



**THE RULE OF LAW INSTITUTE**

**“MIGRANTS HAVE THE RIGHT TO HAVE RIGHTS”**

**IOM working group presentation**

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## Project Team

2 part time lawyers: Irina Kozak-Balaniuk and Tomasz Sieniow

assisted by a legal adviser Sylwia Paduchowska and advocate Marek Siudowski

## 2020-2022 statistics

More than 250 adult migrants applying for international protection  
(representing 33 countries) received legal assistance

Iraq (90 migrants)

Russian Federation (76)

Afghanistan 25

Tajikistan 17

Iran 15

Ukraine 9

Belarus 7

Somalia, Rwanda, Ethiopia, Eritrea, Congo, Cuba, Turkey, Pakistan, India, Nepal,  
Armenia, Palestine, Syria, Algeria, Nigeria, Mali, Benin, Kyrgyzstan, Zimbabwe,  
Senegal, Sri Lanka, Yemen, Morocco, Cameroon, Germany

Represented 10 unaccompanied minors (8 as appointed by the court curators, 2 based on the power of attorney signed by the court appointed curator)

Represented 6 unaccompanied minors who have been considered adults by Polish authorities (despite imperfect age assessment violating Polish law)

More than 200 clients formally represented in asylum or return procedures

- 28 interventions in access to territory (international protection)

- 50 interventions in detention cases (appeals, motions to release or amicus curiae briefs)

- 24 appeals against return decisions

- 10 migrants represented in administrative courts to administrative courts against

We do not report appeals against rejection decisions filed to the Refugee Board, since this legal aid has not been funded by the EEA grant, but during this 24 months period The Rule of Law has filed app. 100 appeals (only two of them were successful)

We do not report interventions funded by grants from other sources. If we reported all RLI activities during the 24 months period, the reported results could be doubled

## Context

### Number of foreigners applying for international protection in Poland

year	Number of applicants	Recognized refugees/subsidiary protection 1 <sup>st</sup> Instance	Recognized refugees/subsidiary protection 2nd Instance	Comments
2015	12325	348/167	12/30	Elections in Poland
2016	12319	108/150	20/46	anti-refugee rhetoric, following EU relocation decision. World Youth Day and NATO summit in Poland,
2017	5078	150/340	1/29	decrease of the first time applications
2018	4135	168/191	17/30	decrease of the first time applications
2019	4096	131/130	4/7	decrease of the first time applications
2020	2803	161/222	0/9	Suspension of the train connection with Belarus. Covid restrictions Belarusian protests after elections October 2020 – Belarusian border
2021	7699	1019/1125	0/11	Belarusian protests after presidential elections, refugees from Afghanistan, growth of applicants from Iraq

Since 1992 until 2021 (30 years of application of Geneva Convention in Poland) 183 000 foreigners have applied for a refugee status/international protection (6100 a year).

## Recognition - 30 years totals

	Refugee status (since 1992)	Subsidiary protection (since 2008)	Tolerated stay/humanitarian stay	Discontinued procedures for international protection
Applicants	6516	6828	Min. 11000	App. 110 000
Recognition rate	3,8%	6 %	Min. 6,4%	App. 60%
Recognition rate after eliminating discontinued procedures (transit asylum seekers)	9,5%	13.5%	n/a	-

## Number of foreigners applying for international protection per month



Number of foreigners applying for international protection per month. Data from the website of the Office for Foreigners: [www.udsc.gov.pl](http://www.udsc.gov.pl)

## **Autumn 2020**

During first week of October Belarus dismantles Soviet border security system (“Sistiema”) on its border with Poland and starts helping refugees to cross this border

- Our first clients (from Russian Federation) crossed the border on October 7, 2020 in Narewka

At the same time Belarusian border authorities stopped accepting back migrants that have crossed the border. The Readmission agreement with EU is not honored by Belarus anymore, so Polish Border Guard may not ask for simplified readmission of the foreigner apprehended at the border.

The Rule of Law Institute has observed this unprecedented phenomenon and since December 2020 until February 2021 directed a couple of letter to the Commander in Chief of the Border Guards informing about observed violations of the right of asylum seekers stopped at the border with Belarus.

## **Depenalization of illegal entry or presence**

### Article 31 of the 1951 Convention relating to the Status of Refugees:

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

## **Restrictions of movement (detention) if necessary and until regularization**

### Article 31 of the 1951 Convention relating to the Status of Refugees:

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

**Main findings from Autumn 2020 were very interesting from the proper application of art. 31 of Geneva Convention point of view**

By the end of November Border Guard has stopped 101 foreigners (79 adults) crossing the “green” border

None of them has applied for international protection

In all of the cases Border Guard has initiated return procedures first

In all of the cases the diplomatic/consular authorities of the country of origin were informed

In all 79 cases of adult foreigners the criminal procedures were launched

In all of the cases Border Guard has sent a request to the local courts to detain foreigners for the period of 90 days



### **Access to protection (territory) – not only push-backs**

Even before the border wall was built and before practice of push-backs (“escorting foreigners to the border line”) has started there were and still are various elements of observed border practice that show lack of respect to Poland’s international obligations:

Significant number of the thousands foreigners stopped at the border wished to apply for international protection, but only in very rare situations Border Guard has accepted and registered the declaration for applying for international protection. From our case files monitoring appears that:

- in Autumn 2020 no asylum applications were registered at the border (foreigners could do it only after they have been transferred to detention centers and after quarantine in the detention center)
- Only 5 out of 16 units of the Podlaski Regional Border Guard Division in Białystok had access to EURODAC devices
- In 2021 there were some very rare occasions when foreigners were allowed to apply for international protection before they were placed in detention centers. In the first seven months of 2021 we have found 1 case of Tajik woman. Then after August 2021 registering declaration for applying for international protection could have been done when representatives of Ombudsman office were present at the border.

*From the interviews with the foreigners placed in detention centers we estimate that maybe even half of them were willing to lodge application for international protection at the border but they were normally told “Later in the detention center you will apply”*

**Push-backs – returning foreigners to the border line without individualized assessment** of their reasons for seeking entry to Poland as a violation of the principle of non-refoulement. Migrants declare that they have rarely received any decision in writing. Of course, knowing of the number of persons that died in the forest push backs could amount to inhuman and degrading treatment and could violate the right to life of migrants

**Not accepting applications for international protection at the Border** by the Border Guard Commanders from the foreigners that have successfully reached Polish territory despite the statutory duty to do it with no delay and the duty to register the declaration of the asylum seeker in the special register (data base)

This may be considered the “**original sin**” leading to many subsequent violations of the rights of the foreigner whose legal situation in Poland is significantly worse than when the application is registered.

Consequences:

- Informing authorities of the country of origin – putting some foreigners in danger
- Starting criminal case and convincing foreigners (unaware of depenalization) to plead guilty and accept 6 months of deprivation of liberty (suspended) and fines
- Starting return (deportation) procedure and often issuing return decision within 24 hours
- Sending migrants to detention for 90 instead of 60 days

### **Other problems**

- Collective interpretation by phone by (Kurdish) interpreters
- Collecting from foreigners declarations in which returnees declare that they will not appeal the return orders despite the fact that they were testifying that they are not accepting return to the country of origin

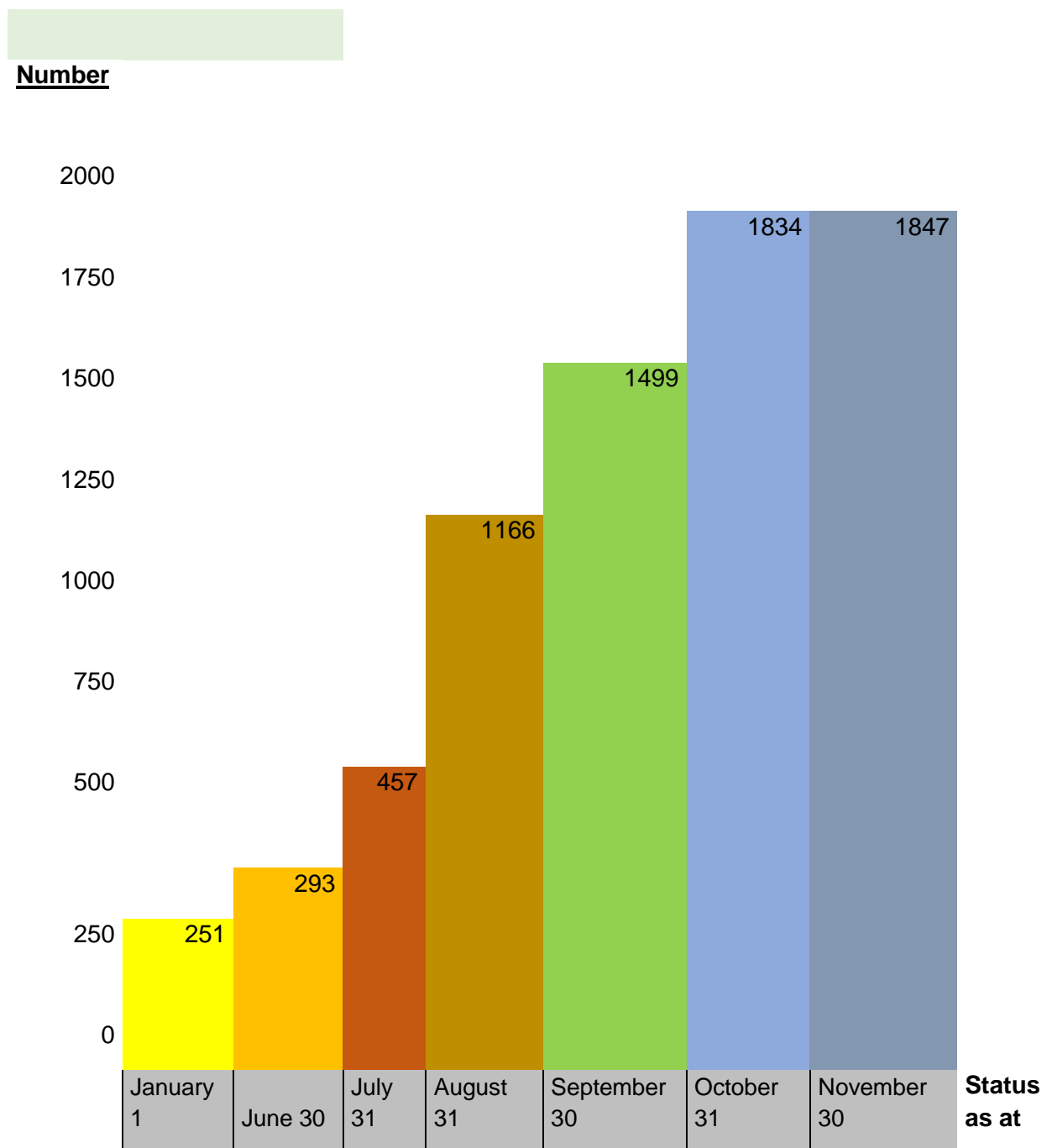
## **Problems with access to territory (protection) through the official border crossing points with Belarus**

- Suspended train connection with Belarus
- Only two road crossing points (no pedestrian traffic)
- Insufficient capacity to collect applications for international protection (seems like 1-2 applications a day are received in Terespol)
- BG is not issuing refusal of entry decisions nor stamps the passports of asylum seekers who leave Belarus but are not admitted to Poland (Terespol)

## DETENTION

### unprecedented number of foreigners in detention facilities in 2021 and early 2022

Detention facilities	Number of places (as of)		
	01.01.2021	30.06.2021	30.11.2021
Biała Podlaska	0 - (guarded center building under renovation)		200* (temporarily adapted rooms of the open Center for Foreigners in Biała Podlaska)
Białystok	35	122	306* (including provisionally adapted premises of the open Center for Foreigners in the Office for Foreigners in Czerwony Bór)
Kętrzyn	120	120	578
Odrzańskie Krosno	64	64	780 * (including a temporary men's unit at the military training ground in Wędrzyn)
Lesznówola	50	73	160
Przemyśl guarded center	86	51	105
Przemyśl Arrest	29	33	39
<b>Total</b>	<b>384</b>	<b>463</b>	<b>2168</b>



## **DETENTION**

### **Detention in asylum procedures is possible mainly for two reason:**

- Establishing or verification of foreigners identity (if migrant does not possess documents proving his identity)
- Collecting information in asylum case that can only be achieved when the foreigner is present

### **Problems of the length of detention**

- Not registering asylum requests at the border was resulting in min 2 months longer detention
- BG ignored ban on extending detention when delays where not caused by the applicant. BG was sending motions to extend detention of applicants with confirmed identity even when the Office for Foreigners has not interviewed applicants. Many foreigners detained in Wędrzyn spent there 6-8 months being interviewed only by the security agencies and as part of their criminal case, but not in their asylum cases
- Introduced in 2021 duty to consult internal security agency (ABW) before releasing a person from detention led to extension of detention “as short as possible” of at least extra 2 weeks

### **DETENTION – wrong policy choice - PARADOX**

- Priority of interviewing families with children led to extending their detention when single men and women were released because they were not interviewed and they had no decision within 6 months
- We know dozen of cases when persons detained were not interviewed at all during their detention period and had to be released

## **Detention of vulnerable migrants**

### Children

According to the data provided by the Border Guard, among the foreigners affected by the lengthy detention there were as many as **518 children** at the end of November 2021, compared to **26 minors on 30 June 2021** (increase by 2000%).

Sometimes unaccompanied children were treated as adults based on imperfect age assessment methods

## **Detention of vulnerable migrants**

Pregnant women were placed in a long lasting detention. Some of them spent there even 6 months.

We have represented 7 pregnant women in detention in Biała Podlaska

Two of the miscarried while being in detention and were not released for many weeks afterwards despite reporting psychological suffering

## **Detention of vulnerable migrants**

Victims of violence and torture were often placed in detention by the courts and it was very difficult to identify them and help them in overcrowded detention facilities

Persons with disability (after amputation, on wheelchairs with certified psychological disorders)

Suicidal attempts (including children)

Hard to understand restrictions of access of external psychologists that were introduced by the detention centers administration



### **Conditions of detention**

- Extra facilities opened in Wędrzyn and Czerwony Bór and Biała Podlaska
- Still problem with overcrowded facilities,
- 2 square meters per person in Wędrzyn (worse standard than prisons)
- Insufficient medical care (Krosno Odrzańskie/Wędrzyn) or Doctor  
“Wszystko w porządku”
- Dividing families into 2 or 3 detention centers
- Problems of released (discharged) detainees to get to open reception centers

## **Systemic problems in asylum procedures**

- Lack of interpreters
- **Unit III of Department of Asylum Procedures** of the Office for Foreigners (responsible for applicants from Asia and Africa) had unprecedented rotation of staff. All of the experienced personnel left in 2021 and 2022 (only head of the Unit is the same).
- However we have observed extra efforts of the staff of this unit to examine applications from Afghanistan, and we respected that highly.
- **The hurry in asylum procedures** of applicants in detention (mostly from Iraq) had nothing to do with the desired speedy procedures. It is hard not to have impression that less than 1% of recognition rate of Iraqi more than 1000 applications is not a coincident (EU statistics show that it is 30-40% average in Europe)
- **Refugee Board** statistic speaks for themselves. In 2020 and 2021 the refugee Board for the first times in history has not granted refugee status to any applicant. Successful appeal are extremely rare and the Refugee Board does not seem to conduct examination of the asylum application

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