



## Input by civil society organisations to the Asylum Report 2024

Dear Colleagues,

The production of the *Asylum Report 2024* is currently underway. The annual [Asylum Report series](#) presents 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, researchers and UNHCR. 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, policies or practices in 2023 by topic as presented in the online survey (**'Part A' of the form**).

We also invite you to share with us any publications your organisation has produced throughout 2023 on issues related to asylum in EU+ countries. These may be reports, articles, recommendations to national authorities or EU institutions, open letters and analytical outputs (**'Part B' of the form**).

Your input can cover information for a specific EU+ country or the EU as a whole. You can complete all or only some of the sections.

Please note that the 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.

All submissions are publicly accessible. For transparency, contributions will be published on the EUAA webpage. For reference, contributions to the 2023 Asylum Report by civil society organisations can be accessed [here](#), 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 Asylum Report is subject to terms of reference and volume limitations. Contributions from civil society organisations feed into EUAA's work in multiple ways and inform reports and analyses beyond the Asylum Report.

Your input matters to us and will be much appreciated!

\*Please submit your contribution to the Asylum Report 2024 by **Thursday, 30 November 2023**.\*





## Instructions

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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:

### Part A:

- ✓ New developments and improvements in 2023 and new or remaining challenges;
- ✓ Changes in policies or practices, transposition of legislation or institutional changes during 2023;
- ✓ Across the different thematic sections feel free to make reference to issues related to the implementation of the Temporary Protection Directive at national level.

### Part B:

- ✓ New publications your organisation produced in 2023

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.

## PART A: Contributions by topic

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1. Access to territory and access to the asylum procedure (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)

### Situation at the Polish-Belarusian border

In 2023, **pushbacks at the Polish-Belarusian border continued**. Pushbacks were reported irrespective of a nationality or vulnerability of persons concerned, including families with children, pregnant women, elderly, disabled and ill persons. Persons crossing the Polish-Belarusian border in an irregular manner asked for international protection, but their [asylum claims were ignored](#) by the Polish authorities. They were pushed back despite their pleadings for international protection.

For example, in May 2023, for couple days, a **group of several dozen third-country nationals from Syria and Iraq (20-30), including children** (11, youngest of 1,5-2 years old) was asking the Polish Border Guard for asylum while being blocked from entering Poland by the fence that had been built at the border. The Belarusian authorities did not allow them to go back to Belarus, threatened them with dogs, so they were stuck “between” two countries. The [Polish Border Guard argued](#) that they cannot allow entry of the third-country nationals, because **asylum applications can be accepted only at regular border crossings** (which is not only [against the law](#), but also incoherent with the [Ministry of Internal Affairs and Administration’s approach](#) in this regard). Multiple calls to allow the group’s entry into Poland were not successful.

The **real number of pushbacks is unknown**. In April 2023, the [Special Rapporteur on Human Rights of Migrants](#) published a report concerning his visit in Poland where he noticed that only the first removal





of the third-country national who entered Poland irregularly is recorded: he or she receives then a decision on an immediate removal (Article 303b of the [Act on Aliens](#)). If he/she enters Poland again, he/she is returned to Belarus without any decision being issued (under [Regulation of August 2021](#)). In August 2023, this practice was confirmed by the [Ministry of Internal Affairs and Administration](#). Moreover, some third-country nationals stated that no documents were ever given to them: irrespective of whether it was a first or subsequent pushback.

Partial [data received from the Polish Border Guard](#) show that **from January to April 2023**, 880 third-country nationals, mostly from Syria and Afghanistan, received a decision ordering an immediate return after their apprehension near the border (based on Article 303b of the Act on Aliens). Moreover, 4,582 preventions of an irregular entry at the Polish-Belarusian border were registered in this period. This number includes *inter alia* removals based on the Regulation of August 2021. **From May to August 2023**, 331 third-country nationals, mostly from Syria (89) and Afghanistan (73), but also from Ethiopia (26) and Eritrea (23), received a decision ordering an immediate return after their apprehension near the border (based on Article 303b of the Act on Aliens). Moreover, only from 15 July to 31 August 2023, 3,015 persons were removed under the Regulation of August 2021. Those were mostly nationals of Syria (878), Afghanistan (502), India (447) and Iran (278). Civil society organizations report that these official statistics does not show the gravity of the problem: the real number of pushbacks is surely higher.

**The use of violence at the border is on the increase.** The [Special Rapporteur on Human Rights of Migrants](#) stated in 2023 that, while both states deny using violence at the Polish-Belarusian border, the evidence proves that abusive and violent tactics are used by Polish and Belarusian forces. In 2023, as reported in two PRAB reports published in [May](#) and [September](#), third-country nationals were subjected to beating (with hands and batons), fully undressing, insults, derision, denying access to toilet or food, and destroying the foreigners' possessions: clothes, shoes, phones and food. Tear gas was regularly used, also towards minors. Third-country nationals informed also about being subjected to a full body search, including the orders to crouch and cough. Some persons also claimed that they had asked for water while being apprehended at the border, but their request had been denied. Moreover, in 2023, especially since mid-June, **the militarization of the border increased** to a great extent: much more Border Guard and Police officers, as well as soldiers, was patrolling the border. With the increased militarization of the area, Polish forces had become more aggressive towards third-country nationals.

**Activists and NGOs are experiencing more threats and violence too**, especially since mid-June 2023, when soldiers started to patrol the border. Persons known to be providing assistance to third-country nationals at the border have been subjected to intensified controls. Moreover, if they entered the restricted area near the fence, they have been punished with fines. Some activists were also [charged with crimes, e.g. of insulting a policeman](#) at the border.

Furthermore, in February 2023, Podlaskie Governor issued a regulation that **prohibits any acts of tossing, handing over, receiving items via the state border line** at the Polish-Belarusian border. For breaching this rule, a person concerned could be fined (PLN 500). The new regulation was challenged by the [Human Rights Commissioner](#). On 13 July 2023, the [Provincial Administrative Court in Białystok \(no. II SA/Bk 365/23\)](#) decided that the abovementioned regulation lacked a legal basis and considered it invalid.

In February 2023, the construction of the '**electronic barrier**' at the Polish-Belarusian border (motion sensors and cameras) was finished. This development forced third-country nationals to use the routes where no such high-tech devices have been installed (rivers, swamps). These routes are bringing in **much more risk to their life and limb**. Cases of frostbitten limbs (leading in extreme cases even to amputation), food poisoning resulting from lack of access to drinking water, hypothermia, trench feet, fractures, dislocations and other injuries upon falling from the fence, [continued to be identified](#) by the activists and doctors working at the border.





As of November 2023, [at least 60 persons died](#) at the Polish-Belarusian border since the beginning of the humanitarian crisis in August 2021, mostly from [hypothermia](#). [Civil society organizations](#) claimed that some of the fatalities at the Polish-Belarusian border had happened after the person concerned had been pushed back from Poland. They asserted that some of those persons 'could have survived if the Polish authorities would – at all, properly or timely - react to the other migrants' calls for help for the ill foreigner who they had to leave in the woods to seek medical assistance'.

The death of an Ethiopian woman raised particular doubts as reportedly Polish Police and Border Guard were informed by the other third-country nationals about her bad medical condition. Instead of transporting her to the hospital, Polish authorities pushed her back to Belarus. The [Human Rights Commissioner](#) investigated this case; however, the Border Guard and Police seemed to be unwilling to cooperate.

While the [authorities claim](#) that the medical assistance at the border is available, NGOs and media report that not all persons needing medical assistance are receiving it. They are **pushed back to Belarus despite being ill or injured**. NGOs also regularly observe that hospitalized third-country nationals are **separated from their family members** and other foreigners accompanying them who are pushed back.

For example, in July 2023, [a mother with a broken leg was taken to a hospital and her 17-year-old daughter was pushed](#) back to Belarus. The mother and child – Kurds from Syria – were separated without a possibility of contact (the girl's phone was destroyed). The girl was located by the activists. The Border Guard Headquarters stated that she would be admitted to Poland, only if she enters it legally – via the Terespol border crossing, so approx. 100 km from her location. Moreover, in Terespol, in practice, many asylum seekers are denied entry (see below). Despite the media attention, interventions of the Commissioner of Human Rights and NGOs, the girl was not allowed to enter Poland; she eventually returned to Syria. Her mother, after being released from the hospital, was placed in the immigration detention centre in Poland.

Many international and regional bodies and organizations (e.g. the [Special Rapporteur on Human Rights of Migrants](#), [Special Rapporteur on violence against women and girls, its causes and consequences](#), [ECRE](#), all upon their visits in Poland) condemned pushbacks in Poland. Moreover, in February 2023, 110 persons representing the world of culture, science and media signed the [statement](#) against the government's policy maintained with regard to third-country nationals crossing the Polish-Belarusian border.

### **Public vote**

On 17 August 2023, Polish parliament (*Sejm*) adopted a [resolution](#) for a **public vote** to be organized on 15 October. Two out of four questions concerned third-country nationals. One of them asked the voters **whether the barrier built at the Polish-Belarusian border should be demolished** and was officially justified by the need for the Poles to decide about their security. Due to the insufficient turnout, the public vote is considered not binding.

### **Law legitimizing pushbacks and national jurisprudence**

In April 2023, the [Special Rapporteur on Human Rights of Migrants](#) and [ECRE](#), and in July 2023, the [Commissioner for Human Rights](#) urged the Polish authorities **to repeal the Regulation of 20 August 2021** (that allowed for immediate pushbacks without any decision being issued). Despite those calls, the Regulation remains in force.

In July 2023, Helsinki Foundation for Human Rights (HFHR) published [an overview of the national case-law concerning pushbacks](#) at the Polish-Belarusian border. The courts coherently stated that the pushbacks in question breached international, EU and Polish law. In particular, they indicated that:





1. Pushbacks are violating the principle of non-refoulement, a right to seek asylum and the prohibition of collective expulsions.
2. The Border Guard should assess the situation of third-country nationals upon their return to Belarus and the circumstances of the humanitarian crisis at the border.
3. The Regulation of 20 August 2021 was adopted without a proper basis in law and is against Polish, EU and international law.
4. Evidentiary difficulties of third-country nationals crossing the Polish-Belarusian border are resulting from the policy of the Border Guard which is not properly recording irregular entries to Poland. Thus, third-country nationals should not be faulted for not having proofs confirming that they were at the Polish territory and then were pushed back to Belarus.

In the previous input, SIP informed that, in 2022, the Provincial Administrative Court in Warsaw had repealed decisions ordering an immediate removal from Poland in 7 cases, but in one – it had rejected the complaint, which was challenged before the higher court. On 10 May 2023, the latter case was [considered](#) by the Supreme Administrative Court (no. II OSK 1735/22). The court “**ruled in favor of the third-country national and repealed the pushback decision**. The court reminded that rules of the administrative procedure apply to the proceedings concerning immediate removals at the Polish border (so based on Article 303b of the Aliens Act). A decision on immediate removal must contain a reasoning: both factual and legal. While states can refrain from initiating regular return proceedings in particular circumstances, those circumstances must be specified in the documentation. Moreover, the [principle of non-refoulement applies in all circumstances](#) and a third-country national has a right to seek asylum” (PRAB report).

In another [judgment](#), delivered on 30 May 2023, the Provincial Administrative Court in Warsaw (no. II SA/Bk 244/23) “considered the pushback of a third-country national, who was seeking help for an Ethiopian woman in a worsening medical condition, to be illegal and ineffective. Considering that the foreigner’s entry to Poland was not registered by the Border Guard and their removal to Belarus was not preceded by an official decision, the court concluded that the statements of the third-country national are the most important source of information as regards the pushback. The Border Guard deprived the complainant of their right to seek asylum and did not examine whether, upon their return to Belarus they would be in danger. Moreover, the court reminded that the prohibition of refoulement is absolute: it cannot be excluded by the rules of national law, factual circumstances (i.e. the crisis at the border) or an irregular entry of the person concerned. Applying the Regulation of 20 August 2021, without taking into account other prevailing Polish law (of a higher rank), EU and international law, was considered as a significant violation of the law” (PRAB report).

Despite the overall human rights-oriented approach of the Polish courts that has been shown in pushback cases, the **remedies** against decisions ordering an immediate removal from Poland **must be considered ineffective**: they do not entail a suspensive effect. Moreover, they are [inaccessible](#) in practice. In the period of January to August 2023, no appeal against the decision ordering an immediate removal from Poland was submitted (information from the Border Guard upon SIP’s request).

### **European Court of Human Rights (ECtHR)**

Pushbacks at the Polish-Belarusian border continued to be [challenged before the ECtHR](#). As of November 2023, [11 cases concerning pushbacks](#) at this border (and the following detention) were communicated by the ECtHR. They concern 23 applications and 84 third-country nationals (16 minors), mainly originating from Afghanistan (37 persons), Iraq (26) and Syria (16). The applicants invoke violations of Articles 2, 3, 5, 13 of the ECHR and Article 4 of the Protocol no. 4 to the ECHR.

For example, a [case](#) involving Yemeni and Afghan nationals was communicated in April 2023. It concerns a group of third-country nationals who were pushed back from Poland to Belarus in August 2021 despite their pleadings for asylum in the presence of witnesses and Border Guard



officers ([M.M. and Others v. Poland](#), nos. 2509/22, 10271/22 and 10373/22). The [Human Rights Commissioner decided to intervene](#) before the ECtHR in this case.

### **Regular border crossings**

Since the closure of the border crossing in Bobrowniki on 10<sup>th</sup> February 2023, asylum seekers can ask for asylum only at one official border check point located at the Polish-Belarusian border, in Terespol. However, for many years, the **practice of intentional not hearing asylum pleadings** have been observed at this border check point. The Rule of Law Institute (RLI) informed that at the beginning of the year max. 1-2 asylum applications were admitted there per day. [SIP and RLI stated](#) in February 2023 that:

*Between July 2022 and February 2023, RLI assisted with submitting 70 applications for international protection (covering 219 persons) in Terespol. In most of these cases applicants were earlier “unofficially” returned to Belarus by the Polish Border Guard officers, who did not even put a stamp in the foreigners’ passports. Decisions on a refusal of entry were issued only in cases of the third-country nationals with the SIS entry ban or foreigners using forged travel documents. Many of the asylum applicants entering Poland during this period had prima facie evidence of being victims of torture (related to forced mobilization). Nevertheless, to access Polish territory, they often needed three or four entry attempts.*

The continuing difficulties in accessing asylum in Terespol have been also confirmed in 2023 by the [HFHR](#) and [Ocalenie Foundation](#).

In February 2023, the **UN Human Rights Committee** (UN HRC) published its [views](#) as regards the communication **no. 3017/2017**. In 2017, the applicants were denied entry to Poland 24 times at the Terespol official border check point located at the Polish-Belarusian border. They were not allowed to enter despite their claims for asylum. The UN HRC, acting under Article 5 (4) of the Optional Protocol, was of the view that the facts before it disclosed a **violation by Poland** of Articles 7 and 13 read alone and in conjunction with Article 2 (3) of the CPPR.

In February 2023, [SIP and RLI submitted their extensive opinion](#) in the [M.K. and Others v. Poland execution proceedings](#). Poland has been **repeatedly reproached by the ECtHR for denying entry to asylum seekers** at the border check points at the Polish-Belarusian border.<sup>1</sup> The court found Articles 3, 13 and 34 ECHR violated; Article 4 of the Protocol no. 4 to the ECHR was also considered breached. Despite this clear disapproval of the practice of not allowing entry to asylum seekers, the situation of asylum seekers approaching the official check points at the Polish-Belarusian border has not changed. Moreover, since August 2021, the situation of the third-country nationals trying to enter Poland irregularly have dramatically worsened. The facts and figures presented by the two NGOs – as well as the [HFHR](#) – clearly prove that the *M.K. and Others v. Poland* judgment has not been implemented in Poland. On 9 March 2023, the Ministers’ Deputies [decided](#) to continue the examination with regard to the execution of this judgment.

### **Detention centres**

In 2023, some detained asylum seekers needed to **wait weeks for the Border Guard to accept and register their asylum application**. It affected the length of their detention and prolonged the waiting time for the decision on international protection. The Border Guard claimed that the 3-day deadline to accept and register an application for international protection was not applicable in the detention centres. In a judgment of March 9, 2023, **no. VIII SAB/Wa 6/23**, the Provincial Administrative Court in Warsaw

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<sup>1</sup> ECtHR, *M.K and Others v. Poland*, 23 July 2020, nos. 40503/17, 42902/17 and 43643/17; *D.A. and Others v. Poland*, no. 51246/17, 8 July 2021; *A.I. and Others v. Poland*, no. 39028/17, of 30 June 2022; *A.B. and Others v. Poland*, 42907/17, 30 June 2022; *T.Z. and Others v. Poland*, no. 41764/17, 13 October 2022.



examined a case of an asylum seeker who had waited over 3 weeks to have his asylum application accepted and registered. The court [confirmed that the Border Guard managing detention centres is bound by the 3-day deadline](#). It indicated that “Under both national law and an interpretation based on Directive 2013/32/EU, in a situation where a migrant declares his or her willingness to submit an application for international protection, both the registration of that declaration, as well as the acceptance from the migrant on the application form for international protection and its registration, must be accomplished within 3 working days of the date on which the migrant submits that declaration. Undoubtedly, when analysing the provisions of the Act on Granting Protection to Foreigners on the Territory of the Republic of Poland and the Directive indicated, one must conclude that the deadline for registering the applicant’s application for international protection was exceeded”.

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

At the Polish-Belarusian border, **access to the information** about the right to seek asylum and legal aid [remains significantly hampered](#). In April 2023, [ECRE](#), upon its fact-finding visit in Poland, called on Polish authorities *inter alia* to proactively inform third-country nationals about the possibility to ask for asylum, and to provide them with proper interpretation and legal assistance before pushing them back to Belarus. Also the [Special Rapporteur on Human Rights of Migrants](#) confirmed that there is **no access to legal aid** guaranteed before a pushback from Poland. The legal framework (the Act on Aliens) does not guarantee access to information and legal aid for persons pushed back to Belarus.

**Misinformation** is rather reported at the Polish-Belarusian border. As noticed in the [latest PRAB report](#): “Persons interviewed by PRAB partners referred that the Polish border guards regularly misinform about the decisions/documents they issue (e.g., foreigners are not informed that the decision on an immediate removal contains an entry ban) and the situation of detained third-country nationals in Poland (to scare pushed-back persons from coming back or seeking asylum in Poland). Moreover, third-country nationals report being regularly forced to sign documents before the pushback without any explanation on, or translation of, what they are signing. Some persons even reported being forced to sign the documents prepared by the Border Guard by threats, denying them access to toilet, water or food.”

In practice, information on the rights of third-country nationals is given to pushbacks’ victims by the **NGOs and activists** providing assistance at the border. They guarantee that translation is provided, and inform third-country nationals about their legal and factual situation.

## 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)

On 21 June 2023, the [Refugee Board](#) (no. RdU-256-1/S/23) revoked the decision of the Head of the Office for Foreigners to refuse international protection to an Egyptian citizen, and referred his case for the reconsideration. During the registration of the application for asylum, the asylum seeker was not provided with an interpreter. The Border Guard officer, who interviewed him, did not speak the third-country national’s native language and **translated his testimony using an online tool**. The Refugee Board, examining the appeal, admitted that this course of action could have affected the results of the asylum procedure. The first-instance authority based its negative decision on the conclusion that there were inconsistencies in the asylum seeker’s testimonies, so that he was lacking credibility.





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

Since April 2023, the social assistance to cover the costs of the transfer to another EU Member State is granted and provided by the Chief Commander of the Border Guard (instead of the Head of the Office for Foreigners) (Article 75a of [the Act on Protection](#)).

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

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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)

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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)

### Changes in law

The rules concerning the duration of detention pending return [changed in April 2023](#). It is now six months that can be prolonged by twelve months, so **in total 18 months**. Before, as a rule, the period of detention could be extended up to twelve months in total, and, exceptionally, up to 18 months – when a person concerned submitted the appeal against a return decision (with a request for suspending the return) to the court. In addition to the abovementioned 18 months, a person concerned may be detained for up to 6 months pending asylum proceedings.

Moreover, detention at the airports and in other rooms designed to accommodate migrants is now possible for up to 7 days based on a decision of the Border Guard. This decision may be appealed to the Chief Commander of the Border Guard; only this second-instance decision can be challenged before courts. In practice, it means that third-country nationals who are denied entry to Poland may be **deprived of liberty for up to 7 days without a court decision**.

### Detention pending asylum proceedings

The grounds for detention are specified in law. For asylum seekers, these grounds mirror Article 8(3) of the Reception Directive (except for the letter c). In practice, many asylum seekers are detained in order to determine or verify their identity or nationality, or 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.

On 20 June 2023, the [Supreme Court](#) issued a ground-breaking judgment concerning immigration detention ([no. II KK 148/22](#)). The judgment indicates [how the provisions concerning detention of asylum seekers should be applied](#). The *ultima ratio* principle applies. According to the Court, **automatic**







**detention of asylum seekers is not acceptable.** “Such a practice undermines the humanitarian aim of granting international protection to third-country nationals, in particular refugees.” The Supreme Court recalled that detention of asylum seekers does not have a “repressive function, nor is its use intended to protect the borders of the Republic of Poland or the external borders of the European Union, much less to combat the phenomenon of illegal immigration.” Moreover, the Supreme Court reminded that **every condition for detention must be proven** and that courts cannot rely solely “on presumptions”. For a detention to be lawful, it must be demonstrated that it was necessary in a particular case. The Court emphasized that “if the deprivation liberty in a detention centre was justified by the necessity to perform certain activities with the third-country national’s participation, but these activities were not carried out or the actual period of detention was not necessary for them to be carried out, there are grounds for considering that the application of this measure was unjust in part or in whole.”

Similarly, on 1 March 2023, the [Court of Appeal in Warsaw \(no. II AKa 487/21\)](#) [awarded a compensation](#) of PLN 72.500 to a family of three unlawfully placed in the detention centre for a period of 2.5 months. The court noticed that the family was detained to gather information needed in the asylum proceedings, but for over 2 months only one interview was conducted and no further activities were even planned. Thus, according to the court, **after this interview, the detention could no longer be justified with the need to gather information.**

In another case, [SIP submitted an amicus curiae](#) in the proceedings concerning the prolongation of detention of a Sri Lankan asylum seeker who had spent already over 5 months in the detention centre. On 3 April 2023, the Regional Court in Olsztyn ([no. VII Kz 150/23](#)) released her from the detention centre. The court argued that it was of no importance that the asylum proceedings were prolonged, as in 5 months no interview was even conducted.

In yet another case, we sought [a compensation for an Irani national](#), who broke his arm while crossing the Polish-Belarusian border and was detained for 113 days. No actions in the asylum procedure were taken in this period. He was not even interviewed. The case is pending.

In another case, the [Supreme Court stressed](#) that the mere illegal departure from Poland does not indicate that there is a significant risk of absconding ([judgment](#) of 12 April 2023, [no. II KK 149/22](#)).

### **Alternatives to detention**

As mentioned above, [SIP submitted an amicus curiae](#) in the proceedings concerning the prolongation of detention of a Sri Lankan asylum seeker. On 3 April 2023, the Regional Court in Olsztyn ([no. VII Kz 150/23](#)) released her from the detention centre. The court highlighted **the importance of considering and applying alternatives to detention**. It argued that: “It should be emphasized that the migrant was detained (...) and has been in a detention centre for more than 5 months. When issuing a decision regarding the third-country national, it is reasonable to consider the fact that placing her in a detention centre undoubtedly worsens her psychophysical condition. (...) It should also be underlined that the ineffectiveness of alternative measures to detention cannot be determined *a priori* by the fact that the third-country national has illegally crossed the state border of the Republic of Poland.”

As we indicated in the previous input, the **effectiveness of engagement-based alternatives** to detention in the Polish context has been proven by the ATD pilot (2020-2022) implemented by SIP in cooperation with the Border Guard. The results prove that the community support provided to persons who would otherwise be detained impacts positively their health and wellbeing and contributes to decreased absconding rates (61% of the participants remained engaged in their procedures). [The final report in this regard was published in 2023](#). This year, SIP organized also a campaign “[Explore the boundaries of the Polish hospitality](#)” aimed at informing about conditions of immigration detention in Poland and promoting alternatives to detention.





## Medical and psychological assistance/hunger strikes

One of the main issues reported by detained foreigners in 2023 was limited access to **medical care**, in particular as regards expert medical assistance (e.g. gynecological for [pregnant women](#)). The access to emergency medical assistance in detention centres was also hampered. In January 2023, an ambulance was called for a third-country national on a hunger strike detained in the centre in Lesznowola. There was no medical staff at the time in the centre. The [emergency unit was not allowed to enter the detention centre](#) and provide medical assistance to the foreigner.

In 2023, **psychological assistance** in detention centres in Poland continued to be insufficient: not enough psychologists worked in the detention centres and these psychologists, who were often also Border Guard officers, were not trusted by detainees. Meanwhile, access to detention centres for external psychologists was still hindered in 2023. The Border Guard repeatedly denied access to detention centres to psychologists working in NGOs.

In 2023, [numerous third-country nationals](#) engaged in hunger strikes in the detention centers. In September 2023, in the detention centre in Przemyśl, the **biggest ever hunger strike** took place: it engaged over 100 third-country nationals. According to the [NGOs](#), the protesters demanded being treated with dignity, ceasing use of violence, including [use of tasers](#), by the Border Guard, being called by names (not numbers), having right to contact their families, access to good-quality and enough food as well as to hygienic products. The centre was [controlled by the Human Rights Commissioner](#) during the protest. In its initial findings, the Commissioner stated that the foreigners protested mostly against the lengthy detention intertwined with asylum or return proceedings and that the information about degrading treatment in the centre provided by the media was not confirmed.

## Children

Children **continue to be detained** in Poland for immigration purposes. Polish law still allows for a deprivation of liberty of all accompanied minors (pending asylum and return proceedings) and unaccompanied minors above 15 years old (pending return proceedings). By law, asylum-seeking unaccompanied minors should not be detained, but in practice they are placed in the detention centres, in particular when their age is contested by Polish authorities, when they applied for asylum while staying in detention as irregular migrants, or when there are no places available in a foster care. It has been also reported that asylum-seeking [unaccompanied minors are detained with unrelated adults](#). Moreover, children are not being detained for as short a period as possible. Cases of detention of accompanied and unaccompanied minors [lasting several months](#) were reported in 2023.

In practice, children are deprived of liberty [automatically, absent a rigorous scrutiny](#) of their individual situation and needs, or of the psychophysical consequences of detention. Child's best interest is often not taken into account. It is also not investigated (at all or sufficiently) whether a detention is a measure of last resort or whether alternatives to detention should be applied.

In 2023, the [Supreme Court](#) determined some **factors relevant for the assessment of the best interest of the child**. In its [judgment](#) of 20 June 2023 (no. II KK 148/22), the Court reproached the Border Guard's practice of presenting standardized and short statements of a doctor that there are no medical contraindications to detain a child. The court noticed that there is no evidence to prove that this medical information and documents were "related to the direct examination of the minor applicant herself prior to the subsequent decisions to extend detention". Moreover, in a case at hand, the lower-instance courts did not justify, in any way, why they consider that there is no risk to the minor's well-being. Furthermore, the Supreme Court noticed that "as a general rule, the deprivation of liberty of a mother with a young child constitutes a threat to the normal development of that child [...]. Only an individualised assessment, considering the psychophysical and developmental state of the minor, can justify a decision in the form of deprivation of liberty in a detention centre" and that "the welfare of the child cannot be reduced solely to the health issues".





Earlier that year, the [Supreme Court stressed](#) that the **principle of family unity cannot justify deprivation of liberty**. It indicated that “the argument provided for in the cassation complaint that there are no grounds for depriving a migrant of his or her liberty on the ground that his or her family members potentially fulfil the conditions justifying their detention should be regarded as requiring consideration” ([judgment](#) of 12 April 2023, [no. II KK 149/22](#)).

Poland has been repeatedly **reproached by the ECtHR for detaining families with children** without a rigorous examination of alternative measures or the best interest of a child. Poland was found to have violated Article 5 and 8 ECHR in five immigration detention cases,<sup>2</sup> including the most recent judgment of 9 February 2023, [R.M. and Others v. Poland](#) (no. 11247/18). In this case a mother with three children – a client of SIP – spent approx. 7 months in detention despite her worsening psychological state. The ECtHR decided that [Poland violated Articles 5\(1\)\(f\) and 5\(4\) ECHR. Poland itself admitted that Article 8 ECHR had been violated](#). The Court noticed that the alternatives to detention were not scrutinized in this case and the detention was not a measure of last resort. National authorities should have acted as quick as possible in order to avoid an unnecessary prolongation of the detention. Moreover, the applicant did not receive the Border Guard’s motions for the extension of the period of the family’s detention, nor could the mother participate in the court hearing, which made it impossible for her to undertake any defence before the court. According to the ECtHR, in the proceedings concerning the extension of detention, foreigners must be informed about its legal basis as well as the legal and actual reasons for the applicants’ deprivation of liberty in a way that gives them a fair opportunity to defend themselves before the court.

In 2023, more cases concerning immigration detention of families with children in Poland were **communicated** by the ECtHR, including two cases initiated by SIP:

- [M.S.T. and Others v. Poland](#), no. 40464/22, concerns a married couple with a three-year-old child who spent almost six months in the Kętrzyn detention centre. Given the severity of the mother’s and child’s mental health condition, they should have never been detained. Furthermore, such a long detention led to a deterioration of their physical condition, in particular that of the child. The hardship of the stay in the detention centre was intensified by the lack of adequate psychological care for the family, including the Border Guard’s refusal to allow a consultation with an independent external psychologist and the lack of a child psychologist in the centre. The family also complained about the poor conditions of their stay in the detention centre, including room size of less than 4 m<sup>2</sup> per person, lack of protection from the summer heat, restriction of outdoor activities, personal inspection upon admission to the centre violating their dignity, and a failure to provide any privacy to conduct their private and family life.
- [M.H.D. and Others v. Poland](#), no. 22399/22, concerns an over 6-month detention of an Iraqi family who had been stranded at the Polish-Belarusian border for 21 days before being detained. They were subjected to violence at this border, which resulted in a poor medical and psychological state of the family. Children’s best interest was not taken into account. Moreover, conditions of the family’s detention were sub-standard: in the Kętrzyn detention centre their personal space was limited to less than 3 m<sup>2</sup> per person. They were also not provided with adequate psychological and medical care. Upon admission to the centre, they were stripped naked.

Moreover, SIP submitted its **third-party interventions** in two newly communicated cases: [V.M. and Others v. Poland](#), no. 40002/22, and [Z.H.R. and Others v. Poland](#), no. 55558/22.

- [V.M. and Others v. Poland](#) concerns the detention of a pregnant Armenian citizen together with her two children in the centre in Biła Podlaska. The family spent many months in immigration

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<sup>2</sup> ECtHR, [Bistieva and Others v. Poland](#), no. 75157/14, 10.04.2018; [Bilalova and Others v. Poland](#), no. 23685/14, 26.03.2020; [A.B. and Others v. Poland](#), nos. 15845/15 and 56300/15, 4.06.2020; [Nikoghosyan and Others v. Poland](#), no. 14743/17, 3.03.2022.





detention, despite the fact that they were victims of violence, their mental state deteriorated over time, and the foreigner had a miscarriage during detention.

- *Z.H.R. and Others v. Poland* also concerns a protracted detention of a mother with two children – Iraqi nationals. They were apprehended upon irregularly entering Poland from Belarus. Mother suffered from anxiety, depression and suicidal thoughts. Despite that she – and her children – spent almost 9 months in the Polish detention centres.

SIP also continued to assist foreign families **before national courts**. On 1 March 2023, the [Court of Appeal in Warsaw](#) (no. II AKa 487/21) [awarded a compensation](#) of PLN 72.500 to a family of three unlawfully placed in the immigration detention centre for a period of 2.5 months. The Court of Appeal criticised the first-instance court, *inter alia*, for not considering the necessity to protect the best interests of the child and for not conducting proceedings with due diligence and without undue delay.

### Victims of violence

By law, detention of victims of violence is prohibited. However, in practice, victims of violence are detained pending asylum and return proceedings. The **identification mechanism applied by the Border Guard is ineffective** and too restrictive, resulting in many instances of unlawful detention of victims of violence. In particular, persons who suffered **pushbacks at the Polish-Belarusian border** were detained in Poland despite being victims of violence (also inflicted at the Polish-Belarusian border) or being in a poor mental state (intertwined with the trauma they experienced at this border). In 2023, SIP continued its litigation before national courts and the ECtHR against unlawful immigration detention of victims of violence.

In 2023, [SIP submitted an application to the ECtHR concerning an Egyptian national](#) who spent more than six months in the detention centre pending return and asylum proceedings, despite having several health conditions (urological, gastrological) that required an urgent surgery and were causing constant pain. The third-country national also repeatedly indicated that he was a victim of violence and provided evidence in this regard. Despite this, **no official procedure had been implemented to determine whether a foreigner is a victim of violence**. The courts did not, at any stage of the proceedings, take into consideration the foreigner's health problems, his poor psycho-physical state or the fact that he had experienced violence.

In 2023, SIP also [requested a compensation for an Iraqi citizen](#) – now a recognized refugee – who had been detained for 185 days despite being a victim of violence. At any stage of the proceedings, the poor mental health of the foreigner was taken into account by the Border Guard and courts deciding on his detention. Instead, he was deprived of liberty **in inhuman and degrading conditions** in the detention centre in Wędrzyn. The centre was overcrowded with no privacy whatsoever – he had to share a room with 12 other people. He was not provided with adequate medical and psychological assistance therein. The centre lacked proper infrastructure, including adequate access to hot water and computers; the rooms were rarely cleaned. The third-country national experienced also direct violence from the Border Guard officers during the protest that broke out in the center in Wędrzyn.

### Compensation for unlawful detention

On 20 June 2023, the [Supreme Court](#) reminded in the ground-breaking [judgment](#) that asylum seekers, as all other third-country nationals, can seek redress for unlawful detention (no. II KK 148/22). The Court also confirmed that a third-country national is only required to prove that there has been a wrongful, not unquestionably wrongful, deprivation of liberty.

Earlier that year, [the Supreme Court](#) also considered a case of a migrant who was placed in detention for seven months together with his wife and children after they were returned to Poland from Germany. The Supreme Court highlighted that the culpability of a migrant's behaviour – by, for example, leaving





Poland illegally – does not affect his/her right to receive a compensation for unlawful detention ([judgment of 12 April 2023, no. II KK 149/22](#)).

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)

The recent case has shown that **international protection may be granted to Russian nationals in connection with the war in Ukraine**. One of the SIP's clients – of Chechen origin – left Russia 20 years ago and lived in Ukraine. After the Russian aggression has started, she came to Poland and asked for international protection. The Head of the Office for Foreigners [granted her subsidiary protection](#). He decided that sending her back to Russia, after 20 years, where she has no family and to which she has no connection at all, and while she condemns Russian invasion of Ukraine (and its actions in Chechnya), would constitute an inhuman treatment.

In yet another case, **a Cameroonian national, upon irregularly crossing the Polish-Belarusian border and being detained in Poland while being pregnant**, was eventually [granted refugee status](#). As a French-speaker, she was afraid of persecution from the English-speaking militia. Instead of having an in-person interview in Warsaw, she was allowed by the Head of the Office for Foreigners to answer the relevant questions in writing, due to the fact that she was living away from Warsaw and she was just after giving birth.

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

### Qualification

In February 2023, the [Refugee Board granted subsidiary protection](#) to the SIP's clients: a family from Congo. The Head of the Office for Foreigners denied them international protection due to the **lack of credibility and evidence**. However, the Refugee Board noticed that, while conducting a credibility assessment, it is necessary to take into account how detailed and broad are the asylum seeker's explanations. More detailed and extensive testimonies are prone to contain some inaccuracies or even contradictions, which may not affect the applicant's credibility. Moreover, the applicant cannot be expected to prove the facts he relies on in the asylum application, but only to make them probable.

In 2023, the [Refugee Board also considered a case of a father and son from Tajikistan](#) who had to flee from their country of origin for political reasons. They were living in Ukraine when the Russian invasion started. In Poland, the Refugee Board concluded that the Tajik nationals should be granted subsidiary protection because, upon return to their country of origin, they could be exposed to inhuman or degrading treatment due to being considered a person of suspicion by the government, which already had resulted in the father's arrest and detention. The Board also referred to the fact that the foreigner had previously been **convicted of participating in a terrorist group**, which, in its opinion, may result in further deprivation of liberty and violence upon the return to Tajikistan.

### Procedures

On 29 June 2023, the [Supreme Administrative Court \(no. II OSK 1927/22\)](#) rendered invalid the judgment of the Provincial Administrative Court in Warsaw concerning asylum application of the SIP's client. The latter court first informed the parties to the proceedings about the consideration of the case at the public hearing and then, on the day when that hearing was to be held, **the case was heard in a closed**





**session.** In the opinion of the Supreme Administrative Court, such a situation satisfies the premise for the invalidity of the proceedings due to the fact that the party was deprived of the opportunity to defend its rights. In the opinion of the Supreme Administrative Court, the Provincial Administrative Court could decide to organize a closed session if he considered it necessary and if organizing a remote session was not possible. Law adopted in connection with the **COVID-19 pandemic allowed for this.** In such a situation, however, the application of this law should be combined with taking measures aimed at reducing the negative effects of depriving a party of the right to a public hearing and at guaranteeing his/her **right to defense.** In particular, the parties should have been in advance informed about the consideration of the case at a closed session and instructed about the possibility of presenting an additional position in writing.

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

In August 2023, Polish CSOs, including SIP, [appealed to the Head the Office for Foreigners](#) to change its practice as regards the access to the country of origin information. NGOs noticed that the relevant reports of the COI Department of the Office for Foreigners are not included into the case files. Accordingly, even though asylum decisions often mention these reports, the asylum seekers (and their lawyers) cannot find them in the case files; thus, they cannot read and question them. According to the NGOs, it is against the most basic principles of the administrative proceedings.

#### 11. Issues of statelessness in the context of asylum (including identification and registration)

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#### 12. 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)

### Victims of violence

On 21 June 2023, the [Refugee Board](#) (no. RdU-256-1/S/23) revoked the decision of the Head of the Office for Foreigners to refuse international protection to an Egyptian citizen, and referred the case for the reconsideration. The Refugee Board stated, *inter alia*, that the Head of the Office for Foreigners violated the provisions requiring a **special treatment of persons who experienced violence** in their country of origin. During the interview, the third-country national declared having experienced physical violence in Egypt. Having obtained such information, the asylum authority should have asked him whether he wanted to continue the interview. There is also no documentation in the case files indicating that any assessment was made of whether he is a person who requires a special treatment and whether there is a need for a psychologist to participate in the activities undertaken in the proceedings, including in the interview. This was particularly important in the case at hand, because the main reason for issuing a negative decision by the Head of the Office for Foreigners was the lack of credibility of the foreigner.

### Unaccompanied minors

In 2023, SIP has initiated a project "[Support system for the reception of unaccompanied minor migrants in Poland](#)" aimed at lawyers wanting to be guardians of unaccompanied minors and at the foster care





institutions admitting foreign minors. The project is a response to the **systemic problem of the lack of a sufficient number of guardians** for unaccompanied minors staying in Poland, as well as the **lack of places in foster care institutions** for such children. We would like to pay special attention to detained unaccompanied minors.

In practice, **establishing guardianship** for unaccompanied minors is a lengthy process (mostly due to the [difficulties with finding a person willing to act as a guardian](#) – it was only 11 persons in 2022 for 217 unaccompanied minors), despite the three-day time-limit in this regard. Thus, also submitting an asylum application is often delayed. It is particularly troublesome in case of detained unaccompanied minors, who most often need to apply for asylum to be released from the detention centre.

**Age assessment** still raises some concerns. The medical examination aimed at establishing whether an applicant is a minor is conducted when the Border Guard has doubts as regard the age of the applicant. The age assessment is most often based on the wrist x-ray. The medical certificates following this examination do not specify the margin of error, despite the widespread doubts as regards the adequacy of such examination for the age assessment purposes. More recently also dental examinations are taking place. In practice, [children are detained due to an incorrect age assessment](#).

13. Content of protection (including access to social security, social assistance, health care, 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)

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#### 14. Return of former applicants for international protection

In 2023, important legal changes were introduced into the [Act on Aliens](#). The powers of the Polish Border Guard has been increased since 7 April 2023 and the rights of third-country nationals have been significantly diminished. [The main changes concern:](#)

- Appeals against the decisions issued by the Border Guard, including decisions on return and humanitarian/tolerated stay, are to be submitted to the Chief Commander of the Border Guard instead of the Head of the Office for Foreigners. Thus, appeals against the Border Guard's decisions will be now considered within the Border Guard's internal structure. The second-instance decision of the Chief Commander of the Border Guard can be appealed to the administrative courts.
- There is now only 7 days to appeal decisions issued by the Border Guard (instead of 14), including decisions on return and humanitarian/tolerated stay.
- There is now a shorter period for a voluntary return, at minimum 8 days (instead of 15).
- Appeals to a court against a return decision no longer entail a suspensive effect. A third-country national may ask the court to suspend his/her return, but he/she can be deported before the court considers his/her motion.
- Longer period of entry ban was introduced: at maximum 10 years (instead of 5).
- The Head of the Office for Foreigners can now issue a new decision: on a refusal of entry and stay in the Schengen states. It can be issued when a person is considered to be a threat to a national security, or was convicted of a crime for over one-year imprisonment, or he/she circumvented immigration rules. The decision of the Head of the Office for Foreigners is final and is not delivered to a person concerned.

In June 2023, an Iraqi national was [deported to his country of origin despite the risk of ill-treatment](#) therein. The deportation was executed in accordance with the return decision issued 2 years earlier that did not sufficiently analyze the risks upon the third-country national's return. In 2023, the Human Rights





Commissioner applied to grant humanitarian stay to the third-country national concerned. Despite receiving this application, against the law, the Border Guard expelled the third-country national.

15. 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)

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

There are no relocation – nor resettlement – programs in Poland: in force nor planned. However, the relocation of third-country nationals to Poland sparked a heated debate in 2023 in connection with EU legislative efforts to adopt the Regulation on Asylum and Migration Management. In June 2023, the Council reached an agreement in this regard which was contrary to the Polish position. The Council's agreement was immediately discussed by the Polish parliament (*Sejm*). On 15 June 2023, *Sejm* adopted a [resolution](#) expressing a **definitive opposition against adopting a compulsory relocation mechanism** in the EU. Due to the nearing parliamentary elections in Poland, the debate in this regard was grossly politicized. On 17 August 2023, *Sejm* adopted a [resolution](#) for a public vote (referendum) to be organized on 15 October. Two out of four questions concern third-country nationals. Poles were asked to answer a question: “**Do you support accepting thousands of illegal migrants from Middle East and Africa under the compulsory relocation mechanism forced by the European bureaucracy?**”. Several dozen organizations [protested against the referendum](#) and called on Poles not to take part in it. The NGOs claimed that the public vote was politically motivated and dishonestly organized. The questions, so as the video materials published by the government to promote the public vote, were [misleading](#) and based on anti-aliens' rhetoric. The NGOs also highlighted that: „Human rights, including the rights of migrants and refugees, are fundamental and inalienable rights of every individual, and their protection should not be left to a politically motivated, populist referendum”. [NGOs also appealed](#) to the National Election Committee to organize the public vote in a manner enabling not taking part in it and that fact being appropriately recorded. Due to the insufficient turnout, the public vote is considered not binding.

17. National jurisprudence on international protection in 2023 (please include a link to the relevant case law and/or submit cases to the EUAA Case Law Database)

Important judgments have been mentioned in the text above and below and marked, for your convenience, in red.

18. Other important developments in 2023

**Universal Periodic Review**

Within the UN Universal Periodic Review, Poland received [233 recommendations](#), including recommendations aimed at improving the situation of third-country nationals. Among other things, [Poland should](#) ensure access to its territory and to the proceedings for granting international protection to all persons seeking such protection. Poland should also stop detaining unaccompanied minors, families, pregnant women and people suffering from mental illness.







## Temporary protection

Most of the problems mentioned in the SIP's previous input in respect of persons displaced from Ukraine continued in 2023. Temporary protection has been prolonged in Poland (for now) until 4 March 2024, with some minor exceptions allowing a legal stay until the end of August or September 2024.

## **Recognition and residence permits**

Since 28 January 2023, a **30-day time limit** (from arrival to Poland) to apply for a special personal number 'PESEL UKR' has been introduced. 'PESEL UKR' is granted to Ukrainian nationals and some of their family members enjoying temporary protection in Poland. It is not obligatory to obtain it, but access to some rights is conditioned upon receiving this special number. Now, a person concerned has only 30 days to apply for it. Moreover, a Ukrainian national who entered Poland between 24 February 2022 and 28 January 2023, and who did not apply for a 'PESEL UKR' before the latter date, could apply for it only within 30 days counted from 28 January 2023.

The law now also clearly states that **temporary protection beneficiaries in other EU member states are excluded** from this protection in Poland. Since 28 January 2023, a temporary protection beneficiary loses his/her status in Poland, if he/she enjoys temporary protection in another EU Member State. In those circumstances, his/her 'PESEL UKR' (issued for Ukrainian nationals or some of their family members) or a certificate confirming being TP beneficiary (in case of other beneficiaries) is withdrawn. Additionally, the amendment of 13 January 2023 specified that Ukrainian nationals who registered as a temporary protection beneficiaries in Poland, but as of 28 January 2023 enjoyed temporary protection in another EU Member State, lost their temporary protection in Poland on 28 January 2023.

By the amendment of 9 March 2023, the attempt was made to solve the [problem of the hampered access to 'Diia.pl' for children](#) enjoying temporary protection in Poland. Since 7 April 2023, parents can access residence permit of their children through their mobile app. However, this solution seems to be insufficient to guarantee access to residence permits to all children enjoying temporary protection in Poland.

## **Refusals of entry and pendular movement**

The pushbacks at the Polish-Ukrainian border – in the form of decisions on a refusal of entry – continued in 2023 (as noticed, *inter alia*, in [May](#) and [September](#) 2023 in the PRAB reports).

For example, in January 2023, [the Human Rights Commissioner informed](#) about a refusal of entry at the Polish airport. A Ukrainian national, living for some years in Poland and working here legally, left Poland for holidays abroad. Coming back, she was not allowed to enter Poland. She asked for asylum, but her pleadings were not heard. Her attorneys-at-law tried to contact her while she was detained at the airport, but the access to their client was repeatedly denied. Eventually, after the Human Rights Commissioner's intervention, she was allowed to seek asylum in Poland and enter its territory.

In July 2023, [SIP with R2P, HIAS and Alliance for Black Justice protested](#) against the practice of denying entry at the Polish-Ukrainian border to persons seeking safety, in particular non-Ukrainians. The NGOs reported that third-country nationals having international or complementary protection or seeking asylum in Ukraine, as well as recognized temporary protection (TP) beneficiaries in Poland and other EU MS, are **denied entry to Poland – mostly due to the lack of visa or other required documents**. They noticed that asylum seekers and international or complementary protection beneficiaries often have no possibility to obtain needed documents (like passports). In consequence, they are stuck in Ukraine where the war hostilities continue. The NGOs call the Polish government and Border Guard to "make sure that all persons fleeing Ukraine, including non-Ukrainian asylum seekers, refugees and





complementary protection holders, can leave Ukraine to seek safety in Poland or any other country of the European Union.”

Pendular movement of temporary protection beneficiaries was possible in 2023, but it remained hampered (as reported in [May](#) and [September](#) by the PRAB initiative). The Border Guard **continued to register – in a special registry – all departures from Poland of the TP beneficiaries, but only some returns** to Poland of those persons. Border Guard (and the [Ministry of Internal Affairs and Administration](#) as well as the [Ministry of Family and Social Affairs](#)) claims that the person concerned must declare at the border crossing point that he/she is entering Poland due to the war in Ukraine, even if he/she has already been granted TP in Poland for this reason. If such a declaration is lacking, his/her return to Poland is not inscribed into the special registry. It may eventually **lead to the termination of temporary protection status** (PESEL UKR) and all intertwined rights (especially [social benefits](#), see more below).

Ukrainian nationals having TP in Poland are **often unaware** that the abovementioned declaration is expected from them every time they cross the border. The [information](#) about that is available predominantly in Polish and is not easily accessible. However, the government [declared](#) in July 2023 actions to be taken – with the Embassy of Ukraine in Poland – to disseminate this information. Moreover, in the abovementioned circumstances, the **termination of the PESEL UKR is automatic** – the persons concerned are not informed about it. They often [learn that they are no longer TP beneficiaries](#) at the Polish border (when they are denied entry due to the fact that their TP residence permit – Diia.pl – is no longer valid), from the Social Insurance Institution (when their benefits are ceased) or in medical establishments (when they are requested to pay for healthcare that is free-of-charge for TP beneficiaries).

### **Social benefits**

In 2023, many persons had their temporary protection terminated due to the “30-day absence in Poland” rule - even when they never left Poland – at all or for more than 30 days. The reason is the [unfavorable practice of the Border Guard](#), which requests saying the exact words at the border to register a concerned person’s re-entry to Poland (see above). Without this registration, the 30-day time limit is not interrupted; thus, **this practice eventually leads to losing TP (PESEL UKR) in Poland with all associated rights, including a right to social benefits.**

According to the [governmental data](#) announced in July, **one of the social benefits (called “500+”) was ceased** from 1 June 2022 to 31 May 2023 in case of approx. 140.000 Ukrainian nationals. Only in the first 14 days of June 2023, another 1.310 persons lost a right to receive this benefit. It is unknown how many of these people really left Poland for more than 30 days and how many of those decisions are based on the incorrect data in the special registry run by the Border Guard. However, through the year, NGOs increasingly have been informed about the instances of the social benefits’ refusals/cessations despite the lack of absence in Poland for more than 30 days.

Furthermore, since the amendments of the law in January 2023, any departure from Poland of a temporary protection beneficiary or his/her child leads to the **suspension of payment of social benefits**. If that beneficiary or child returns to Poland, the benefits should be reinstated retroactively, unless a person concerned is no longer entitled to receive them. However, in practice, social benefits are often not reinstated. SIP provided legal assistance in a case where a Ukrainian national was absent from Poland for three hours and her social benefits were firstly suspended, then ceased (the appeal proceedings are ongoing). In fact, the introduction of the abovementioned rules led to thousands of suspensions of social benefits across Poland.

The Social Security Institution (ZUS) suspends and ceases social benefits on a basis of the information provided for in the special registry run by the Border Guard, which it seems to consider binding. Other proofs – confirming absences shorter than 30 days – are often ignored by this institution. There is **no coherent jurisprudence** in this regard: some courts reproach ZUS for ignoring evidence (e.g. Provincial





Administrative Court in Lublin, [judgment](#) of 2 February 2023, [no. II SA/Lu 877/22](#)), others indicate that its actions were correct (e.g. Provincial Administrative Court in Gliwice, [judgment](#) of 26 May 2023, [no. II SA/GI 90/23](#)).

The [Ministry of Family and Social Affairs advised](#) in July 2023 that in the case of the suspension/cessation of social benefits based on the incorrect data in the special registry, a person concerned should apply to have **PESEL UKR restored and to correct data in the registry** by the Border Guard. However, in practice, [persons concerned struggle with having their PESEL UKR restored](#) (especially with a retroactive effect). While in May 2023, the government [informed](#) municipalities how the restoration should be done, this instruction is not a law (only a guidance), it is much overdue and seems to be unknown or not followed. Moreover, in practice, the Border Guard is not promptly nor willingly changing data in the special registry.

The situation described above raises great concerns. The Commissioner for Human Rights [reached out to the government](#) in March and June 2023 and to [ZUS](#) in August and October 2023 to intervene in favor of temporary protection beneficiaries. However, the position of the government, Border Guard and [ZUS](#) has not changed.

Another problem reported by the temporary protection beneficiaries is the lack of access to family benefits when a child has a Ukrainian nationality and accordingly the 'PESEL UKR' (so temporary protection based on the Special Law), but his/her parent is not a Ukrainian national and was granted temporary protection on the basis of the Act on Protection. The access to family benefits is regulated differently for these two groups of temporary protection beneficiaries. Thus, in the above circumstances, despite the fact that the real beneficiary of the family benefits is the child itself, his/her parent is not entitled to ask for these benefits (e.g. Provincial Administrative Court in Gliwice, [judgment](#) of 24 August 2023, [no. II SA/GI 869/23](#), not final).

### **Access to accommodation**

Since 1 March 2023, the cost-free accommodation is limited to 120 days. After this period, a TP beneficiary **must cover 50% of the costs** of his/her accommodation, no more than PLN 40 per day per person. Since May 2023, if a person concerned lives in the accommodation organized by voivodes or other Polish authorities, he/she **must cover 75% of the costs** (no more than PLN 60 per day per person). Abovementioned rules do not apply to some vulnerable TP beneficiaries.

These new rules were **criticized** by the [NGOs](#) and [Commissioner for Human Rights](#) since their inception. There are considered to be contrary to the TPD and unclear. In particular, it is vague who is to be considered not obliged to co-pay for the accommodation and how it is to be assessed. In July, [Ministry of Internal Affairs and Administration](#) claimed that these rules are intentionally vague to allow flexibility of local authorities. It also prepared a **recommendation** for these authorities on how the situation (vulnerability) of a Ukrainian national should be assessed, but it has not been made public.

In August 2023, the [Migration Consortium published a report](#) concerning the access to accommodation for Ukrainian nationals upon the introduction of the co-payment obligation. The research conducted in 6 voivodeships has shown that there is **no coherency in interpreting the law** in question and applying this obligation in practice. **Not enough information** has been given by the government both to the concerned Ukrainian nationals (some of whom thus returned to Ukraine fearing homelessness in Poland) and to local authorities responsible for the accommodation centres. It is unknown how many persons have been exempted from the co-payment obligation. The Consortium stated that the observed practice raises concerns whether the situation of Ukrainian nationals is really scrutinized. Meanwhile, the **access to other accommodation is increasingly limited**. NGOs are forced to provide support to Ukrainian nationals, filling gaps created by the new law.





## Human trafficking

In June 2023, [GRETA published its evaluation report on Poland](#), with some remarks concerning **human trafficking** of Ukrainians seeking protection in Poland. The report identifies a limited number of investigations in this regard initiated in Poland (5), with only one case of human trafficking being confirmed upon the investigation. It concerned two 17-year-old girls who were forced to provide sexual services. The report describes also the efforts of diverse stakeholders to inform Ukrainian nationals and other persons fleeing Ukraine about the risks related to human trafficking.

## Returns of minors from institutional care

In 2022, many groups of children from Ukrainian foster care system were relocated to Poland with their Ukrainian guardians. They were given accommodation and support in Poland, but they were still within the Ukrainian care system. **In May 2023, the process of returning these minors to Ukraine has started.** Save the Children, IRC, and CARE straightaway [protested against](#) this sudden turn of the events. They worried that children are returned without a careful planning and in-depth assessment of their individual situation and the security situation in Ukraine. The Commissioner for Human Rights also [intervened](#) in May and October in the Ministry of Family and Social Affairs, indicating that some of the persons who are to be returned do not wish to leave Poland. The Ministry informed that these **returns are voluntary and based on the decisions of the children's guardians.** Thus, Polish authorities cannot halt these returns. In response to the abovementioned events, in July 2023, the UNHCR published a document: [Voluntary Return to Ukraine of Refugee Children without Parental Care, including Unaccompanied Children and Children Evacuated from Care Institutions in Ukraine.](#)

## Education

In July 2023, the [UNHCR and UNICEF informed](#) that **less than half of Ukrainian children** (approx. 173.000) who escaped war are **enrolled to Polish schools.** It is assessed that approx. 30% of these children are also attending the Ukrainian online schools. Children not attending Polish schools most probably take part in online education organized by the Ukrainian authorities. However, [reports of children being enrolled to no school](#) are also available.

## Roma

In July 2023, the [Towards Dialogue Foundation published a report](#) concerning the situation of Roma who fled Ukraine and sought protection in Poland. The study indicates that tens of thousands of Roma are now in Poland. Majority of them is **excluded from the support system.** They are regularly discriminated at the border and in accommodation centres, as well as with regard to other services (education, translation, transport). Special needs of this group are most often not taken into account. Anti-Roma rhetoric has been also identified in the statements of public officials.

## Access to information and legal aid

Information and legal aid for persons fleeing the war in Ukraine has been mostly provided by civil society organizations. SIP, *inter alia*, continued to operate a special portal where legal questions can be asked and are answered by immigration lawyers: <https://ukraina.interwencjaprawna.pl/>. In 2023, SIP published also three brochures in Polish and Ukrainian:

1. concerning financial allowances for Ukrainian nationals who came to Poland on or after 24 February 2022 ([PL](#) and [UA](#));
2. concerning persons with disabilities ([PL](#) and [UA](#)) and
3. concerning the collective accommodation centres ([PL](#) and [UA](#)).





## Part B: Publications

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1. If available online, please provide links to relevant publications produced by your organisation in 2023

SIP and RLI, [Communication of the Association for Legal Intervention and the Rule of Law Institute on the execution of the M.K and Others v. Poland judgment](#), 27 February 2023.

SIP, [Ochrona uzupełniająca dla rodziny z Kongo](#), 22 March 2023.

SIP, [Complaining Poland for detention of diseased foreigner after violence](#), 24 March 2023.

SIP, [Lack of medical assistance for foreigners in the guarded center for foreigners](#), 24 March 2023.

SIP, [Important amendments to the Act on Foreigners](#), 12 April 2023.

SIP, [We are fighting for redress for the unlawful detention of an Iraqi citizen after experiencing violence](#), 12 April 2023.

SIP, [ETPCz: detencja matki z dziećmi narusza prawo do obrony i prawa człowieka](#), 25 April 2023.

SIP, [Powszechny Przegląd Okresowy ONZ: Rekomendacje dla Polski](#), 25 April 2023.

DRC with other NGOs, including SIP (PRAB initiative), [What we do in the shadows](#), May 2023.

SIP, [Another case of illegal push-back communicated to Poland](#), 5 June 2023.

SIP, [Inaction of the Commander-in-Chief of the Border Guard in the reception of an application for international protection](#), 13 June 2023.

SIP, [The ECtHR communicates another case concerning immigration detention of families in Poland](#), 13 June 2023.

SIP, [The Court: detention should always be a solution of last resort](#), 19 June 2023.

SIP, [Supreme Court: Compensation for detention independent of migrant's culpability](#), 19 June 2023.

SIP, [Compensation for wrongful detention of a post-violence family of three](#), 19 June 2023.

SIP, [Detencja ciężarnej cudzoziemki z małymi dziećmi: interweniujemy przed ETPC](#), 20 June 2023.

SIP, [Obywatel Iraku deportowany wbrew prawu](#), 26 June 2023.

SIP, [Wsparcie zamiast przemocy](#), June 2023.

SIP, [Poznaj granice polskiej gościnności](#), June 2023.

SIP, [Zasada non-refoulement na granicy polsko-białoruskiej](#), 6 July 2023.

SIP, [SIP, R2P, HIAS i ABJ protestują przeciwko odmowom wjazdu na granicy ukraińskiej](#), 7 July 2023.

SIP, [Ochrona uzupełniająca dla Czeczenki mającej pobyt stały w Ukrainie](#), 21 July 2023.

M. Łysienia, [Pushbacki w Polsce w ocenie Europejskiego Trybunału Praw Człowieka](#), Laboratorium Migracji, SIP, 11 August 2023.

SIP, [The lack of a translator as a reason for repealing a negative decision on asylum](#), 17 August 2023.

SIP, [Stanowisko organizacji społecznych w sprawie referendum ogólnokrajowego](#), 17 August 2023.

SIP, [Apelujemy o realne prawo odmowy udziału w referendum - list organizacji społecznych do PKW](#), 31 August 2023.

SIP, [Kolejna sprawa przed ETPC za detencję rodziny z dziećmi](#), 1 September 2023.

SIP, [Migrants in the refugee procedure are not allowed full access to the file on their case – our intervention](#), 7 September 2023.

SIP, [Supreme Court to clarify rules on detention of migrants](#), 8 September 2023.

SIP, [Ruszymy z projektem wspierającym dzieci bez opieki w Polsce](#), 14 September 2023.

SIP, [Wyjaśniamy dlaczego pytanie referendalne o relokację cudzoziemców\(-mek\) wprowadza w błąd](#), 22 September 2023.

SIP, [Składamy kolejny wniosek o zadośćuczynienie za pobyt w strzeżonym ośrodku dla cudzoziemców](#), 29 September 2023.

SIP, [SIP w działaniu. Raport z działalności Stowarzyszenia Interwencji Prawnej w 2022 roku](#), wrzesień 2023.

DRC with other NGOs, including SIP (PRAB initiative), [Surprisingly surprised](#), September 2023.

SIP, [Kolejna interwencja przed ETPC dotycząca detencji cudzoziemców\(-mek\) w Polsce](#), 20 October 2023.

SIP, [Wyrok NSA: Rozpoznanie sprawy na posiedzeniu niejawnym może prowadzić do nieważności postępowania](#), 30 October 2023.





SIP, [Rada ds. Uchodźców objęła ochroną uzupełniającą obywateli Tadżykistanu](#), 30 October 2023.  
SIP, [Mama z Kamerunu i jej dziecko otrzymały status uchodźcy w Polsce](#), 27 November 2023.  
SIP, [Informator dla osób z niepełnosprawnością, które przybyły do Polski w związku z wojną na Ukrainie](#), 2023.  
SIP, [Centra zbiorowego zakwaterowania. Poradnik dla osób przybyłych z Ukrainy](#), 2023.  
UNHCR, SIP, [Świadczenia dla obywateli i obywaterek Ukrainy przybyłych do Polski po 24 lutego 2022 r.](#), 2023.

2.If not available online, please share your publications with us at:  
[Asylum.Report@euaa.europa.eu](mailto:Asylum.Report@euaa.europa.eu)

3.For publications that due to copyright issues cannot be easily shared, please provide references using the table below.

	Title of publication	Name of author	Publisher	Date
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