

# ASYLUM SEEKERS IN POLAND - CURRENT TRENDS

HNLAC FOCUS REPORT - SEPTEMBER 2018



This 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 2018, similarly to previous years, the overwhelming majority of all asylum applications in Poland are made while crossing the land border, with the **Terespól Polish-Belarusian border crossing point remaining the predominant entryway for foreigners seeking protection.**

Terespól traditionally remains also **the main gateway of all Chechen (and other North-Caucasus originating) asylum seekers** on their way to other EU countries. Statistic from recent years indicate a considerably **high turnout of persons absconding** the asylum procedure initiated in Poland.

It is important to notice, however, that the **percentage of persons absconding the refugee procedure** (resulting in formal discontinuation of the administrative proceedings) is **by 10% smaller in 2018 (41%) smaller than in 2017 (51%) and in 2016 (73%)**

. It should be noted that this decreasing tendency is also connected to a smaller number of applications filed in the reporting year. Interestingly, the rate of absconding is also different in different nationality groups; **81% of decisions** on discontinuation of proceedings due to the so called implied withdrawal of the application for granting international protection in the first half of 2018 concerned **Russian citizens (1091 persons)** while only **5% 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 - 6 SEPTEMBER 2018, A TOTAL OF 2810 PERSONS APPLIED FOR PROTECTION IN POLAND.**

**78% of all applications** were made by foreigners originating from one of the 3 countries neighboring Poland to the east: **The Russian Federation (1 874 persons, 67% of the total number), Ukraine (295 persons, 10% of the total number) and Belarus (30 persons, 1% of the total number)**. The figures reveal that there was an increase in the number of applications from Central Asia: **Tajikistan (121 persons, 4%) and Kirgizstan (35 persons, 1%)** accounted for a further **5%** of the total. Other notable nationality groups were from **Armenia (55 persons, 2%) and Georgia (38 persons, 1%) and Azerbaijan (31 persons, 1%)**. The number of asylum seekers from **Iraq** has increased to **2% (55 persons)**, however, there was a drop in applications from **Syria (0,5%, 17 persons), and Turkey (25 persons)**. Applicants from various **African countries** amounted to almost **1%**, the applicants from **South Asia (India, Pakistan, Bangladesh) constitute 1,5%** of the total number of applications.



Consistently, with well established trends, also in 2018, the overall percentage of **minors** in asylum proceedings in Poland was very high. **45%** of all persons covered by asylum applications were **(accompanied) children**.

From the figures published by the Head of the Office for Foreigners it can be seen that the numbers of persons lodging the asylum applications has been **significantly diminishing in the past 2 years**. However, in 2018 the total number of asylum applications has dropped by 28% which is a smaller number after the significant change in the dynamic of asylum applications noted in 2017 (when the total number of asylum applications made in Poland was 2.5 times lower than in 2016). When broken down in relation to different nationality groups this considerable decrease proves to be varied and indicates:

- a **32% drop in Russian applications**

- a **46% drop in Ukrainian applications**

- a **64% drop in Armenian applications**

- a **54% drop in Georgian applications**

- a **45% drop in Turkish applications**

- a **39% drop in Syrian applications**

- a **46% drop in Vietnamese applications**

The data would seem to suggest that there is a visible increase in the number of applications from **Tajikistan (increased by 16%)** and **Iran**, while the number of applications from **Syria** has dropped.

## 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. It is important to underline that there is a **significant drop in the number of asylum seekers** at the aforementioned border crossing comparing to the previous year. In the beginning of 2018 the **estimated group of some 350 persons** was noted in orbit between the Belarusian border town of Brest and the Terespol BCP repeatedly trying to submit applications.

However, in the middle of the summer, the number of persons seeking asylum at Terespol BCP has **diminished to 50 persons, hitting the minimum record in the past 2 years**. Currently (as of beginning of September 2018) the estimated number of **250 persons** are making regular attempts to file the application for international protection traveling almost daily from Brest to the Terespol BCP.

Thanks to the regular contact with the asylum seekers at the Terespol BCP HNLAC is keeping a record of the successful and unsuccessful attempts to file the application for international protection. From the information HNLAC has managed to obtain from the asylum seekers, NGO's operating in the area (Human Constanta), and the Border Guard Service - the following findings shall be presented:

1) The countries of origins of the asylum seekers trying to file the application at the Terespol BCP are: the **Russian Federation** (several regions, but mostly from the **Chechen Republic and Republic of Dagestan**), **Tajikistan, Kirgizstan, Iran and Armenia**.

2) As it can be noted from the data presented above, the **decrease of applications is varied** in relation to different nationalities. It is assumed that to some extent these changes may be attributed to the changing situation in countries of origin but the challenges of filing an application at the Polish border is undoubtedly an important factor. **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**. The estimated number of **26 families per month (approximately 100 persons)** are being able to succeed in filing the application. Some days no asylum seeker is allowed through the border to file the application for international protection. Asylum seekers have also mentioned that **during the visits of NGO's or Ombudsman representatives and human rights activists there is a higher chance** that the attempt to file an application for international protection will be successful.



3) Some of the persons undertaking **multiple attempts at entering Poland**. The maximum number registered from the beginning of 2018 is **70 attempts to file the application**. Given the significant drop in the number of asylum seekers at the Terespol border crossing in 2018, the average number of attempts resulting in the possibility to file the application **reaches 20**. Thus, it can be presumed that the diminishing number of people at the Terespol BCP may also indicate the overall discouragement and the will to search for alternative ways of entering Europe and submitting their applications.

4) Moreover, the number of attempts seems to have become an **important factor in the process of decision making on whether to allow the asylum seeker through the border to file the application** for international protection. Thus, there is an assumption that the asylum seekers with a smaller number of previous attempts (1-2) are more likely to be allowed through the border.

5) Asylum seekers with **more than 10 attempts to cross the border in order to apply for international protection face the risk of deportation or expulsion from Belarus**. This tendency was noticed by the NGO operating in Belarus, as well as reported to HNLAC by the asylum seekers. Despite the fact that the citizens of Russian Federation are entitled to stay on the territory of Belarus for **90 days without registration** (citizens of other countries – 5 days), Citizenship and Migration Departments in Brest tend to reduce the period of stay of the foreigner on the territory of Belarus. The decision is accompanied by a stamp in a passport with a date by which the foreigner is obliged to leave the country. In addition, in the number of cases this decision was followed by **the decision to impose a ban on entering the territory of Belarus**. The legal basis of such decision is specified by the paragraph 9 of article 30 of the Law of the Republic of Belarus "On the Legal Status of Foreign Citizens and Stateless Persons in the Republic of Belarus", as "there are sufficient grounds to believe that a foreigner can [...] use the territory of the Republic of Belarus for illegal migration to a third state".

Therefore, there is a **link between the number of unsuccessful attempts** to file the application for international protection at the Terespol BCP and the **risk of being returned** to the country of origin despite the well-founded fear of persecution. A **number of applications to ECHR** in relation to difficulties at the border and the risk of refoulement are currently pending.

## RECOGNITION RATE

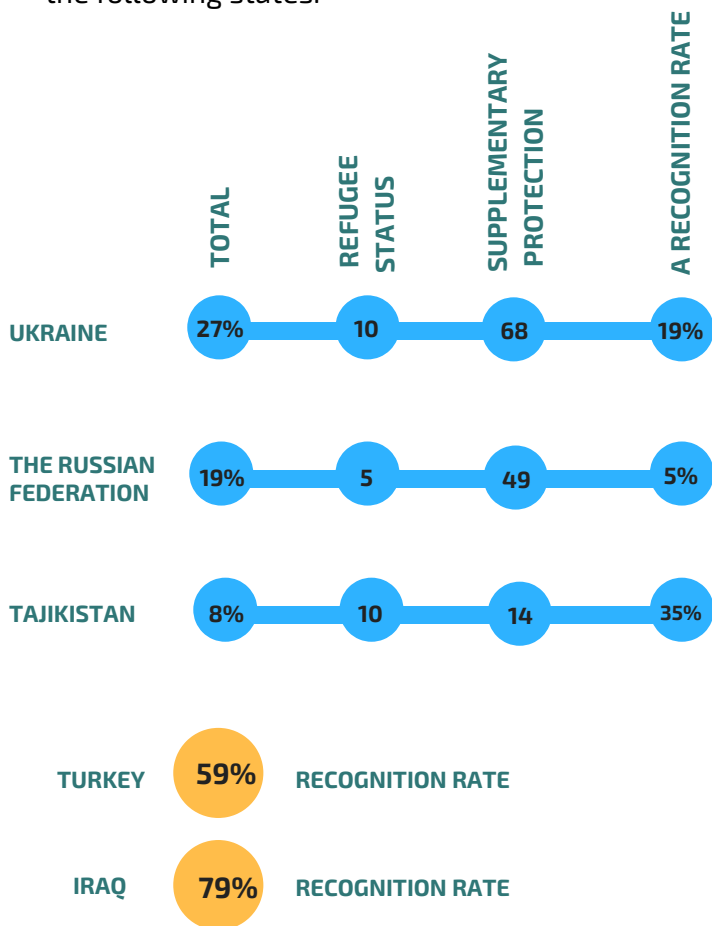
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# RECOGNITION RATE

In the reported period the Head of the Office for Foreigners acting as the 1st instance authority in the protection proceedings issued **3 261 decisions**. Various forms of protection were granted to **306 persons**, constituting **9%** of the total number of applicants. **1603 persons (49%)** received a negative decision, while **1268 cases (42%) were discontinued**

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



**41% of the proceedings were discontinued due to the lack of interest from the foreigner, 81% of the foreigners, willing to discontinue the proceedings were from the Russian Federation.**

One of the most notable changes in the levels of recognition rates is the **significant increase in the number of positive decision issued in relation to asylum seekers from Tajikistan** coupled with a **25% drop in the number of Ukrainian** applications comparing to the same period in 2017.

# DUBLIN III PROCEEDINGS

In 2018 Poland already received **3004 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 2017 amounted to 5723**. The largest number of 2018 applications came from **Germany, France, Netherlands, Sweden and Belgium**. 57% of all Dublin applications concerned Russian citizens while 11% concerned Armenian citizens. So far 2567 positive decisions were issued on "in" applications. Poland have filed the "out" applications in cases of 130 persons, which were followed by 55 positive decisions. Most of the applications (both "in" and "out") concern the **cooperation with Germany (49% of "in" and 32% of "out") and France (33% of "in" and 12% of "out")**.

Tendencies, nationalities and statistics concerning the implementation of Dublin III proceedings show that there were some changes regarding the receiving countries. In the reporting period Poland has submitted **12 "out" applications to Greece and 9 to Italy, receiving 3 positive transfer decisions that were not implemented yet**. It should be noted, however, that the rate of actual transfers vis-à-vis to the number of Dublin applications slightly increased **from 3605/991 (27,4%) in 2017 to 1469/440 (30%) in 2018**.



## 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;
- ▶ if 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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**A TOTAL OF 246 ASYLUM SEEKERS WERE DETAINED IN GUARDED CENTRES IN 2017. STATISTICS FOR 2018 HAVE NOT BEEN RECEIVED YET, BUT THE NUMBERS FOR PREVIOUS YEARS SUGGEST A WORRYING GENERAL TENDENCY OF 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.



## DETENTION-RELATED ISSUES

Among most serious problems that still needed to be addressed are:

### a) Detention of minors in the guarded centers for foreigners.

Due to the ECHR judgment *Bistieva and Others v. Poland* issued on April 10, 2018 some positive tendencies towards more court decisions issued to families with children replacing detention with an alternative measure can be noted. However, since it is in the appeal procedure when the court reviews the decision to place the family with children in the guarded center, children get to spend months in detention with their parents. This practice exercised by Polish courts violates the principle of the best interest of the child and may have adverse effects on the psychophysical development of the child.

### b) Placement of torture victims (and other forms of violence) in guarded centers for foreigners.

First of all this issue concerns the lack of effective mechanism of identification of torture victims in the practice of Polish courts. Second issue is related to the fact that some courts **improperly apply the rule of absolute prohibition of detention of torture victims.**

The incorrect application of the rule results in the reasoning that the availability of psychological care within the premises of the guarded center means that there is no impediment to the detention. Thirdly, in some cases it was noted that the court applies the prohibition of detention only to specific cases of torture experience. For example, the detention is not applied if the foreigner was the victim of violence or torture as part of a deliberate political repression. Other circumstances of violence and torture might not be recognized as basis for dismissal from the guarded center.

#### SOURCES:

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/>  
Information of the Head of the Office for Foreigners for the reporting period of 01.01.2018-06.09.2018. <https://udsc.gov.pl/statystyki/raporty-okresowe/meldunek-tygodniowy/>  
Information on the statistics on migration, available at: <https://migracje.gov.pl/en/>

## AVAILABILITY OF LEGAL AID

According to the 2015 amendment to the Act on granting protection **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.

**However, due to the fact that NGO lawyers are not able to provide legal assistance at the first stage of procedure, on the following stages both NGO and a foreigner may encounter some difficulties.**

The difficulties are often caused by the **insufficient accessibility of free legal assistance** in Poland. 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. Thus, if a lawyer from the NGO needs to file an appeal to the court as a legal representative of the foreigner, it is necessary to obtain a power of attorney from the foreigner and the original decision from the court. Given that there are 11 reception centers for foreigners and 6 guarded centers it is often not possible to receive the original documents on time due to the logistical reasons and time limits. **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 Halina Niec 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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