**Input by civil society to the**

**2021 EASO Asylum Report**

Dear Colleagues,

The production of the *EASO Asylum Report 2021* is currently underway. The annual [Asylum Report series](https://www.easo.europa.eu/asylum-report) 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 organisations, UNHCR and researchers. To this end, we invite you, our partners from civil society, academia and research institutions, to share with us your reporting on developments in asylum law, policy or practice in 2020 (and early 2021) by topic as presented in the online survey.

Please note that the EASO Asylum 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.

All submissions are publicly accessible. For transparency, 2021 contributions will be published on the EASO webpage. Contributions to the 2020 EASO Asylum Report by civil society organisations can be accessed [here](https://easo.europa.eu/asylum-report-2020), under 'Acknowledgements'. 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 Asylum Report is subject to terms of reference and volume limitations. Contributions from civil society organisations feed into EASO’s work in multiple ways and inform reports and analyses beyond the Asylum Report.

Your input matters to us and will be much appreciated!

**Nina Gregori** -*EASO Executive Director*

**\***Please complete the online survey and submit your contribution to the 2021 EASO Asylum Report by **Thursday, 25 February 2021.\***

# 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, only include the following type of information:

* New developments and improvements in 2020 and new or remaining challenges; and
* Changes in policies or practices, transposition of legislation or institutional changes during 2020.

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

# 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 asylum procedures in **Poland** is still a persisting concern. In July 2020 the European Court of Human Rights (hereinafter: ECtHR) in the ruling *M.K. and Others v. Poland* (Application Nos. 40503/17, 42902/17, 43643/17) which became final on 14 December 2020[[1]](#footnote-1), confirmed that persons trying to cross the external border in Terespol (border between Belarus and Poland) might not be properly identified as persons seeking international protection and might be pushed-back to Belarus in breach of international human rights law. The judgement contains a detailed analysis of the circumstances of the events of pushbacks at the Polish border. The judgement concerns the group of Chechen asylum seekers, who had repeatedly been refused an opportunity to file an application for asylum by the Polish Border Guard. The applicants were among the group of persons who received *pro bono* legal assistance at the border crossing with Belarus in Terespol on 17 March 2017, which was provided by attorneys from the Warsaw Bar Association[[2]](#footnote-2) working with NGOs such as the Helsinki Foundation for Human Rights, Association for Legal Intervention and Brest-based Human Constanta. On that day the applicants, together with fifty other persons represented by the lawyers from Warsaw, were again refused to apply for asylum in Poland. The Court found that – contrary to the claims of Polish authorities – the foreigners had applied for international protection and that these applications were ignored by the Border Guard. The ECtHR further held that the refusals had been a part of consistent practice at the Terespol border crossing, which was confirmed by sources such as reports of NGOs and Polish Ombudsman. The ECtHR also confirmed the existence of a wider state policy of not accepting asylum applications and of returning individuals seeking such protection to Belarus. The applicants were granted *interim measure*, in which the ECtHR prohibited Polish authorities from returning the applicants to Belarus. However, in an unprecedented move, the Polish government decided to ignore the order. The applicants later made several, equally unsuccessful, attempts to apply for international protection. The ECtHR found that Poland had violated the following articles of the European Convention on Human Rights: Article 3 due to the risk that Belorussian authorities may hand over the applicants to Russian authorities, who may have the applicants transferred to Chechnya, from where the applicants fled in fear of torture; Article 4 of Protocol No. 4 - the Court found that Poland had no right to return the applicants to Belarus and that such a practice constituted an element of a wider policy of push-backs conducted by the Polish authorities; Article 13 - which resulted from the fact that decisions refusing entry were immediately enforceable; Article 34 in conjunction with Rule 39 of the Rules of Court - namely Polish authorities’ refusal to comply with the ECtHR *interim measure* prohibiting the applicant’s return to Belarus and obliging Poland to accept the applicants’ requests for international protection for a proper review.

Another case on the access to asylum which was communicated to the Polish government on 7 September 2017 (*D.A. and Others v. Poland*, Application No. 51246/17) concerning citizens of Syria who were refused entry to Poland at the Terespol border crossing despite *interim measure* granted by the ECtHR[[3]](#footnote-3). One more case was communicated on 16 December 2020 (*Jama SHEROV and Others v. Poland,* Applications Nos. 54029/17, 54117/17, 54128/17, 54255/17).[[4]](#footnote-4) The case communicated in 2020 concerns a group of refugees from Tajikistan who at the turn of 2016 and 2017 tried to make applications for international protection at the Polish-Ukrainian border crossing in Medyka but the Polish Border Guard did not accept these applications and the foreigners were returned to Ukraine.[[5]](#footnote-5)

Moreover, it is worth pointing out that in addition to the problems identified above (pushbacks), the COVID-19 epidemic and the restrictions caused by it also contributed to the reduction of the number of asylum applications submitted in Poland in 2020.

The Office for Foreigners has suspended on 16 March 2020[[6]](#footnote-6) direct customer service. Personal visits in the office were possible only in matters ‘absolutely necessary’ and only after a prior telephone appointment. Foreigners were asked to contact the Office for Foreigners in writing (by post and e-mail) or by phone. In the building of the Office for Foreigners in Warsaw, there is also a Border Guard Station, where asylum applications are being submitted, which had a significant impact on access to asylum. The direct customer service was resumed by the Office on 22 May 2020[[7]](#footnote-7) and since then foreigners are served in accordance with the **sanitary rules** resulting from the epidemic status associated with SARS-CoV-2 virus in Poland.

What is significant, as a result of the introduction of border restrictions, after 15 March 2020, asylum applications were accepted only in ‘urgent cases at border crossings with authorized border traffic’.[[8]](#footnote-8) The asylum applications have been registered again from 11 May 2020.[[9]](#footnote-9) According to the Border Guard,[[10]](#footnote-10) the border service together with the authority competent for examining asylum claims (the Head of the Office for Foreigners), made every effort to develop the right course of action, so that the fundamental rights of persons seeking asylum on the territory of Poland would be guaranteed.[[11]](#footnote-11) However, the restrictions introduced after 15 March 2020 at border crossings with authorized border traffic - including the suspension of international rail connections - caused a large decrease in the intensity of border traffic.[[12]](#footnote-12) The Polish Ombudsman confirmed that this situation resulted from the fact that many border crossings have been closed, including the rail border crossing in Terespol most frequently visited by people seeking international protection - it was closed due to the suspension of rail connections.[[13]](#footnote-13) The Ombudsman also stated that the introduction of a pandemic state cannot justify refusing to accept refugees in Poland and pointed out that in *the regulation of the Ministry of Interior and Administration of 13 March 2020 on the temporary suspension or limitation of border traffic at specific border crossing points*, persons intending to apply for asylum were not included as persons allowed to enter the Polish territory, making access to the asylum procedure illusory in many cases.[[14]](#footnote-14) In the opinion of the Commission of Experts of the Ombudsman, the lack of effective access to the asylum procedure during a pandemic is a violation of international and national law.[[15]](#footnote-15)

The official statistics show that in the second quarter of 2020, no asylum application was lodged in Terespol border crossing between Belarus and Poland, previously the main entry point for the asylum seekers to Poland.[[16]](#footnote-16)

Nevertheless, during the period when asylum applications were not registered, mostly ‘the declarations of intention to submit the asylum application’[[17]](#footnote-17) were accepted and registered. Such a declaration may be submitted by e-mail or by post to the nearest Border Guard station.[[18]](#footnote-18) It is worth mentioning that the persons who ‘declared the intention to submit the asylum application’ are not covered by the medical and social assistance since they are not considered as yet as asylum applicants in the national law, contrary to the EU law (Article 2c and Article 6.1 of the recast Procedure Directive 2013/32).[[19]](#footnote-19) The Consortium of Polish NGOs, in the letter to the Minister of Interior and Administration, raised the need to include these persons in the social system for asylum seekers.[[20]](#footnote-20)

As a result of the above, the number of applications for international protection lodged in Poland in 2020 is at the lowest level in years**.**[[21]](#footnote-21) In 2020, only 1620 applications for international protection (first and subsequent) were submitted which covered 2803 individuals. It is the lowest number since 1999 [[22]](#footnote-22) [[23]](#footnote-23) [[24]](#footnote-24) [[25]](#footnote-25) [[26]](#footnote-26). For example in the year 2019, 1958 asylum applications (first and subsequent) were registered, which covered 4095 individuals.[[27]](#footnote-27)

More information can be found in the ECRE's AIDA Country report on **Poland**.[[28]](#footnote-28)

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

In **Poland**, after the delivery of the *M.K. and Others* ruling[[29]](#footnote-29), the Minister of Interior and Administration issued the statement, which shows that the challenges and obstacles faced by the NGOs and attorneys regarding the effective access to migrants at the border, in order to ensure their right to seek asylum, are still valid.[[30]](#footnote-30)

The Minister, in the answer to one of the MP's question about the violation of the European Convention on Human Rights at the eastern border of Poland, stated that M.K. and Other applicants had not applied for asylum at the border and had therefore been refused entry. The Minister did not mention that the Court found that the applicants, in this case, had asked for asylum, only their applications had been ignored or that the ECtHR found that the policy of refusing entry at the border was a systemic problem. The Minister also stated that the interviews conducted at the border are documented only by the mean of an official memo drafted by the Border Guards officer. However, the Minister did not mention that such practice was found to be inadequate by the Supreme Administrative Court in the numerous judgements.[[31]](#footnote-31) The Minister stated that *interim measure* is not a basis for allowing a foreigner to enter the territory or for accepting his or her asylum application.[[32]](#footnote-32) The Minister also did not mention that according to the case-law of the Court, the attorney representing a foreigner should be allowed to participate in the procedures at the border.[[33]](#footnote-33)

More detailed information on the access to information and legal assistance for vulnerable groups can be found in the ECRE's AIDA Country report on **Poland**.[[34]](#footnote-34)

1. **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)**

Information can be found in the ECRE's AIDA Country report on **Poland**.[[35]](#footnote-35)

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

In **Poland**, the Border Guard[[36]](#footnote-36) due to the announcement of the COVID-19 pandemic state, followed by the announcement of the COVID-19 epidemic, has stopped the execution of all transfers under the Dublin III Regulation between 16 March 2020 and 8 July 2020. Later in July 2020, Poland resumed admitting foreigners under the Dublin III regulation. According to the Border Guard,[[37]](#footnote-37) all Border Guard units have been provided with information materials (posters, leaflets) on COVID-19 in more than 20 language versions (information on the disease itself, prevention, hygiene). Furthermore, since 26 October 2020,[[38]](#footnote-38) an additional requirement was introduced regarding the ‘Dublin procedure’. The sending EU Member States, are requested to perform tests for the SARS-CoV-2 virus no later than 72 hours before the foreigner is transferred to Poland under the Dublin III regulation. Only the issuance of the relevant certificate of a negative virus test result by the sending Member State allows the transfer of a foreigner to **Poland**.

More information on Dublin procedures can be found in the ECRE's AIDA Country report on **Poland**.[[39]](#footnote-39)

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

Information can be found in the ECRE's AIDA Country report on **Poland**.[[40]](#footnote-40)

1. **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)**

In **Poland,** at the end of 2020, 3176 people in total are under the care of the Head of the Office for Foreigners – they received social assistance (e.g. housing, providing information on health issues).[[41]](#footnote-41)

In **Poland,** the assistance granted in the reception centres is granted primarily to all asylum applicants. An asylum applicant can obtain assistance in the form of a financial allowance to live outside these centres only upon request examined by the Head of the Office for Foreigners. It can be granted for organizational, safety or family reasons or to prepare asylum applicants for independent life after they have been granted any form of protection. The amount of these funds is PLN 750 / € 180 per person per month (PLN 25 per day). In the case of families, these amounts are lower, for example in a family of three or more persons, the amount is PLN 450 per person per month and in the case of four-person households and more - it is PLN 375 per person per month. It was raised that these resources are not sufficient to meet the basic living needs of asylum seekers, thus violating EU Directive 2013/33/EU which lays down the standards for the reception of applicants for international protection.[[42]](#footnote-42) The Directive stipulates that the material resources granted to asylum seekers should ensure an adequate standard of living. According to the Polish NGOs, in the case of families of three or more persons, the financial allowance for asylum seekers who decide to reside outside reception centres is lower than the established social criterion, i.e. the income threshold for social assistance. Currently, the latter is set at PLN 528 per month per person in the family. One of the NGOs has submitted a complaint to the European Commission on the amount of financial allowance received by asylum seekers staying outside the reception centres. As the authors of the complaint emphasise, 'the amount of financial allowance granted to asylum seekers in households with three or more persons is also lower than the minimum subsistence level'.

More information can be found in the ECRE's AIDA Country report on **Poland**.[[43]](#footnote-43)

1. **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)**

In **Poland**, that due to the announcement of the COVID-19 pandemic state, followed by the announcement of the COVID-19 epidemic, the practice of admitting foreigners to detention centers has changed. Since 15 March 2020, each foreigner was examined by a doctor before being put in detention (in the case of symptoms of illness, further steps are taken, same as towards Polish citizens, in particular, a virus test is carried out). After the admission, the foreigner was re-examined and placed in isolation conditions to be observed by medical personnel. The body temperature is being measured to all foreigners staying in detention centres, as well as anyone entering this centre.[[44]](#footnote-44) Since the end of July 2020, [[45]](#footnote-45) tests for COVID-19 are obligatory for every foreigner placed in detention. In the case of a positive result for COVID-19, the sanitary and medical services decide about the further procedure (they issue decisions on compulsory hospitalization, quarantine or isolation).

In **Poland**, the Border Guard[[46]](#footnote-46) on 10 October 2020 issued the guidelines to ensure that alternative measures to detention in the form of the foreigner's obligation to report to the border authorities are implemented in a way that limits the possibility of direct contact.

The detention of foreign families with children is still a persisting concern because the ECtHR’s issued in 2020 two judgements in this regards concerning **Poland**. On 25 March 2020, the ECtHR published its judgment in the case of Bilalova and Others vs. **Poland** (application no. 23685/14)[[47]](#footnote-47) concerning the detention of a foreign woman and her five children. The Court found that the detention of the children amounted to a violation of Article 5 (1) (f) ECHR. It concluded that there was insufficient evidence to show that the domestic authorities had carried out such assessment and that steps had not been taken to limit the duration of the children's detention. The Court noted that according to a well-established case-law the confinement of young children in such structures should be avoided and that only short-term placement under suitable conditions and only as a measure as a last resort**,** could be compatible with the Convention.

On 4 June 2020, the ECtHR issued a third judgment regarding the detention of foreign families with children in **Poland** in the cases of *A.B. and Others v. Poland* (applications no. 15845/15 and 56300/15),[[48]](#footnote-48) resulting from the complaints submitted by the HFHR’s lawyer (previous judgments were issued on 25 March 2020 in the mentioned case *Bilalova and Others vs. Poland* and on 10 April 2018 in the case *Bistieva and Others v. Poland*, application no. 75157/14[[49]](#footnote-49)).In its recent judgment, the ECtHR found a violation of the right to family life (Article 8 of the Convention) towards the child. The ECtHR held that the Polish authorities had not examined the child's well-being when deciding on the detention of the family, did not treat detention as a last resort and did not examine the possibility of applying alternatives to detention.

In **Poland**, the detention of victims of violence and torture is still a persisting concern. For example, in March 2020 the District Court in the city of Radom granted 39.000 PLN compensation for the unlawful detention of a citizen of the Democratic Republic of Congo in the detention center in Lesznowola. The client has been identified by the Border Guard as a victim of violence. Although the law does not allow the detention of such persons, he was detained and released only as a result of a complaint against the decision on placement in the detention center. The judgment of the district court was upheld by the Court of Appeal in Lublin in February 2021.[[50]](#footnote-50)

More information on the detention of applicants for international protection can be found in the ECRE's AIDA Country report on Poland.[[51]](#footnote-51)

1. **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)**

Information can be found in the ECRE's AIDA Country report on Poland.[[52]](#footnote-52)

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

Information can be found in the ECRE's AIDA Country report on Poland.[[53]](#footnote-53)

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

Information can be found in the ECRE's AIDA Country report on Poland.[[54]](#footnote-54)

1. **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)**

Information can be found in the ECRE's AIDA Country report on Poland.[[55]](#footnote-55)

1. **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)**

Information can be found in the ECRE's AIDA Country report on Poland.[[56]](#footnote-56)

1. **Return of former applicants for international protection**

Information can be found in the ECRE's AIDA Country report on Poland.[[57]](#footnote-57)

1. **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)**

Information can be found in the ECRE's AIDA Country report on Poland.[[58]](#footnote-58)

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

Information can be found in the ECRE's AIDA Country report on Poland.[[59]](#footnote-59)

1. **National jurisprudence on international protection in 2020 (please include a link to the relevant case law and/or submit cases to the** [**EASO Case Law Database**](https://caselaw.easo.europa.eu/Pages/default.aspx)**)**

Information can be found in the ECRE's AIDA Country report on Poland.[[60]](#footnote-60)

1. **Other important developments in 2020**

Information can be found in the ECRE's AIDA Country report on Poland.[[61]](#footnote-61)

References and sources

1. **Please provide links to references and sources and/or upload the related material in PDF format**

ECtHR, Bilalova and Others v. Poland, application no. 23685/14, available at: <http://hudoc.echr.coe.int/eng?i=001-201895>

ECtHR, A.B. and Others v. Poland, applications no. 15845/15 and 56300/15, available at: <http://hudoc.echr.coe.int/eng?i=001-202693>

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Warsaw Bar, Advocates at the Border, information available at: <https://informator.ora-warszawa.com.pl/2018/numer-e382018/projekt-adwokacinagranicy-zakonczyl-sie-sukcesem/>

Ombudsman, information available at: <https://www.rpo.gov.pl/pl/content/sytuacja-migrantow-pandemii-stanowisko-rpo-i-komisji-ekspertow-ds-migrantow>

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Head of the Office for Foreigners,statistical data for the period of 1992-2000, available at: <https://udsc.gov.pl/wp-content/uploads/2014/12/41206412b98bd_nsuch_gotowe.xls>

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1. **Feedback or suggestions about the process or format for submissions to the EASO Asylum Report**

N/A

# Contact details

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**I accept the provisions of the EASO** [**Legal and Privacy Statements**](https://www.easo.europa.eu/legal)

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2. Warsaw Bar, Advocates at the Border, information available at: <https://informator.ora-warszawa.com.pl/2018/numer-e382018/projekt-adwokacinagranicy-zakonczyl-sie-sukcesem/> [↑](#footnote-ref-2)
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4. ECtHR, Jama SHEROV and Others v. Poland, applications nos. 54029/17, 54117/17, 54128/17, 54255/17, communicated on 16 December 2020, available at: <http://hudoc.echr.coe.int/eng?i=001-207441> [↑](#footnote-ref-4)
5. Helsinki Foundation for Human Rights, information available at: <https://www.hfhr.pl/kolejna-sprawa-odmowy-wjazdu-dla-uchodzcow-zakomunikowana-polskiemu-rzadowi-przez-etpc/> [↑](#footnote-ref-5)
6. Head of the Office for Foreigners,information available at: <https://udsc.gov.pl/en/suspension-of-direct-customer-service/> [↑](#footnote-ref-6)
7. *Ibidem* [↑](#footnote-ref-7)
8. Poland, Border Guard, Border Guard Headquarters (Straż Graniczna, SG), e-mail, 31 March 2020. [↑](#footnote-ref-8)
9. Poland, Border Guard, Border Guard Headquarters (Straż Graniczna, SG), e-mail, 25, 29 June 2020. [↑](#footnote-ref-9)
10. Poland, Border Guard, Border Guard Headquarters (Straż Graniczna, SG), e-mail, 31 March 2020. [↑](#footnote-ref-10)
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14. *Ibidem* [↑](#footnote-ref-14)
15. *Ibidem* [↑](#footnote-ref-15)
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17. ‘The declaration of intention to submit the asylum application’ is the Polish equivalent of the institution indicated in the Article 6 of Directive 2013/32/EU as ‘making application for international protection'. The ‘acceptance of the asylum application’ mentioned in the Border Guard’s statement and the Polish law is respectively the equivalent of 'lodging' the application for international protection mentioned in art. 6 of Directive 2013/32/EU. [↑](#footnote-ref-17)
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