

## Input by civil society to the EASO Annual Report 2017

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EASO has started the production of the 2017 Annual Report on the Situation of Asylum in the European Union, in line with Article 12 (1) of the EASO Regulation. The report aims to provide a comprehensive overview of important asylum-related developments at EU+ and national level, and the functioning of all key aspects of the Common European Asylum System (CEAS). While the final product comes out of an analytical and synthetic process that takes place in-house, a critical part of information is elicited through valuable contributions by a multiplicity of stakeholders from EU+ countries, civil society organizations, UNHCR, and other actors possessing in-depth knowledge on main developments in asylum policies and practices in EU+ countries. Previous reports are available for review at EASO's website.

We would like to kindly invite you to take part in this process, by sharing your observations **on developments in asylum law, policy or practice in 2017 (and early 2018) in the areas listed on page 2**. The topics listed there reflect the structure of Chapter 4 of the EASO report, which focuses on the 'Functioning of the CEAS'. To this end, your observations may concern national practices of specific EU+ countries or the EU as a whole. Overall, the EASO Annual Report is not meant to describe the national asylum systems in detail, but present key developments in 2017, including **improvements and new/remaining concerns**. In terms of format, your contributions would be preferably offered in the form of bullet points, which would facilitate further processing of your input.

Please, bear in mind that the EASO Annual Report is a public document. Accordingly, it would be desirable that your contributions, whenever possible, be supported by references to relevant sources. Providing links to materials such as analytical studies, articles, reports, websites, press releases, position papers/statements, and press releases, would allow for maintaining transparency. For your reference, you may review the contributions offered by civil society actors for the 2016 Annual Report. If you do not consent on EASO making your submission available, please inform us accordingly.

In our effort to provide an inclusive overview of all relevant developments, we strive to incorporate as many contributions as possible. At the same time, the final content of the EASO Annual Report is subject to its set terms of reference and volume limitations. To this end, your submissions, which are gratefully received and acknowledged, may be edited for length and clarity so that the final product concisely serves the objectives of the Annual Report: to improve the quality, consistency, and effectiveness of CEAS. From our side, we can assure you that the valuable insights you offer feed into EASO's work in multiple ways and inform reports and analyses beyond the production of the Annual Report.

Please, kindly provide your input by filling in this document (with attachments, if needed) and returning it to [ids@easo.europa.eu](mailto:ids@easo.europa.eu) **AND** [consultative-forum@easo.europa.eu](mailto:consultative-forum@easo.europa.eu) **by 16 February 2018**.

Within each area, please highlight the following **type of information**:

- NEW positive developments; improvements and NEW or remaining matters of concern;
- Changes in policies or practices; transposition of legislation; institutional changes; relevant national jurisprudence.

*You are kindly requested to make sure that your input falls within each section's scope. Please, refrain from including information that goes beyond the thematic focus of each section or is not related to recent developments. Feel free to use Section 16 to share information on developments you consider important that may have not been covered in previous sections.*

**Name of the contributing stakeholder:** Helsinki Foundation for Human Rights

[Contact details]

#### GENERAL COMMENT:

In this contribution, the Helsinki Foundation for Human Rights (hereafter: HFHR) has focused on the selected aspects of the asylum system in Poland that belong to HFHR's primary area of expertise and where significant developments were observed in 2017. These areas include: access to the asylum procedure, access to information and legal assistance, detention, treatment of vulnerable groups and procedural guarantees. For information on legal provisions and practical developments in matters that are not covered in this contribution we kindly recommend to consult the ECRE AIDA *Country report – Poland* for 2017 and 2018 (forthcoming).<sup>1</sup>

#### 1) Access to territory and access to asylum procedure

##### **I. Restricted access to the asylum procedure at Poland's eastern border with Belarus remains a matter of concern**

The policy of 'closed doors' persists at the border crossing point in **Terespol** on the Polish-Belarusian border where numerous asylum seekers, mostly from Russia and other post-Soviet states, attempt to lodge applications for international protection in the EU.<sup>2</sup> Only a couple of individuals (2-3 families, 8-9 persons per day) manage to apply for asylum successfully.<sup>3</sup> The logic behind the registration of asylum cases by the Polish Border Guard is unclear. According to the record of the Border Guard officers (not confirmed by the foreigners), most individuals arriving at the border declare economic purpose of their entry to Poland. The Border Guard do not write down official protocols documenting the initial interviews made at the second border line control. Therefore, the course of the interview is not properly recorded. The Border Guard also prevent lawyers from accessing the foreigners who declare their intention to apply for asylum in Poland.

The situation in the **Medyka** border crossing point at the Ukrainian-Polish border is similar. Only 21 persons in need of international protection applied successfully for asylum at this border crossing point.<sup>4</sup>

<sup>1</sup> European Council on Refugees and Exiles, Asylum Information Database (AIDA), *Country report – Poland*, 2017 and 2018 (forthcoming), available at: <http://www.asylumineurope.org/reports/country/poland>.

<sup>2</sup> Human Rights Watch, *Poland: Asylum Seekers Blocked at Border*, 1 March 2017, available at: <https://www.hrw.org/news/2017/03/01/poland-asylum-seekers-blocked-border>; Hungarian Helsinki Committee, *Pushed Back at the Door: Denial of Access to Asylum in Eastern EU Member States*, 2017, available at: [http://programy.hfhr.pl/uchodzcy/files/2017/01/Pushed-Back-at-the-Door\\_report.pdf](http://programy.hfhr.pl/uchodzcy/files/2017/01/Pushed-Back-at-the-Door_report.pdf); Wilczewska-Pikulicka, A, *Tajikistan: Asylum Seekers Stranded in Limbo on Polish Border*, Eurasianet, 17 January 2017, available at: <https://eurasianet.org/s/tajikistan-asylum-seekers-stranded-in-limbo-on-polish-border>; Gall, L., *Poland trapping asylum seekers in unsafe Belarus*, 14 May 2017, available at: <https://www.neweurope.eu/article/poland-trapping-asylum-seekers-unsafe-belarus/>.

<sup>3</sup> Border Guard Headquarters, *Letter to the Helsinki Foundation for Human Rights*, 11 January 2018, KG-OI-III.0180.6.2017.BK.

<sup>4</sup> Border Guard Headquarters, *Letter to the Helsinki Foundation for Human Rights*, 11 January 2018, KG-OI-III.0180.6.2017.BK.

The number of applications for asylum successfully lodged in 2017 amounted to 2 231 and 4 502 in 2016, while the number of applicants covered in the applications – 5 078 and 12 322 persons respectively; these data show that while the number of application was only slightly lower than in the year before, the difference in the number of individuals was significant (a decrease by 59%).<sup>5</sup>

## II. Cases of non-admission of asylum seekers to the procedure before national and international courts

In 2017, 34 complaints against the Border Guard were registered by the **Voivodship Administrative Court** (*Wojewódzki Sąd Administracyjny*, hereafter: WSA); out of which 12 complaints were dismissed or rejected, 11 are still pending, and in 11 cases the Court upheld the claim and overruled the Border Guard Headquarters decision in which it refused the applicant entry to Poland.<sup>6</sup> The judgments are not final as they are subject to cassation appeal to the Supreme Administrative Court.

The HFHR represented asylum seekers in five of the above-mentioned cases decided by WSA in 2017.<sup>7</sup> The applicants were Tajik and Chechen nationals who had unsuccessfully tried to file an application for international protection at the border crossing points in Medyka and in Terespol. One of these cases was dismissed; in four other cases, the Court upheld the applicants' complaints. Importantly, in one of the judgments, WSA held that a memo written by a Border Guard officer indicating 'economic purposes' as the reason behind a foreigner's intent to enter Poland cannot be a sufficient evidence on the basis of which the entry is denied and that a formal protocol needs to be prepared. Such protocol needs to be signed by the foreigner.<sup>8</sup> Furthermore, in one of the judgments, the Court also stated that a refusal to allow a legal representative to participate in the administrative proceedings at the border crossing point next to a foreigner is a violation of the rules of administrative proceedings<sup>9</sup>.

On 17 March 2017, a group of 14 attorneys from the District Bar Council in Warsaw provided legal assistance to persons seeking international protection in Poland at the Polish-Belarusian border crossing in Brest-Terespol. The event (**'Advocates at the Border'**, Polish: *Adwokaci na Granicy*) was a joint initiative of the District Bar Council in Warsaw, the HFHR and the Association for Legal Intervention – the organizations that have been long involved in the monitoring of the

<sup>5</sup> Poland, Office for Foreigners (Urząd do Spraw Cudzoziemców), *Statystyki – Zestawienia roczne*, available at: <https://udsc.gov.pl/statystyki/>.

<sup>6</sup> Information provided by WSA Judge Ewa Marcinkowska, cited in: TVN24, *Straż Graniczna staje przed sądem. Za odmowy uchodźcom wjazdu do Polski*, 5 February 2018, available at: <https://www.tvn24.pl/wiadomosci-z-kraju,3/straz-graniczna-przed-sadem-procesy-za-odmowy-uchodzcom-wjazdu,811669.html>.

<sup>7</sup> WSA judgements: No. IV SA/Wa 3021/16 of 2.06.2017 (available at: <http://orzeczenia.nsa.gov.pl/doc/6BDCAC62A3>); No IV SA/Wa 1847/17 of 17.10.2017 (available at <http://orzeczenia.nsa.gov.pl/doc/E5D619FEE9>); No. IV SA/Wa 1846/17 of 27.10.2017 (available at: <http://orzeczenia.nsa.gov.pl/doc/C974DECF88>); No. IV SA/Wa 1845/17 of 9.11.2017 (available at: <http://orzeczenia.nsa.gov.pl/doc/1F8EF12CB6>); No. IV SA/Wa 1829/17 of 21.11.2017 (available at: <http://orzeczenia.nsa.gov.pl/doc/EE34FC7F2C>).

<sup>8</sup> Poland, Helsinki Foundation of Human Rights, *Administrative court again rules in favour of foreign refugee refused entry to Poland*, 27 October 2017, available at: <http://www.hfhr.pl/en/administrative-court-again-rules-in-favour-of-foreign-refugee-refused-entry-to-poland/>; Helsinki Foundation for Human Rights, *WSA uwzględnił skargę na decyzję o odmowie wjazdu do Polski uchodźczyni z Czeczenii*, 2 June 2017, available at: <http://www.hfhr.pl/wsa-uwzlednil-skarge-na-decyzje-o-odmowie-wjazdu-do-polski-uchodzyczyni-z-czecenii/>.

<sup>9</sup> Judgment No. IV SA/Wa 1829/17 of 21.11.2017.

situation at border stations, including the railway border station at Terespol. The initiative was also supported by the Office of the Commissioner for Human Rights, Belarusian refugee aid organization Human Constanta, Chlebem i Solą project for refugees, the International Humanitarian Initiative Foundation and the uchodzczy.info website.<sup>10</sup> Some of the cases later brought before the WSA concerned the events of that day when the asylum seekers were refused to lodge their asylum claims.

Between June and September 2017, the **European Court of Human Rights** (hereafter: ECtHR) communicated to the Polish Government four cases concerning access to asylum in Poland:

- M.K. v. Poland (no. 40503/17);
- M.A. and others v. Poland (no. 42902/17);
- M.K. and others v. Poland (no. 43643/17);
- D.A. and others v. Poland (no. 51246/17).<sup>11</sup>

These cases concern Chechen (first three cases) and Syrian nationals (D.A. and others) who travelled to the Terespol border crossing point in order to seek asylum in Poland. They tried to lodge applications for international protection numerous times but were denied entry to the country and were later sent back to Belarus without the asylum proceedings being instigated. In all the cases, the ECtHR, under Rule 39 of its Rules of Court, issued interim measures indicating to the Government that the applicants should not be removed to Belarus. The applicants all complain about having been repeatedly denied the possibility to lodge an application for international protection. Most of them allege that their situation was not reviewed individually and that they are victims of a general policy adopted by the Polish authorities aimed at reducing the number of asylum applications registered in Poland. They also allege that the Polish Government did not comply with the interim measures granted by the Court.

The HFHR currently represents or co-represents asylum seekers in two of the above-mentioned cases.<sup>12</sup> Several other cases were submitted by HFHR lawyers to the ECtHR on behalf of other asylum seekers but have not yet been communicated. The complaints argue that, by ignoring the applicant's requests for protection and refusing them entry, Polish authorities violated the prohibition of collective expulsion (Article 4 of Protocol No. 4 to the European Convention on Human Rights). They have also failed to take into account the fact that Belarus fails to provide meaningful protection to hundreds of asylum seekers, mostly from the Russian republic of Chechnya, and cannot be considered a safe country.<sup>13</sup> The complaints also alleged that the mere

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<sup>10</sup> Helsinki Foundation of Human Rights, *Na granicy. Adwokaci z warszawskiej ORA, HFPC i SIP pomagają w Terespolu ubiegającym się o ochronę międzynarodową*, 17 March 2017, available at <http://www.hfhr.pl/16112-2/>; Civil Liberties Union for Europe, *At a Border Crossing Where Rights Are Forgotten, Polish Lawyers Stand Up for Refugees*, 5 April 2017, available at: <https://www.liberties.eu/en/news/lawyers-at-the-border-help-refugees-poland/11646>; Euronews, *Refugees from Chechnya unsuccessfully seek refuge in Poland*, 3 April 2017, available at: <http://www.euronews.com/2017/04/03/refugees-from-chechnya-unsuccessfully-seek-refuge-in-poland>.

<sup>11</sup> European Court of Human Rights, *Press country profile – Poland*, January 2018, available at: [http://www.echr.coe.int/Documents/CP\\_Poland\\_ENG.pdf](http://www.echr.coe.int/Documents/CP_Poland_ENG.pdf); Helsinki Foundation for Human Rights, *ETPC zakomunikował polskiemu rządowi skargi dotyczące odmowy wjazdu uchodźcom w Terespolu*, 18 August 2017, available at: <http://www.hfhr.pl/etpc-zakomunikowal-polskiemu-rzadowi-skargi-dotyczace-odmowy-wjazdu-uchodzcom-w-terespolu/>.

<sup>12</sup> Helsinki Foundation for Human Rights, *ETPC zakomunikował polskiemu rządowi skargi dotyczące odmowy wjazdu uchodźcom w Terespolu*.

<sup>13</sup> Human Rights Watch, *World Report 2018 – Belarus*, January 2018, available at: <https://www.hrw.org/world-report/2018/country-chapters/belarus>.

necessity of repeatedly appearing at the border and the refusals of entry constitute at least degrading treatment. It was also pointed out that foreigners did not have access to an effective remedy against the decision to refuse entry.

On 25 August 2017, in response to an application submitted by a Belarusian NGO Human Constanta, the **UN High Commissioner for Human Rights** issued a decision ordering Poland to adopt interim measures with regard to a family from Chechnya staying at the Belarusian-Polish border crossing in Brest-Terespol. The family have been living in Brest for 8 months and have already attempted to lodge an application for international protection with the Polish Border Guard in Terespol more than 20 times. They were repeatedly refused this possibility. The decision of the High Commissioner obliges Poland to adopt interim measures, i.e. to admit the family to Poland for the time the Committee considers the complaint. Despite this decision, the Chechen family was not allowed to enter Poland.<sup>14</sup>

On 15 November 2017, the **European Parliament** (hereafter: EP) adopted a resolution on the situation of the rule of law and democracy in Poland.<sup>15</sup> The EP called on the Polish Government to halt summary returns to Belarus so as to comply with the binding interim orders of the ECtHR of 8 June 2017, and to ensure that anyone who expresses an intention to seek asylum or international protection at Poland's borders enjoys full access to the Polish asylum procedure in line with international obligations and EU law.

## 2) Access to information and legal assistance

**Lack of systematic legal assistance to asylum seekers, including in detention centres and open centres due to lack of funding from AMIF.** New calls for proposals are not announced and the results have not been published for over a year. In August 2016, the Ministry of Interior and Administration (*Ministerstwo Spraw Wewnętrznych i Administracji*, hereafter: MSWiA, Ministry) announced a call for proposals on legal assistance to asylum seekers and irregular migrants.<sup>16</sup> The results were supposed to be announced in December 2016<sup>17</sup> but they have not been published until now.

In September 2017, HFHR and the Association for Legal Intervention published a report on the prospects of maintaining the infrastructure for legal aid as well as for refugee and migrant

<sup>14</sup> Helsinki Foundation for Human Rights, *Zarządzenie tymczasowe Wysokiego Komisarza ONZ ds. Praw Człowieka w sprawie rodziny uchodźców z Czeczenii*, 5 September 2017, available at: <http://programy.hfhr.pl/uchodzcy/zarzadzenie-tymczasowe-wysokiego-komisarza-onz-ds-praw-czlowieka-w-sprawie-rodziny-uchodzcow-z-czecenii/>.

<sup>15</sup> *European Parliament resolution of 15 November 2017 on the situation of the rule of law and democracy in Poland*, No. 2017/2931(RSP), available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2017-0442>.

<sup>16</sup> Poland, Ministry of Interior and Administration, Department of Border Policy and International Funds (*Department Polityki Granicznej i Funduszy Międzynarodowych*), *Ogłoszenie o naborze wniosków nr 6/2016 FAMI*, available at: <http://fundusze.mswia.gov.pl/ue/aktualnosci/14167,OGLOSZENIE-O-NABORZE-WNIOSKOW-nr-62016-FAMI.html>

<sup>17</sup> Poland, Ministry of Interior and Administration, *Lista złożonych projektów w ramach naboru Funduszu Azylu, Migracji i Integracji 6/2016*, 4 November 2016, available in Polish at: <https://fundusze.mswia.gov.pl/ue/aktualnosci/14534,Lista-zlozonych-projektow-w-ramach-naboru-Funduszu-Azylu-Migracji-i-Integracji-6.html>.

integration in the absence of state-funded support.<sup>18</sup> Authors stressed that the lack of financial support has a significant impact on migrants' integration prospects, e.g. through limiting legal and integration support, restricting the NGO capacity to conduct monitoring of migrants' rights and pursue strategic litigation in cases that are crucial for the protection of those rights.

### 3) Providing interpretation services

For information on legal provisions and practical developments we recommend to consult the ECRE AIDA *Country report – Poland* for 2017 and 2018 (forthcoming).

### 4) Dublin procedure

For information on legal provisions and practical developments we recommend to consult the ECRE AIDA *Country report – Poland* for 2017 and 2018 (forthcoming).

### 5) Specific procedures (border, accelerated, admissibility)

On 30 January 2017, the Government presented a draft amendment of the Law on granting protection.<sup>19</sup> The draft foresees the introduction of border procedures. It also authorises the Government to draw up safe third country and safe country of origin lists. According to the Ministry of Interior and Administration, the main aim of the draft amendment is to ensure the security of Poland's borders and safety of its citizens. The draft amendment was criticised by NGOs and the Polish Ombudsman as it assumes automatic detention of majority of applicants for international protection subjected to the border procedures.<sup>20</sup>

### 6) Reception of applicants for international protection

For information on legal provisions and practical developments we recommend to consult the ECRE AIDA *Country report – Poland* for 2017 and 2018 (forthcoming).

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<sup>18</sup> Helsinki Foundation for Human Rights, Association for Legal Intervention, *The European funds and their role in supporting the integration of migrants in Poland*, September 2017, available at: [http://www.hfhr.pl/wp-content/uploads/2017/11/Po-FAMI-raport\\_EN.pdf](http://www.hfhr.pl/wp-content/uploads/2017/11/Po-FAMI-raport_EN.pdf).

<sup>19</sup> Ministry of Interior and Administration, *Po pierwsze bezpieczeństwo - projekt zmian w zasadach udzielania ochrony cudzoziemcom*, 30 January 2017, available at: <http://www.mswia.gov.pl/pl/aktualnosci/15698,Po-pierwsze-bezpieczenstwo-projekt-zmian-w-zasadach-udzielania-ochrony-cudzoziem.html?search=748856772>.

<sup>20</sup> Helsinki Foundation for Human Rights, *Step backwards in granting protection to foreigners – HFHR's comments on proposed amendment*, 15 February 2017, available at: <http://www.hfhr.pl/en/step-backwards-in-granting-protection-to-foreigners-hfhrs-comments-on-proposed-amendment/>; Helsinki Foundation for Human Rights, *Propozycja zaostrenia przepisów wobec uchodźców wciąż aktualna – kolejne stanowisko HFPC do projektu nowelizacji ustawy*, 20 June 2017, available at: <http://www.hfhr.pl/propozycja-zaostrenia-przepisow-wobec-uchodzcow-wciaz-aktualna-kolejne-stanowisko-hfpc-do-projektu-nowelizacji-ustawy/>; Białas, J., *Draft amendment to the law on protection of foreigners – another step to seal Europe's border, OP-ed by Polish Helsinki Committee*, 10 March 2017, available at: <https://www.ecre.org/poland-draft-amendment-to-the-law-on-protection-of-foreigners-another-step-to-seal-europes-border-op-ed-by-polish-helsinki-committee/>.

## 7) Detention of applicants for international protection

There are currently 6 detention centres for migrants in Poland and some of them (in Biała Podlaska, Kętrzyn and Przemyśl) are designated specifically for families with children and persons with disabilities. In 2017, 1290 migrants were detained in Poland including 300 children (with families) and 19 unaccompanied children.<sup>21</sup> Foreigners are placed there upon a court decision. The HFHR practice shows that, unfortunately, regional courts often do not consider the principle of the best interests of the child when deciding on placing or extending foreigners' stay in detention centres. Additionally, foreigners cannot present their standpoint on the extension of their stay in detention centre as, in most cases, they are not present in the court. The appeals against the extension of the period of detention have to be prepared in Polish and migrants depend in this regard on the assistance provided by the NGO whose resources are limited. Furthermore, victims of violence are often placed in detention centres, despite the fact that it is prohibited by Polish law (see also: section 11. Vulnerable applicants).

## 8) Procedures at First instance

For information on legal provisions and practical developments we recommend to consult the ECRE AIDA *Country report – Poland* for 2017 and 2018 (forthcoming).

## 9) Procedures at Second Instance

For information on legal provisions and practical developments we recommend to consult the ECRE AIDA *Country report – Poland* for 2017 and 2018 (forthcoming).

## 10) Availability and use of Country of Origin Information

For information on legal provisions and practical developments we recommend to consult the ECRE AIDA *Country report – Poland* for 2017 and 2018 (forthcoming).

## 11) Vulnerable applicants

**Detention of victims of violence.** The asylum seekers and immigrants who are victims of violence are placed in detention centres despite the fact that this is prohibited by Polish law.<sup>22</sup> The Border Guard do not conduct proper identification of victims of violence at an early stage when foreigners

<sup>21</sup> Border Guard Headquarters, *Letter to the Helsinki Foundation for Human Rights*, 11 January 2018, KG-OI-III.0180.6.2017.BK.

<sup>22</sup> Poland, *Act on foreigners (Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach)*, 12 December 2013, available in Polish at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20130001650>; Poland, *Act on granting protection to foreigners within the territory of the Republic of Poland (Ustawa o udzielaniu cudzoziemcom ochrony na terenie Rzeczypospolitej Polskiej)*, 13 June 2003, available in Polish at: <http://i.sap.sejm.gov.pl/DetailsServlet?id=WDU20031281176>.

are apprehended and do not check properly if there are indications against placing them in detention centres.<sup>23</sup>

In July 2017, a regional court ordered the release from detention of a female asylum seeker from Tajikistan, a victim of violence and a HFHR client. In spite of multiple expert opinions indicating her vulnerable condition (she was diagnosed with adaptive and depressive disorders related to traumatic experiences in the country of origin and subsequent detention in Poland; in June 2017 she attempted to commit suicide), she was detained for 10 months. In April 2017, HFHR filed a complaint to the ECtHR on behalf of the client, in which it indicated a number of violations of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>24</sup>

In March 2017, Poland's Supreme Court decided a case concerning compensation for unlawful placement in a guarded centre of a family of asylum applicants (a mother with two children) who were victims of violence in the country of origin.<sup>25</sup> Although during the proceedings they clearly stated this fact, they were not properly examined and dismissed from the guarded centre, contrary to the Polish law. After their eventual release from the guarded centre, HFHR lawyers filed a request for compensation for an unlawful deprivation of liberty. During the proceedings, the District Court in Warsaw and the Warsaw Court of Appeal awarded insufficient amounts of compensation not taking into account all the circumstances of the case; therefore a cassation was filed with the Supreme Court. The Supreme Court overruled the earlier judgment of the Court of Appeal in Warsaw and ordered the case to be re-examined. In the justification, the Supreme Court stated that in determining the impact of unlawful deprivation of liberty on the mental state of a foreigner, it is the court's duty to appoint experts, and the court is not entitled to determine this circumstance by itself. In HFHR's opinion, this statement should also apply to proceedings for placing a foreigner in a guarded centre, i. e. the court should always appoint an expert to establish the condition of the foreigner, especially when it is likely that he or she is a victim of violence or is disabled. In this case, a foreigner should not be placed in a guarded centre. Meanwhile, district courts often decide on the stay of foreigners in guarded centres, relying only on the documents presented by the Border Guard, ignoring, e.g. the opinions made by psychologists from non-governmental organizations.<sup>26</sup>

In September 2017, the Border Guard adopted new observations forms (*arkusz obserwacyjny*) in detention centres in cooperation with Różnosfera, a foundation who provides diagnosis and psychological support for asylum seekers in Poland and conducts identification of vulnerable asylum seekers. The Border Guard assess foreigners' mental health condition during their stay in guarded centres based on the above-mentioned form and remarks of Border Guard officers

<sup>23</sup> Poland, *Polish Ombudsman's Letter to Chief Commander of Border Guard*, June 2017, available in Polish at: [www.rpo.gov.pl/pl/content/ofiary-tortur-nie-powinny-przebywac-w-strzezonych-osrodkach-dla-cudzoziemcow-rpo-pisz-do-komendanta](http://www.rpo.gov.pl/pl/content/ofiary-tortur-nie-powinny-przebywac-w-strzezonych-osrodkach-dla-cudzoziemcow-rpo-pisz-do-komendanta).

<sup>24</sup> Helsinki Foundation for Human Rights, *Ofiara tortur zwolniona z ośrodka strzeżonego dla cudzoziemców po 10 miesiącach pobytu*, 12 July 2017, <http://www.hfhr.pl/ofiara-tortur-zwolniona-z-osrodka-strzezonego-dla-cudzoziemcow-po-10-miesiacach-pobytu/>.

<sup>25</sup> Poland, *Supreme Court ruling of 2 March 2017, case no. II KK 358/16*, available in Polish at: <http://www.sn.pl/sites/orzecznictwo/Orzeczenia3/II%20KK%20358-16.pdf>.

<sup>26</sup> Helsinki Foundation for Human Rights, *Wyrok Sądu Najwyższego w sprawie bezprawnego umieszczenia uchodźców w strzeżonym ośrodku*, 13 April 2017, available in Polish at: <http://www.hfhr.pl/wyrok-sadu-najwyzszego-w-sprawie-bezprawnego-umieszczenia-uchodzcow-w-strzezonym-osrodku/>.

working.<sup>27</sup> The aim of this instrument is to observe the changes in foreigners' mental health condition on daily basis.

## 12) Content of protection – situation of beneficiaries of protection

For information on legal provisions and practical developments we recommend to consult the ECRE AIDA *Country report – Poland* for 2017 and 2018 (forthcoming).

## 13) Return of former applicants for international protection

For information on legal provisions and practical developments we recommend to consult the ECRE AIDA *Country report – Poland* for 2017 and 2018 (forthcoming).

## 14) Resettlement and humanitarian admission programmes

and

## 15) Relocation

The Polish government does not participate in EU resettlement and relocation programmes. Even though some local municipalities offered to host refugees of special concern (children with health problems), the central government strongly rejected the possibility.<sup>28</sup>

## 16) Other relevant developments

### **Violation of the right to defence in case when an applicant for international protection has been considered as a threat to national security**

The HFHR takes part in the proceedings concerning Ameer Alkhwilany, an Iraqi citizen and former PhD student of the Jagiellonian University in Cracow. Alkhwilany had been rejected a residence permit based on information contained in classified files and subsequently placed in a detention centre. Then he received a return decision issued by the Border Guard and the Minister of Interior and Administration. While in detention, he lodged an asylum application but his claim was rejected by the Refugee Board. In April 2017, Alkhwilany was deported from Poland. Both the applicant and his lawyer had no access to the classified files that made ground for the decisions in his case. The HFHR lodged an appeal against the Refugee Board's decision claiming that his right to defence was violated. In November 2017, WSA dismissed the complaint. According to WSA, Alkhwilany's

<sup>27</sup> Poland, UNHCR, interview, 1 December 2017.

<sup>28</sup> Radio Zet, *Rząd nie zgodził się, żeby Sopot przyjął 10 sierot z Aleppo*, 3 February 2017, available at: <http://archiwum.radiozet.pl/Wiadomosci/Kraj/Rzad-nie-zgodzil-sie-zeby-Sopot-przyjal-do-siebie-10-sierot-z-Aleppo-00036308>; Wantuch, D. 'Nie przyjmujemy syryjskich dzieci. Z obawy przed terroryzmem', *Gazeta Wyborcza*, 23 January 2018, available at: <http://wyborcza.pl/7,75398,22931318,nie-pryjmiemy-syryjskich-dzieci-z-obawy-przed-terroryzmem.html>.

procedural rights were not infringed as he had lodged an appeal to the court and the court had an access to the classified evidence. The WSA also stressed that the Polish Ombudsman may participate in cases involving classified case files and may be treated as 'special representative'.<sup>29</sup> A cassation appeal against this judgment was lodged by the HFHR and the Ombudsman.

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<sup>29</sup> Helsinki Foundation of Human Rights, *Court to dismiss Ameer Alkhawlany's complaint of denial of international protection*, 24 November 2017, available at: [www.hfhr.pl/en/court-to-dismiss-ameera-alkhawlany-complaint-of-denial-of-international-protection/](http://www.hfhr.pl/en/court-to-dismiss-ameera-alkhawlany-complaint-of-denial-of-international-protection/).