

Input by civil society to the EASO Annual Report 2019

Fields marked with * are mandatory

The production of EASO's *2019 Annual Report on the Situation of Asylum in the European Union* is currently underway. The yearly [annual report](#) series present a comprehensive overview of developments in the field of asylum at the regional and national levels.

The report includes information and perspectives from various stakeholders, including experts from EU+ countries, civil society organizations, the UNHCR and researchers. To this end, we invite you to submit information on developments in asylum law, policy or practice in 2019 (and early 2020) by topic as presented in the online survey.

Please note that the EASO Annual Report does not seek to describe national systems in detail but rather to present key developments of the past year, including improvements and challenges which remain. Your input can cover practices of a specific EU+ country or the EU as a whole. You can complete all or only some of the sections. It is preferred to provide your submission in bullet points to facilitate drafting.

All submissions are publicly accessible. For transparency, 2019 contributions will be published on the EASO webpage. Contributions to the 2018 annual report by civil society organisations can be accessed [here](#). All contributions should be appropriately referenced. You may include links to supporting material, such as analytical studies, articles, reports, websites, press releases or position papers. If your organisation does not produce any publications, please make reference to other published materials, such as joint statements issued with other organisations. Some sources of information may be in a language other than English. In this case, please cite the original language and, if possible, provide one to two sentences describing the key messages in English.

The content of the EASO annual report is subject to terms of reference and volume limitations. Submissions may be edited for length and clarity or may not be included in the final report. Contributions from civil society organisations feed into EASO's work in multiple ways and inform reports and analyses beyond the annual report.

Please complete the online survey and submit your contribution to the 2019 annual report by **Thursday, 12 March 2020**

Instructions

Before completing the survey, please review the list of topics and types of information that should be included in your submission.

For each response, please only include the following type of information:

- ✓ New developments and improvements in 2019 and new or remaining challenges;
- ✓ Changes in policies or practices, transposition of legislation or institutional changes during 2019.

Please ensure that your responses remain within the scope of each section. Do not include information that goes beyond the thematic focus of each section or is not related to recent developments

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Contributions by topic

1. Access to territory and access to asylum procedures (including first arrival to territory and registration, arrival at the border, application of the non-refoulement principle, the right to first response (shelter, food, medical treatment) and issues regarding border guards)

Access to the asylum procedure in Poland is still restricted. Throughout 2016, independent monitoring visits to the border crossing point in Terespol held by the Legal Intervention Association,¹ Helsinki Foundation for Human Rights (hereinafter: HFHR),² the Ombudsman,³ Amnesty International,⁴ and Human Rights Watch⁵ confirmed the existence of grave systemic irregularities with accepting applications for international protection at the border. **In April 2019** the Helsinki Foundation for Human Rights published a report entitled *Access to Asylum Procedure at the external borders of Poland. Current State of Affairs and Future Challenges* discusses access to the asylum procedure at the Eastern border of Poland.⁶ The report summarises the situation on the eastern border of Poland in the years 2015-2019 and presents an analysis of national, EU and international law on access to asylum, describes the case law of national courts and the European Court of Human

¹ Legal Intervention Association, *At the Border. Report on monitoring of access to the procedure for granting international protection at the border crossings in Terespol, Medyka and Warszawa-Okecie airport, Warsaw 2016*, available at: <https://bit.ly/2tuJCK0>.

² Helsinki Foundation for Human Rights, *A Road to Nowhere: The account of the monitoring visit at the Brest-Terespol border crossing between Poland and Belarus*, Warsaw 2016, available at: <https://bit.ly/2ShztiG>.

³ Ombudsman paid three unannounced visits to Terespol border crossing on 11 August 2016, 15 May 2018 and 23 September 2019, the report of the last visit available (in Polish) at: <https://bit.ly/31nzrtK>.

⁴ Amnesty International Poland, *Tam i z powrotem: Brześć–Terespol*, 7 December 2016, available at: <https://bit.ly/2GMcEOW>.

⁵ Human Rights Watch, *Poland: Asylum Seekers Blocked at the Border*, 1 March 2017, available at: <https://bit.ly/2GMcGq2>.

⁶ Helsinki Foundation for Human Rights, *Access to asylum procedure at Poland's external borders, Current situation and challenges for the future*, Warsaw April 2019, available at: <https://bit.ly/3955t0w>.

Rights and sums up the findings of monitoring activities undertaken by non-governmental organizations, the Ombudsman and the Ombudsman for Children.

Moreover, the problem with the access to the asylum procedure was raised in **July 2019** by the UN Committee against Torture in the concluding observations on the seventh periodic report of Poland. The Committee was concerned that persons in need of international protection are not always given access to the territory of Poland, in particular at the Terespol border crossing with Belarus and the Medyka border crossing with Ukraine, even in the case of vulnerable persons.^{7 8}

In **December 2019**, the coalition⁹ of NGOs (Amnesty International, Our Choice Foundation, Polish Hospitality Foundation, Helsinki Foundation for Human Rights, Migrant Info Point, Polish Migration Forum Foundation, Homo Faber Association, Association for Legal Intervention, NOMADA Association) raised concern that the access to the asylum procedure in Poland is still restricted.¹⁰ They have recalled the problem¹¹ in this regard that has been occurring for several years now and placed at the border crossing in Terespol, a huge banner with the words '*WE ARE SORRY - BORDER OF HUMAN RIGHTS*'.¹² However, despite the repeated reports, interventions and litigation in 2016-2019, the Polish government denies the application of unlawful practices at the border.¹³

Worth mentioning is that between June and September 2017, the European Court of Human Rights (ECtHR) communicated to the Polish Government four cases concerning access to asylum in Poland: M.K. v. Poland (no. 40503/17); M.A. and others v. Poland (no. 42902/17); M.K. and others v. Poland (no. 43643/17); D.A. and others v. Poland (no. 51246/17)¹⁴. Those cases concern Chechen (first three cases) and Syrian nationals (D.A. and others) who traveled to the Terespol border crossing (at the Polish-Belarusian border) to seek asylum in Poland. They tried to lodge applications for international protection numerous times but were denied entry to the country and were sent back to Belarus without the asylum proceedings being instigated. In all of these cases, the Court, under Rule 39 of its Rules of Court, issued interim measures indicating to the Government that the applicants should not be removed to Belarus. The government have not complied with these interim measures and removed applicants to Belarus. The cases are still pending.^{15 16}

⁷ UN Committee against Torture, *Concluding observations on the seventh periodic report of Poland*, 22-24 July 2019, available at: https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/POL/CAT_C_POL_CO_7_35715_E.pdf

⁸ Helsinki Foundation for Human Rights (Helsińska Fundacja Praw Człowieka, HFPC), *Wnioski końcowe Komitetu Przeciwko Torturom ONZ* (Final conclusions of the UN Committee against Torture), 1 October 2019, available at: <http://www.hfhr.pl/wnioski-koncowe-komitetu-przeciwko-torturom-onz/>

⁹ Website available at: <https://konsorcjum.org.pl/>

¹⁰ Helsinki Foundation for Human Rights, *Granica Praw Człowieka / PRZEPRASZAMY Organizacje społeczne przepraszą uchodźców za łamanie praw człowieka przez polskie władze*, available at: <https://www.hfhr.pl/granica-praw-czlowieka-przepraszamy-organizacje-spoeczne-przepraszaja-uchodzcow-za-lamanie-praw-czlowieka-przez-polskie-wladze/>

¹¹ Website available at: <http://www.granicaprawczlowieka.pl/>

¹² Helsinki Foundation for Human Rights, *Granica Praw Człowieka / PRZEPRASZAMY Organizacje społeczne przepraszą uchodźców za łamanie praw człowieka przez polskie władze*, available at: <https://www.hfhr.pl/granica-praw-czlowieka-przepraszamy-organizacje-spoeczne-przepraszaja-uchodzcow-za-lamanie-praw-czlowieka-przez-polskie-wladze/>

¹³ Helsinki Foundation for Human Rights, *Access to asylum procedurę at Poland's external borders, Current situation and challenges for the future*, Warsaw April 2019, available at: <https://bit.ly/3955t0w>.

¹⁴ European Court of Human Rights, Press country profile – Poland, January 2018, available at: http://www.echr.coe.int/Documents/CP_Poland_ENG.pdf; Helsinki Foundation for Human Rights, *ETPC zakomunikował polskiemu rządowi skargi dotyczące odmowy wjazdu uchodźcom w Terespolu*, 18 August 2017, available at: <http://www.hfhr.pl/etpc-zakomunikowal-polskiemu-rzadowi-skargi-dotyczace-odmowy-wjazdu-uchodzcom-w-terespolu/>

¹⁵ European Court of Human Rights, *M.A. and Others v. Poland*, Application No 42902/17, available at: <https://hudoc.echr.coe.int/eng/?i=001-176484>

2. Access to information and legal assistance (including counselling and representation)

For information on legal provisions and practical developments we recommend to consult the ECRE AIDA Country report on Poland for 2019 (forthcoming) prepared with the support of Helsinki Foundation for Human Rights.¹⁷

3. Provision of interpretation services (e.g. introduction of innovative methods for interpretation, increase/decrease in the number of languages available, change in qualifications required for interpreters)

For information on legal provisions and practical developments we recommend to consult the ECRE AIDA Country report on Poland for 2019 (forthcoming) prepared with the support of Helsinki Foundation for Human Rights.¹⁸

4. Dublin procedures (including the organisational framework, practical developments, suspension of transfers to selected countries, detention in the framework of Dublin procedures)

According to the NGOs, in 2019 there were cases of asylum seekers who were not transferred to Poland from the other Member States under the Dublin procedures due to the risk of immigration detention and risk of a possible violation of the *non-refoulement* rule.¹⁹

For information on legal provisions and practical developments we recommend to consult the ECRE AIDA Country report on Poland for 2019 (forthcoming) prepared with the support of Helsinki Foundation for Human Rights.²⁰

5. Special procedures (including border procedures, procedures in transit zones, accelerated procedures, admissibility procedures, prioritised procedures or any special procedure for selected caseloads)

On 4 February 2019, the Government in Poland presented another version of the draft amendment of the Act on granting protection.²¹ The draft foresees the introduction of border procedures. It also authorises the Government to draw up a safe third country and safe country of origin lists. According to the Ministry of Interior and Administration (hereinafter: MSWiA, Ministry), the main aim of the draft amendment is to ensure the security of Poland's borders and safety of its citizens. The draft provides that the appeal to the administrative court against a decision on asylum refusal has no

¹⁶ European Court of Human Rights, Press country profile, Poland, January 2019, available at: https://www.echr.coe.int/Documents/CP_Poland_ENG.pdf

¹⁷ European Commission for Refugees and Exiles, Asylum Information Database, country reports on Poland, available at: <https://www.asylumineurope.org/reports/country/poland>

¹⁸ European Commission for Refugees and Exiles, Asylum Information Database, country reports on Poland, available at: <https://www.asylumineurope.org/reports/country/poland>

¹⁹ Stowarzyszenie Interwencji Prawnej (2019), available at: <https://interwencjaprawna.pl/en/the-dutch-court-temporarily-halted-dublin-transfer-to-poland/>

²⁰ European Commission for Refugees and Exiles, Asylum Information Database, country reports on Poland, available at: <https://www.asylumineurope.org/reports/country/poland>

²¹ Ministry of Interior and Administration, available at: <https://legislacja.rcl.gov.pl/projekt/12294700/katalog/12410554>

automatic suspensive effect. Also, appeal to the administrative court does not provide for a full and *ex nunc* examination of both facts and points of law, but only *ex tunc* examination of points of law.²² The draft amendment was criticised by the HFHR as it assumes automatic detention of the majority of applicants for international protection subjected to the border procedures as well as does not ensure the right to an effective remedy before the court within these proceedings. The Ombudsman wrote to the Minister of Interior and Administration that the concept of safe country of origin list should not be a solution for the situation at the border crossing with Belarus in Terespol where push-backs of the asylum seekers had been continuedly reported.²³ The UN Committee against Torture in the concluding observations on the seventh periodic report of Poland was concerned that the draft amendments to the Act on granting protection to foreigners within the territory of the Republic of Poland may limit further access to Polish territory with the introduction of border proceedings under an accelerated procedure where a decision is given in 20 days that would result in the refusal of asylum claims and that appeals to the court within border proceedings would not have a suspensive effect.²⁴

6. Reception of applicants for international protection (including information on reception capacities – increase/decrease/stable, material reception conditions - housing, food, clothing and financial support, contingency planning in reception, access to the labour market and vocational training, medical care, schooling and education, residence and freedom of movement)

For information on legal provisions and practical developments we recommend to consult the ECRE AIDA Country report on Poland for 2019 (forthcoming) prepared with the support of Helsinki Foundation for Human Rights.²⁵

7. Detention of applicants for international protection (including detention capacity – increase /decrease/stable, practices regarding detention, grounds for detention, alternatives to detention, time limit for detention)

Asylum-seekers and immigrants who are violence victims (victims of torture in the country of origin, physical and psychological violence) are placed in detention centers despite the fact that this is prohibited by Polish law²⁶ due to lack of an effective system of identification foreigners. Deputy director of the National Mechanism for the Prevention of Torture (hereinafter: NPM) said in **April 2019** that since 2016 the NPM has visited guarded centers for foreigners in Poland and in each of them there were people whose behaviour made it highly probable that they were torture

²² Helsinki Foundation for Human Rights, available at: <http://www.hfhr.pl/uwagi-hfpc-do-projektu-nowelizacji-ustawy-o-udzielaniu-cudzoziemcom-ochrony/>

²³ Ombudsman, Koncepcja bezpiecznego kraju pochodzenia to zły pomysł na rozwiązanie sytuacji na przejściu w Terespolu - RPO do MSWiA, 18 April 2019, available at: <https://www.rpo.gov.pl/pl/content/koncepcja-bezpiecznego-kraju-pochodzenia-terespol-rpo-mswia>

²⁴ UN Committee against Torture, *Concluding observations on the seventh periodic report of Poland*, 22-24 July 2019, available at: https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/POL/CAT_C_POL_CO_7_35715_E.pdf

²⁵ European Commission for Refugees and Exiles, Asylum Information Database, country reports on Poland, available at: <https://www.asylumineurope.org/reports/country/poland>

²⁶ Act on foreigners (Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach), 12 December 2013, available in Polish at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20130001650>; Poland, Act on granting protection to foreigners within the territory of the Republic of Poland (Ustawa o udzielaniu cudzoziemcom ochrony na terenie Rzeczypospolitej Polskiej), 13 June 2003, available in Polish at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20031281176>

sufferers.²⁷ In **July 2019** in Geneva the UN Committee against Torture analyzed Poland's periodic report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which Poland ratified on 26 July 1989.^{28 29} The UN rapporteurs have pointed out the problem affecting foreigners seeking international protection who are victims of torture, specifically the problem with the appointment of experts to determine whether the foreigner is a victim of torture.^{30 31} The Polish delegation did not directly answer the Committee's question in that field.³²

In **June 2019** on the Council of Europe's website information on measures taken to implement the ECHR's judgment in the case of *Bistieva and Others* against Poland (application no. 75157/14, the judgment of 10 April 2018, final on 10 July 2018) were presented. The case concerned the detention of a Chechen family of asylum seekers. The ECHR held that the Polish authorities had not viewed the family's administrative detention as a measure of last resort. According to the Court, the Polish authorities had not given sufficient consideration to the best interests of the children. The ECHR held that detention of the family constituted a violation of Article 8 of the European Convention on Human Rights. According to it, the Government is of the opinion that no further individual measures are necessary in this case and that the general measures adopted are sufficient to conclude that Poland has fulfilled its obligations under Article 46 § 1 of the Convention.³³ However, the HFHR not agree with such a statement and published recommendations concerning actions to be taken in order to implement judgement properly (i.e. Judges and Border Guard officers should receive proper training on applying the principle of the best interests of the child and the ECtHR's case law in cases of immigration detention of minors; Guidelines for the specific actions to be taken should be prepared; The courts must examine, on a case-by-case basis, the best interests of the child in all matters concerning immigration detention, also by hearing the children concerned or experts; All court decisions to place a family in a guarded centre must incorporate a personalized assessment of the situation of the affected children).³⁴

²⁷ Ombudsman, Panel dyskusyjny Homo Homini Lupus est: Osoby z PTSD w strzeżonych ośrodkach dla cudzoziemców, 26 April 2019, available at: <https://www.rpo.gov.pl/pl/content/panel-dyskusyjny-homo-homini-lupus-est-osoby-z-ptsd-w-strzezonych-osrodkach-dla-cudzoziemcow-relacja>.

²⁸ UN Web TV, *Consideration of Poland (Cont'd) - 1762nd Meeting, 67th Session of Committee Against Torture*, 24 July 2019, available at: <http://webtv.un.org/meetings-events/human-rights-treaty-bodies/committee-against-torture/watch/consideration-of-poland-contd-1762nd-meeting-67th-session-of-committee-against-torture/6063626677001/?term=>

²⁹ UN Committee against Torture, *Concluding observations on the seventh periodic report of Poland*, 22-24 July 2019, available at: https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/POL/CAT_C_POL_CO_7_35715_E.pdf

³⁰ UN Web TV, *Consideration of Poland (Cont'd) - 1762nd Meeting, 67th Session of Committee Against Torture*, 24 July 2019, available at: <http://webtv.un.org/meetings-events/human-rights-treaty-bodies/committee-against-torture/watch/consideration-of-poland-contd-1762nd-meeting-67th-session-of-committee-against-torture/6063626677001/?term=>

³¹ Ombudsman, *Komitet ONZ przeciwko Torturom (CAT) pyta o tortury w Polsce (The UN Committee against Torture (CAT) asks about torture in Poland)*, 25 July 2019, available at: <https://www.rpo.gov.pl/pl/content/komitet-onz-przeciwko-torturom-cat-pyta-o-tortury-w-polsce>

³² Association for Legal Intervention (Stowarzyszenie Interwencji Prawnej, SIP), *Komentarz SIP: sprawozdanie Polski przed Komitetem przeciwko Torturom ONZ (Association for Legal Intervention comments on Poland's reporting before UN Committee against Torture)*, 30 July 2019, available at: <https://interwencjaprawna.pl/en/association-for-legal-intervention-comments-on-polands-reporting-before-un-committee-against-torture/>

³³ Council of Europe, ACTION REPORT, Information on measures taken to implement the judgment in the case of *Bistieva and Others* against Poland, 11 June 2019, available at: <https://rm.coe.int/1355th-meeting-september-2019-dh-action-report-11-06-2019-communicatio/168094ef06>

³⁴ Helsinki Foundation for Human Rights, *Has Poland fully executed ECtHR's judgment on Chechen family's detention? HFHR's communication to CoE's Committee of Ministers*, information available at: <http://www.hfhr.pl/en/has-poland-fully-executed-ecthrs-judgment-on-chechen-familys-detention-hfhrs-communication-to-come-committee-of-ministers/>

in **July 2019**, the UNHCR Representation in Poland has published online its 2017 report on the applicability of the best interests of the child principle as the primary consideration in detention decisions as well as the alternatives to detention in Poland. According to the findings of the report, not only domestic law but international law requires national authorities to make decisions on the detention of children to take into consideration their best interests, but these principles are rarely implemented by national authorities in practice. However, in the vast majority of cases analyzed for the purpose of the UNHCR's study, District Courts did not examine the best interests of the child nor took it into consideration when ruling on their detention. Children were usually mentioned only in the operative part of the court decision while in the justification only the situation of their parents was assessed. In only one case the court did not accept the Border Guards' request to detain family with children referring to the best interests of the child.³⁵ Also in **December 2019**, the media alarmed that every year between one and two hundred foreign children are being detained in Poland, although they do not commit any crime.³⁶

8. Procedures at first instance (including relevant changes in: the authority in charge, organisation of the process, interviews, evidence assessment, determination of international protection status, decision-making, timeframes, case management - including backlog management)

For information on legal provisions and practical developments we recommend to consult the ECRE AIDA Country report on Poland for 2019 (forthcoming) prepared with the support of Helsinki Foundation for Human Rights.³⁷

9. Procedures at second instance (including organisation of the process, hearings, written procedures, timeframes, case management - including backlog management)

For information on legal provisions and practical developments we recommend to consult the ECRE AIDA Country report on Poland for 2019 (forthcoming) prepared with the support of Helsinki Foundation for Human Rights.³⁸

10. Availability and use of country of origin information (including organisation, methodology, products, databases, fact-finding missions, cooperation between stakeholders)

For information on legal provisions and practical developments we recommend to consult the ECRE AIDA Country report on Poland for 2019 (forthcoming) prepared with the support of Helsinki Foundation for Human Rights.³⁹

³⁵ Helsinki Foundation for Human Rights, *HFHR's study on immigration detention of families for UNHCR*, available at: <https://www.hfhr.pl/en/hfhrs-study-on-immigration-detention-of-families-for-unhcr/>

³⁶ Newsweek, *Co roku w Polsce od stu do dwustu dzieci trafia do zamkniętego ośrodka, choć nie popełnia żadnego przestępstwa*, available at: <https://www.newsweek.pl/polska/mali-uchodzcy-za-drutami-dzieci-uchodzcy-czekaja-na-azyl/x9j68kz>

³⁷ European Commission for Refugees and Exiles, Asylum Information Database, country reports on Poland, available at: <https://www.asylumineurope.org/reports/country/poland>

³⁸ European Commission for Refugees and Exiles, Asylum Information Database, country reports on Poland, available at: <https://www.asylumineurope.org/reports/country/poland>

³⁹ European Commission for Refugees and Exiles, Asylum Information Database, country reports on Poland, available at: <https://www.asylumineurope.org/reports/country/poland>

11. Vulnerable applicants (including definitions, special reception facilities, identification mechanisms/referrals, procedural standards, provision of information, age assessment, legal guardianship and foster care for unaccompanied and separated children)

Please see *Section 7 Detention*.

12. Content of protection (including access to social security, social assistance, healthcare, housing and other basic services; integration into the labour market; measures to enhance language skills; measures to improve attainment in schooling and/or the education system and/or vocational training)

For information on legal provisions and practical developments we recommend to consult the ECRE AIDA Country report on Poland for 2019 (forthcoming) prepared with the support of Helsinki Foundation for Human Rights.⁴⁰

13. Return of former applicants for international protection

In November 2019, HFHR informed⁴¹ about the judgment⁴² of the Voivodship Administrative Court in Warsaw in the case of the Chechen national - Azamat Bayduyev who received asylum in Poland but later his asylum was withdrawn and he had been deported from Poland to the Russian Federation on the basis of a classified document, and also because Bayduyev allegedly posed a threat to the public security of Poland. After arriving at his home in the Chechen Republic he was abducted by the armed forces and disappeared.⁴³ Upon deportation, Bayduyev had been arrested and prosecuted in Chechnya.⁴⁴ The Polish Court after examining the legality of the Minister's decision on obliging Mr. Bayduyev to return, revoked both decisions of the Minister (the decision on obliging the foreigner to return and a decision upholding the return decision). The Court reiterated that the national provisions on granting tolerated stay to foreigners whose rights enshrined in the European Convention on Human Rights (right to life, liberty, personal security, fair trial, freedom from torture and forced labor) might be violated, are absolute and anticipate no exceptions. As a consequence, authorities are obliged to examine the necessity to grant a foreigner who is about to be expelled the tolerated stay even if he poses a threat to national security. The Court did not agree, however, that Azamat Bayduyev was unlawfully deprived of his procedural guarantees and considered that the procedural requirements arising from the case-law of the CJEU (judgment in case ZZ C-300/11) were fulfilled in this case. The Court emphasized that although the applicant undoubtedly encountered difficulties in formulating his procedural position without having access to the classified memo of the Internal Security Agency being a ground of his expulsion, his rights have not been violated.

⁴⁰ European Commission for Refugees and Exiles, Asylum Information Database, country reports on Poland, available at: <https://www.asylumineurope.org/reports/country/poland>

⁴¹ Helsinki Foundation for Human Rights, *Administrative court revokes Government's decision to expel Azamat Bayduyev following HFHR's intervention*, available at: <http://www.hfhr.pl/en/administrative-court-revokes-governments-decision-to-expel-azamat-bayduyev-following-hfhrs-intervention/>

⁴² Voivodship Administrative Court in Warsaw, judgement from 5 November 2019, available at: <http://orzeczenia.nsa.gov.pl/doc/2DFFB93EA9>

⁴³ Helsinki Foundation for Human Rights, Marta Szczepanik, *Republic of fear. Human rights in modern-day Chechnya*, 24 January 2019, available at: <https://www.hfhr.pl/wp-content/uploads/2019/11/Czeczunia-raport-COI-2019-EN-FIN-05-08-web-1.pdf>

⁴⁴ Free Russia Foundation, *Misrule of Law, How the Kremlin Uses Western Institutions to Undermine the West*, 2019, available at: <https://www.4freerussia.org/wp-content/uploads/2019/06/MisruleOfLaw-Web.pdf>

On 4 February 2019, the Government presented another version of the draft amendment of the Act on granting protection. The draft amendment provides that asylum refusal decision will be accompanied by the return order. Appeal to the court against a return decision will have no suspensive effect. This provision was criticized by the HFHR as it violates the right to an effective remedy before a court.⁴⁵

For information on legal provisions and practical developments we recommend to consult the ECRE AIDA Country report on Poland for 2019 (forthcoming) prepared with the support of Helsinki Foundation for Human Rights.⁴⁶

14. Resettlement and humanitarian admission programmes (including EU Joint Resettlement Programme, national resettlement programme (UNHCR), National Humanitarian Admission Programme, private sponsorship programmes/schemes and ad hoc special programmes)

The Polish government does not participate in EU resettlement and relocation programmes.

15. Relocation (ad hoc, emergency relocation; developments in activities organised under national schemes or on a bilateral basis)

Poland does not participate in EU resettlement and relocation programmes.

However, it is worth mentioning that the Advocate-General Sharpston at the Court of Justice of the European Union (CJEU) has delivered in **October 2019** the opinion⁴⁷ in the infringement case against Poland (C-715/17).⁴⁸ The applicant in this case (European Commission) claims that the CJEU should declare that, by failing to indicate at regular intervals, and at least every three months, the appropriate number of asylum applicants who can be relocated swiftly to its territory starting from 16 March 2016, Poland has failed to fulfill its obligations under Article 5(2) of Council Decision (EU) 2015/1523 and under Article 5(2) of Council Decision (EU) 2015/1601, and has consequently failed to fulfill its other relocation obligations as set out in Article 5(4) to (11) of both of the aforementioned Council decisions. Advocate-General Sharpston clarified that Member States have to exercise their competence under Article 72 Treaty on the Functioning of the European Union (TFEU) in a way that respects other relevant provisions of EU law. According to the opinion, the Member States cannot rely on Article 72 TFEU to avoid complying with an EU provision they disagree with but they can rely

⁴⁵ Ministry of Interior and Administration, available at: <https://legislacja.rcl.gov.pl/projekt/12294700/katalog/12410554>

⁴⁶ European Commission for Refugees and Exiles, Asylum Information Database, country reports on Poland, available at: <https://www.asylumineurope.org/reports/country/poland>

⁴⁷ Court of Justice of the European Union, Opinion of Advocate General Sharpston, delivered on 31 October 2019, Case C-715/17, European Commission v Republic of Poland, available at: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=219670&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=7366313>

⁴⁸ Court of Justice of the European Union, Action brought on 21 December 2017, Case C-715/17, European Commission v Republic of Poland, available at: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=200632&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=7516787>

on the legislative framework already provided by EU secondary law when there are legitimate concerns of national security.

16. National jurisprudence on international protection in 2019 (please include a link to the relevant case law and/or submit cases to the [EASO Case Law Database](#))

For information on legal provisions, practical developments and case law we recommend to consult the ECRE AIDA Country report on Poland for 2019 (forthcoming) prepared with the support of Helsinki Foundation for Human Rights.⁴⁹

17. Other important developments in 2019

Ongoing concern in Poland:

Violation of the right to defence in case when an applicant for international protection has been considered as a threat to national security. In cases involving national security, it provides to classify files of the procedures on granting and withdrawing different residence permits, including asylum, as “classified”. Moreover, reasons of the decisions may be limited and contain no information about the factual ground of the decision. It results in a lack of possibility to access case files by foreigners and their legal representatives - both at the administrative stage of the procedure and even later when the case was appealed to the administrative court. Therefore they have no information about factual grounds of decision, which violates their rights of defence.

Ameer Alkhawlany case update:

The HFHR took part in the proceedings concerning Ameer Alkhawlany, an Iraqi citizen and former Ph.D. student of the Jagiellonian University in Cracow. Alkhawlany’s application was rejected as the asylum authority found no grounds to grant him refugee status or subsidiary protection. In April 2017, Alkhawlany was deported from Poland based on classified information which allegedly showed that Mr. Alkhawlany was a “security threat”. The HFHR has submitted a complaint to the Supreme Administrative Court (hereinafter: SAC) in cassation in the case which concerned his return to the country of origin, acting as a social organisation.⁵⁰ On 30 May 2019, SAC dismissed the complaint, accepting the reasoning presented by the Provincial Administrative Court in Warsaw and the administrative authorities involved in the expulsion procedure and held that Mr. Alkhawlany’s deportation was based on reasonable grounds (Case No. II OSK 3559/18).⁵¹ It should be recalled that in an earlier case concerning the refusal to grant international protection to Ameer Alkhawlany, the Supreme Administrative Court overturned the appealed judgment of the Provincial Administrative Court in Warsaw and the prior administrative decisions, stating that Mr. Alkhawlany’s “security risk” status had been determined incorrectly. At that time, SAC indicated that the application of specific grounds for refusal had not been thoroughly examined. The court pointed out that classified materials indicated that the foreigner posed a threat to the security of the state and society, but did

⁴⁹ European Commission for Refugees and Exiles, Asylum Information Database, country reports on Poland, available at: <https://www.asylumineurope.org/reports/country/poland>

⁵⁰ Helsinki Foundation for Human Rights, *Top administrative court decides cases of foreigners named “security risk”*, available at: <https://www.hfhr.pl/en/top-administrative-court-decides-cases-of-foreigners-named-security-risk/>

⁵¹ Helsinki Foundation for Human Rights, *HFHR’s complaint against compulsory return of Iraqi PhD student dismissed*, available at: <https://www.hfhr.pl/en/hfhrs-complaint-against-compulsory-return-of-iraqi-phd-student-dismissed/>

not pose any risk to international relations. However according to the jurisprudence of the Supreme Administrative Court, in the event that a party does not have access to classified material collected in its case, the right of defense is guaranteed by the fact that the court can access the classified material.⁵²

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19. Feedback or suggestions about the process or format for submissions to the EASO Annual Report

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