical institution.

The same general rules apply to asylum seekers living in refugee centers and in private accommodations.

In each facility (in detention and in open refugee centers) foreigners have access to the psychologist but the translation during psychological sessions continues to be problematic in some cases. Psychiatric therapy can be also carried out upon referral from the general practitioner, such therapy would be carried out outside of refugee center. If psychiatric treatment is needed in case of a detainee they may be placed in a psychiatric hospital but after hospitalization they may be redetained.

Vulnerable persons

The HNLAC has underlined on many occasions that the identification of vulnerable persons and victims of torture remains problematic as is the practice of courts taking decisions on placement in detention. Even though there is noticeable progress in this regard it is crucial that the person in question also actively cooperates with Polish authorities (Office for Foreigners and Border Guard) and presents all relevant documentation (if any) medical or otherwise that could indicate his special needs as early as possible during the process.

Dublin returnees should make sure that any previous medical records or additional documentation concerning their health or special needs is provided – to the court deciding upon detention, to the Border Guard and to the Office for Foreigners proceeding their asylum claim.

According to recent amendments in the Act on granting protection, the Office for Foreigners is obliged to apply a special procedure upon identification of the asylum seeker as a vulnerable person with the possibility of ordering a medical or psychological examination to confirm the mental or physical state of the asylum seeker in question.

Special guarantees during asylum proceedings are granted to the following groups of foreigners (inter alia): unaccompanied minors, victims of violence and the disabled, the elderly, pregnant women, single parents, human trafficking victims, ill persons.

Special treatment may consist in ensuring such people with special social aid and ensuring adequate support with regard to the procedures. Required interviews with such persons are conducted in conditions adapted to their needs and perception abilities, with a possibility of involving a psychologist or a school counselor (in the case of minors) and a medical doctor where appropriate. All such activities are to be run by employees with special qualifications in this regard.

It is important to note that persons whose mental and physical condition may justify a presumption that they were subject to violence, unaccompanied minors and the disabled cannot be placed in detention. Court practice is however diverse and it is crucial that the asylum seeker in question presents all medical documentation in their possession confirming his medical condition. If such documentation is not available it may be necessary to file a formal motion for an expert opinion (medical or psychological) in order to ensure that detention is not applied.

Security conditions for asylum seekers in Poland

In general, Poland provides asylum seekers with a safe environment. The law enforcement is in place and legal remedies are available. The basic security in the reception centers is provided by the management and appointed guards from selected private security companies. Security outside reception centers is provided by the police officers who also have unrestricted right to undertake security related interventions within the reception centers.

There are no observed systemic deficiencies that would indicate a heightened security related risk for asylum seekers/ refugees, emanating from the authorities of the country of origin. Therefore such a risk should not be assessed at the higher level than in other Schengen countries with notable presence of Chechen communities.



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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