

REFUGEE PROCEDURE IN POLAND

1. Sources of law

Act of June 13, 2003 on granting protection to foreigners within the territory of the Republic of Poland

Code of Administrative Procedure

Dublin III Regulation

Transformed Procedural Directive

2. Can the Border Guard authority refuse entry a foreigner applying for international protection?

- Article 33 (1) of the Geneva Convention relating to the status of refugees:

"No contracting State has extradited or will in any way return a refugee to the frontiers of territories where his life or freedom would be threatened by his race, religion, nationality, membership of a particular social group or political belief"

- Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the so-called protection in the event of procedural violations):

"No one may be tortured either inhuman or degrading treatment or punishment" Violation of Article 3, case judgment of the ECtHR of 11 12 2018 M A and others against Lithuania, complaint no. 59 793 17

3. Scheme of the procedure for granting international protection (its phases) - Poland:

Accepting an application for international protection

- Border Guard

Consideration of the case in the first instance

- Head of the Office for Foreigners

Consideration of the case in the second instance

- Council for Refugees

Judicial control

4. Scheme of the procedure for granting international protection (its stages) - the transformed qualification directive:

Determining authority (administrative phase)

A court or tribunal as defined by EU law

Possible further court instances

A court or tribunal as defined by EU law:

- Examination of the case ex nunc (assessment according to the decision made by the court);
- Decision as to fact and law;
- the adversarial nature of the proceedings;
- Impartiality (also understood as the lack of a party's status before a higher court)

5. How is Poland implementing the recast Procedural Directive in the part relating to the court / tribunal?

Requirement	Council for Refugees	Provincial Court Administrative
Ex nunc	+	-
Fact and law	+	-
Adversary	-	+
Impartiality	-	+

6. Proceedings for granting protection - possible options for terminating the proceedings:

- Inadmissibility - the application
- Cancellation (also implicit withdrawal of application)
- Withdrawal
- Transfer of the application for consideration to the competent state
- Accelerated – border proceedings?
- Normal proceedings

7. Dublin proceedings (II OSK 2114/20 Judgment of the Supreme Administrative Court of 2021-06-22):

- Request from the Polish authorities to assume responsibility
- Acceptance of another EU member state
- Discontinuation of proceedings and transfer to another Member State

8.

Implicit Withdrawal

- Lack of contact with a foreigner
- Trip abroad
- Failure to appear at the hearing

Follow-up after an implicit withdrawal of the application:

Decision to discontinue the proceedings

Declaration of intention to continue the proceedings

Conducting a "full investigation"

9. Inadmissibility of the application

II OSK 3478/19 - Judgment of the Supreme Administrative Court of 2020-01-29

Repeated applications:

- "making the granting of international protection more probable"

Other reasons:

- Another EU Member State has already granted international protection;
- "country of first asylum"

Inadmissibility of the application

9. Well-founded fear

"Well-founded fear of persecution" / "real risk of serious harm"

Subjective element

Objective element

10. Evidences

PARTY

- Providing all necessary information;
- Disclosure of all evidence in your possession;
- Appearing when summoned

AUTHORITY

- Verification of the evidence provided by the party;
- Making further findings to clear up any factual doubts;
- Collecting comprehensive information on the country of origin

11. The principle of material truth (Art. 7 of the Code of Administrative Procedure)

Art. 7. [The principle of objective truth; the principle of taking into account the social and legitimate interests of citizens]

In the course of the proceedings, public administration bodies uphold the rule of law, ex officio or at the request of the parties, take all steps necessary to thoroughly clarify the facts and to settle the case, bearing in mind the public interest and the legitimate interest of citizens.

12. Criteria for assessing applications not supported by evidence (Art. 42)

- The circumstances of submitting the application (first possible date)
- Reliability and consistency
- Complete and detailed explanations
- No contradiction

13. The most common evidence (in refugee proceedings):

a) Explanatory activities undertaken by the authority ex officio

- In-depth questioning of the foreigner;
- An ex officio investigation of the situation in the country of origin in relation to the declared concerns;
- Evidence from the files of previous proceedings (before various authorities).

b) Investigation activities undertaken upon request

- Different types of documents (party certificates, third party statements, summonses for questioning from the country of origin, letters from the family, etc.);
- Articles, reports on the country of origin.
- Medical certificates, psychological certificates;
- CDs and DVDs, photos.

14. Persons needing special treatment

- disabled person,
- an elderly person,
- pregnant woman,
- a single parent,
- a victim of human trafficking,
- a bedridden person,
- a person with mental disorders,
- a person subjected to torture,
- a victim of psychological and physical violence, including sexual violence, as well as violence due to gender, sexual orientation and gender identity