

Country factsheet Poland

Based on its 2010 Work Programme, the European Union Agency for Fundamental Rights (FRA) carried out a study on access to justice for asylum seekers. This study illustrates the perspective of asylum seekers on two specific issues relating to the asylum procedure, namely information on the procedure itself and access to remedies against a negative decision.

The FRA interviewed almost 900 asylum seekers throughout the European Union. The information received has been analysed taking into account the relevant national legal provisions and the responses to a questionnaire on information received from national asylum authorities. The research has resulted in two comparative reports, the first on the duty to inform and the second on access to effective remedies.

This factsheet complements these two comparative studies by providing some basic background information, including statistics and relevant domestic legal provisions relating to the issues covered in the two reports.

1. Statistics

Statistics on asylum applications (Total and top 10 nationalities)

2009 Top 10 Nationalities		2008 Top 10 Nationalities	
Total	10,595	Total	8,515
Russian Federation	5,725	Russian Federation	7,760
Georgia	4,180	Georgia	70
Armenia	150	Iraq	70
Vietnam	65	Vietnam	65
Belarus	40	Belarus	60
Ukraine	35	Armenia	50
Indonesia	35	Ukraine	40
Nigeria	25	Nigeria	25
Pakistan	20	Uzbekistan	25
Uzbekistan	20	Turkey	20

Statistics on first instance asylum decisions (Total positive decisions - top five nationalities)

2009							
	Geneva Convention Status	Subsidiary protection status	Humanitarian ¹	Rejected	Total number of decisions	Total positive decisions	Recognition rate ² %
Total	130	2,330	65	4,055	6,580	2,525	38.4
Russian Federation	100	2,270	45	2,140	4,560	2,420	53.1
Iraq	0	25	0	5	30	25	83.3
Belarus	20	0	0	25	45	20	44.4
Sri Lanka	0	15	0	0	15	15	100.0
Somalia	0	5	0	0	10	10	100.0

Statistics on final decisions (Total positive decisions - top five nationalities)

2009							
	Geneva Convention Status	Subsidiary protection status	Humanitarian ¹	Rejected	Total number of decisions	Total positive decisions	Recognition rate ² %
Total	0	75	15	10	100	95	95.0
Russian Federation	0	70	10	5	90	85	94.4
Kazakhstan	0	0	5	0	5	5	100.0
Armenia	0	0	0	0	5	0	0.0

Notes: These tables are based on categories used by Eurostat. The way Eurostat presents its data may not necessarily correspond to categories used at national level. This can particularly be the case with statistics provided under 'humanitarian status'. For a more detailed understanding of the data, the reader is invited to consult national statistics at: <http://www.udsc.gov.pl/Statistics,275.html>.

Data has been rounded to the nearest 5. Due to the rounding, the sum of individuals may not necessarily match the given total. 0 means less than 3; n.a. = not available.

¹ Covering persons granted authorisation to stay for **humanitarian reasons** under national law by administrative or judicial bodies. It includes persons who are not eligible for international protection as currently defined in the first stage legal instruments but are nonetheless protected against removal under the obligations that are imposed on all Member States by international refugee or human rights instruments or on the basis of principles flowing from such instruments.

² The **recognition rate** corresponds to the proportion of positive first instance or final on appeal decisions out of the total number of decisions in 2009. Positive decisions include the provision of refugee status, subsidiary protection and humanitarian protection (where data is available).

Source: [Eurostat](#), Data extracted on 01 September 2010.

2. Background Information

Asylum legislation¹

[Act on Granting Protection to Aliens \(2003\)](#)

[Act on Aliens \(2003\)](#)

Asylum authorities

First instance authority

[Head of the Office for Foreigners](#)

Second instance authority

[Council for Refugees \(Rada do spraw uchodźców\)](#)

3. Duty to inform asylum seekers

The 2003 Act on granting protection to aliens guarantees asylum seekers the right to information as well as the possibility to contact freely the UNHCR.

Pursuant to its Article 29, the authority admitting the application shall inform the alien in a language understandable to him/her about the principles and the form of the procedure, his/her rights and obligations as well as legal effects of the failure to comply with them. The migration authority shall further provide the alien with information on organisations dealing statutorily with refugees matters.

In August 2010, the Office for Foreigners provided the following information to the FRA as regards written information materials.

Written information materials	Information leaflet translated into 8 languages.
Provided when?	At the time of lodging the application and during the first instance interview.
Provided by whom?	At the time of lodging the application – by the Border Guard. During the first instance interview – by the Office for Foreigners, centres for foreigners.
Has an evaluation of information tools been carried out?	No.

¹ The legal information in this factsheets has been updated to reflect the situation on 1 September 2010.

4. Effective Remedy

Type of procedures

An accelerated procedure exists for manifestly unfounded applications (which also includes safe third country decisions), whereby a decision has to be rendered within 30 days from the submission of the application (Article 34). If in the course of examining the application any circumstances appear, which justify transferring the applicant to another country in accordance with the Dublin II Regulation, the determining authority shall issue a decision on the applicant's transfer and on discontinuation of the procedure (Article 41). The regular procedure on the asylum application should be finalised by issuing a decision on granting or refusing asylum within a time limit of six months from the date of the submission of the application (Article 35(1)).

The migration authority will declare as inadmissible, and will discontinue the asylum procedure, applications lodged by the asylum seeker after the receipt of the final decision on refusal of asylum if the new application is based on the same grounds (Article 40).

Duty to state reasons for rejection and procedure to appeal

According to the general rules on administrative procedure, an administrative decision has to be motivated (except in certain circumstances) and contain an instruction on whether and within which time limit it is possible to file an appeal (Article 107 of the [Code of Administrative Procedure](#)). The law allows the authority to refrain from justifying the decision or the ruling if it is justified by state security or by public policy reasons (Article 107(5) CAP). The same provision is contained in the aliens law (Article 5). The first instance migration authority informs the asylum seeker in writing in a language he/she understands of the outcome of the asylum procedure (Article 50, Act on granting protection to aliens).

Time limits for appeal

Article 129 of the Code on Administrative Procedures provides that an appeal shall be lodged within 14 days from the receipt of a written first instance decision. This timeframe also applies to asylum decisions, with certain exception: the decision to reject the application as manifestly unfounded may be appealed within the time limit of five days from the date of its delivery to the alien (Article 34, Act on granting protection to aliens).

Type of procedure	Time limits	Right to remain
General rule	14 days	Automatic suspensive effect as a general rule, but several exceptions exist.
Decisions rejecting the application as manifestly unfounded	5 days	Automatic suspensive effect as a general rule.
Subsequent applications	14 days	No automatic suspensive effect.

Type of procedure	Time limits	Right to remain
Dublin procedure ²	14 days	Automatic suspensive effect as a general rule (with several exceptions)

Right to remain in the country during appeal

The general rule on automatic suspensive effect of the appeal against an administrative decision issued in the first instance shall apply also to a negative decision on the asylum application (Article 130(2), CAP). The appeal has no suspensive effect when the administrative authority decides on the immediate enforceability of its decision (Article 108, CAP) or when the immediate enforceability stems directly from the law (Article 130(3), CAP). Exceptions are defined in Article 130 (3) of the Code of Administrative Procedure, and apply to cases where the first instance decision is immediately enforceable (when it is necessary for the protection of health or national economy, Article 108), or the immediate enforceability is ordered by law.

Legal Aid

The authority admitting the asylum application shall inform the alien in a language understandable to him/her about organisations dealing with refugees matters (Article 29(1)(6)). One of such organisation is the Legal Intervention Association, which provides free legal aid and legal information to asylum seekers in Poland.³ It also represents its clients before the public authorities.

The authority shall, with certain explicitly defined exemptions, enable the party to the administrative proceedings to access his/her file and to make copies and notes (Article 73-74, CAP).

Language assistance

The first instance migration authority, competent to carry out an interview with the asylum seeker, shall provide, if necessary, for an interpreter free of charge in a language understandable to the asylum seeker (Article 43(4), Act on granting protection to aliens).

Hearing

The appellate authority shall carry out a hearing in each case when it considers it necessary to ensure the acceleration or the simplification of the procedure, or in instances where it serves an educational purpose, or if it is required by law. The public authority is obliged to order a hearing when *inter alia* there is a necessity of the reconciliation of interests of the parties or when the involvement of witnesses is needed (Article 89, CAP).

² There is no explicit legal provision regulating the time limit and the right to remain in connection with the decision taken in accordance with the Dublin II Regulation to transfer the asylum seeker to the other country. However, the general rules on the appeal as well as on the suspensive effect have been applied in the recent decision issued by the Council for Refugees No. RdU-1283-1/S/09 from February 2010 which dealt with the appeal against a decision issued in the Dublin procedure.

³ See the website of Legal Intervention Association, *Stowarzyszenie Interwencji Prawnej (SIP)*, at <http://www.interwencjaprawna.pl/o-stowarzyszeniu.html>.

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There is only one appellate body, the Council for Refugees (Rada do spraw uchodźców), competent to deal with appeals of the asylum seekers against the negative decisions on refusal to grant asylum, which is based in Warsaw.