

**NATIONAL REPORT DONE BY THE ODYSSEUS NETWORK FOR THE
EUROPEAN COMMISSION ON THE IMPLEMENTATION OF THE DIRECTIVE
ON RECEPTION CONDITIONS FOR ASYLUM SEEKERS IN:**

Poland

by

Mikołajczyk Barbara

Professor at the University of Silesia

mikolaj@us.edu.pl

1. NORMS OF TRANSPOSITION

- Q.1. Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the directive.

Ustawa o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej - The Act of 13 June 2003 on granting protection to aliens within the territory of the Republic of Poland [further called Act on protection] (Journal of Laws of 2003, No 128, item 1176, of 2004, No 96, item 959, No 173, item 1808, No 210, item 2135, of 2005, No 90, item 757, No 94, item 788) is the main act which transposes the Directive 2003/9/EC. It is clearly stated in the amendment to this Act adopted by the Parliament on 22 April 2005 (Journal of Laws of 2005, No 94, item 788). The Act of 22 April 2005 has amended not only the Act on granting protection to aliens within the territory of the Republic of Poland but also the Act on Aliens of 13 June 2003 (Journal of Laws of 2003, No 128, item 1175 with subsequent modifications) and other acts. It transposes provisions of the following Directives: 2003/86/EC, 2003/109/EC, 2003/110/EC, 2004/81/EC, 2003/9/EC, 2001/55/EC.

All the transposed directives are itemized at the beginning of the Act (in the footnote), not within the concrete provisions.

In 2005 the challenge was to change the provisions referring to the asylum seekers' access to employment.

- Q.2. List by order of importance by using numbers (1, 2, 3) the others norms of transposition if there are more than one (indicate for each norm the title, date, number and references of publication into the official journal; include in your answer the administrative measures taken to ensure implementation of the directive and of the transposition norms like regulations, administrative circulars, special instructions,...)

- Put as an annex to your report a paper copy of each norm in the original language with a reference number to help the reader to find it easily;
- Send us as an electronic version of each norm or a weblink to the text (this will be used for the website we are building);
- Provide the texts of any translation of the above norms into English if they are available.

1. *Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 14 sierpnia 2003 r. w sprawie wysokości cudzoziemców ubiegających się o nadanie statusu uchodźcy*

(Dziennik Ustaw [Journal of Laws] 2003 No. 146, item 1428, and 2005, No.157, item 1322). The Regulation of the of the Minister of Interior and Administration of 14 August 2003 amended on 8 August 2005 refers *inter alia* to the rules according granting performances for applicants for refugee status. The Directive is not mentioned there (because it is mentioned in the Act) but in fact the Regulation contains the details of the reception conditions and it should be taken into account in the assessment of the fulfilment of the Directive. The text in Polish on the website of the Office for Repatriation and Aliens – www.uric.gov.pl or www.sejm.gov.pl

2. *Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 18 sierpnia 2003 r. w sprawie warunków zakwaterowania małoletnich bez opieki oraz standardu opieki w ośrodku dla cudzoziemców ubiegających się o nadanie statusu uchodźcy* published in Dziennik Ustaw [Journal of Laws] No. 151, item 1473. The Regulation was issued by the Minister of Interior and Administration of 18 August 2003 refers to conditions of accommodation and standards of care of the unaccompanied minors. The text in Polish on the website of the Office for Repatriation and Aliens – www.uric.gov.pl or on the web site of the Polish Parliament – www.sejm.gov.pl
3. *Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 12 sierpnia 2003 r. w sprawie regulaminu pobytu w ośrodku dla cudzoziemców ubiegających się o nadanie statusu uchodźcy* published in Dziennik Ustaw [Journal of Laws] No. 146, item 1425. The Regulation was issued by the Minister of Interior and Administration of 12 August 2003 refers to rules of stay in the reception centers. The text in Polish on the website of the Office for Repatriation and Aliens – www.uric.gov.pl or www.sejm.gov.pl
4. *Ustawa z dnia 13 czerwca 2003 r. o cudzoziemcach [Act on Aliens]* published in Dziennik Ustaw [Journal of Laws] 2003, No.128, item. 1175, 2004, No 96, item 959, No 179, item 1842, 2005 No 90, item 757, Nr 94, poz. 788, Nr 132, poz. 1105 i Nr 163, poz. 1362 oraz z 2006 r. Nr 104, poz. 708 i 711, Nr 143, poz. 1027 i Nr 144, poz. 1043). The text in Polish on the website of the Office for Repatriation and Aliens – www.uric.gov.pl or www.sejm.gov.pl The English version of this Act which is available on the Office for Repatriation and Aliens does not contain all the amendments.
5. *Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 26 sierpnia 2004 r. w sprawie warunków, jakim powinny odpowiadać strzeżone ośrodki i areszty w celu wydalenia oraz regulaminu organizacyjno-porządkowego pobytu cudzoziemców w strzeżonym ośrodku i areszcie w celu wydalenia* published in Dziennik Ustaw [Journal of Laws] 2004, No.190, item. 1953. The Regulation was issued by the Minister of Interior and Administration of 26 August 2004 and it refers to rules of discipline and the organization of the guarded centers and deportation centers.

Q.3. Explain which level of government is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because

it is about the competence of the components and it is impossible for you to gather reliable information about all of them)

Acts (statutes) – *ustawy* – such as the Act of 13 June 2003 on granting protection to aliens within the territory of the Republic of Poland, further called the “Act on protection” are passed by the Parliament (according to Article 120 of the Constitution of the Republic of Poland of 2 April 1997) . However, the executive regulations – *rozporządzenia* – regulating the situation of aliens, including asylum seekers, in Poland are issued by the Minister of Interior and Administration. The main rules of the reception conditions of asylum seekers are contained in the Act of 2003 but the details are regulated by the Minister’s regulations. Regulations are issued on the basis of a concrete provision of an act (statute).

Q.4. Explain the legal technical choices done to transpose the directive (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the technique of transposition of the directive which is interesting for the implementation of Community law.

In all cases directives can be transposed by an act (statute), which means by the Parliament. The statutory norm is the only way to transpose a directive. The regulations are issued on the ground of a given act.

Q.5. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and explain if there is a risk that those provisions remain unapplied or will create difficulties of implementation in the future.

It seems that it is too early to any permanent practice of Poland in this area because Poland has been an EU Member merely for 2 years. However, it may be noted that the mentioned in the answer to question no 1 Article 30a is very similar to the Article 11 sec. 2 of the Directive.

Article 30a of the Act on Protection states:

“1. If a first instance decision has not been rendered within the time limit of one year from the date of submission of an application for granting refugee status, and the proceedings were prolonged for the reason beyond the applicant, the President of the Office, upon an alien’s request, shall issue the certificate, which accompanied by the alien’s provisional identity certificate constitutes a basis for obtaining a work permit according to the Act of 20 April 2004 on promotion of employment and institutions of labour market (J. L. No 99, it. 1001, No 273, it. 2073 and of 2005 No 64, it. 565).

2. The certificate referred to in sec. 1 shall confirm the time limit which has passed from the date of initiation of the proceedings as well as the circumstance that the proceedings were prolonged for the reason beyond the applicant and also shall specify an expected time limit for the completion of the proceedings for granting refugee status”.

Q.6. Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?

It may be stated that the main aims of the Directive are implemented. The issue of the access to employment was the last one which was to be regulated. However, there are no rules regarding vocational training of asylum seekers in the Polish law. But according to Article 12 of the Directive it is not obligatory and the Member States may allow asylum seekers to participate in any vocational training. The Polish law gives instruments to fulfil the obligations arising from the Directive but, it must be stressed that sometimes the practical implementation of the aims of the Directive and the Polish legal acts is difficult.

2. BIBLIOGRAPHY

Q.7. Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy (*please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration*).

On 30 September 2004 the grounds of the draft of amendment of the Act on aliens, the Act on protection and other acts were submitted by the Prime Minister to the Parliament. The draft also referred to the transposition of the Directive 2003/9. The submission of the draft caused the work of the Parliament on the amendment to the aliens law. This and other documents on the issue were published and are accessible at the Sejm website.

Uzasadnienie do projektu ustawy z 13.06.2003 o cudzoziemcach – Druk Sejmowy no. 3333.
http://ks.sejm.gov.pl/proc.4/ustawy/3333_u.htm.

Q.8. Quote any recent scientific book or article published about the directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).

There are not any strict scientific books or articles dedicated exclusively to the transposition of the Directive. The main discussion in this field took place before Poland's accession to the EU. For example, various aspects of the reception were discussed in:

B.Mikołajczyk: *Osoby ubiegające się o status uchodźcy. Ich Prawa i standardy traktowania*. Katowice 2004,

B.Mikołajczyk: *Prawa dziecka w sytuacji ubiegania się o status uchodźcy*. „Państwo i Prawo” 2004, no.. 7, pp. 88 – 99

B.Mikołajczyk: *Pomoc prawna w sprawach uchodźczych. Nowe wyzwania w związku z przystąpieniem Polski do UE*. „Palestra” 2004, no 1, pp. 19 – 29.

It is quite difficult to find any recent publications on transposition but worth mentioning is the article dedicated to all important changes which were introduced into the Polish law in 2005 (also amendments arising from the transposition of the Directive).

This is:

A.Jasiakiewicz, W.Klaus: 2005: *Zmiany w polskim prawie o uchodźcach. Nowelizacja przynosi korzystne zmiany, między innymi więcej praw socjalnych*. „Z obcej ziemi” May 2006.

The issue of education of children and the protection of unaccompanied minors are discussed in reports:

A.Jasiakiewicz, W. Klaus: *Raport z monitoringu realizacji obowiązku szkolnego przez małoletnich cudzoziemców, przebywających w ośrodkach dla uchodźców*. Stowarzyszenie Interwencji Prawnej 2005;

A. Jasiakiewicz, W. Klaus: *Raport z monitoringu realizacji obowiązku szkolnego przez małoletnich cudzoziemców, przebywających w ośrodkach dla uchodźców*. Druga edycja. Stowarzyszenie Interwencji Prawnej 2006

Raport o sytuacji małoletnich cudzoziemców bez opieki ubiegających się o nadanie statusu uchodźcy w Polsce. Fundacja Studencki Ośrodek Pomocy Prawnej przy Wydziale Prawa i Administracji Uniwersytetu Warszawskiego – Klinika Prawa UW. Warszawa 2005.

K.Zdybska: *Ochrona ofiar przemocy oraz cierpiących na traumę na gruncie polskiej ustawy o udzielaniu cudzoziemcom ochrony*. In: *Biuletyn Stowarzyszenia Praw Człowieka im. Haliny Nieć* 2005, pp. 4-12 www.niecassociation.org

B.Smoter: *Wybrane zagadnienia sytuacji prawnej małoletnich cudzoziemców bez opieki w świetle nowelizacji ustawy o cudzoziemcach i ustawy o udzielaniu cudzoziemcom ochrony na terytorium RP z dnia 22 kwietnia 2005*. In: *Biuletyn Stowarzyszenia Praw Człowieka im. Haliny Nieć* 2005, pp. 13-18 www.niecassociation.org

Implementacja Prawa Azylowego w Polsce. *Biuletyn Prawny Stowarzyszenia Praw Człowieka im. dr Haliny Niec*. Nr 1/2004

Listening to refugees. Report in the Gender, Age and Diversity Roll-Out in Hungary, Poland, the Slovak Republic and Slovenia – UNHCR Regional Representation 2005

Q.9. Quote any interesting decision of jurisprudence based on the implementation of the new rules of transposition of the directive (indicate references of publication if any)?

So far there have not been any judgements.

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

*The purpose of the following two questions is to help the reader to understand easily and quickly the system of reception conditions in your Member State and also to avoid that you have to repeat general elements in other parts of the questionnaire. **Please do not write more than one or maximum two pages and do not include large historical developments.***

Q.10. Describe in general the system of reception conditions in your Member State (in particular which are the main actors in charge of reception conditions?)

An alien who submitted an application for granting refugee status may also apply for social assistance for the time of pending procedure in both administrative instances. The request for assistance may also refer to an alien's spouse and his/her minor children.

Decisions on granting the assistance shall be rendered by the President of the Office of Repatriation and Aliens in Warsaw. The President of the Office and the Office are the main actors in the whole of the asylum procedure.

This assistance is granted until the final decision (issued by the second administrative instance) and additionally for a period of 14 days after delivery of such a decision. An applicant must prove that he/she does not possess any financial resources allowing him/her to

cover the cost of their stay on the territory of Poland and that he/she is unable to obtain any financial resources and accommodation.

However, upon the request of an alien, the assistance may be extended for a period of up to 3 months from the date of delivery of the decision in cases when an alien has been granted refugee status or he/she obtained a tolerated stay permit. This provision seems to be very important because sometimes a positive decision may be a big problem for a refugee. It can be difficult to find himself/herself in a new situation.

Moreover, upon the request of an alien the assistance may be prolonged until the end of a period of up to 1 month from the date of delivery of the decision on discontinuation of the procedures for granting refugee status due to the fact that the application for granting refugee status has been withdrawn.

According to Article 57 of the Act of 13 June 2003 the assistance shall include:

- accommodation in the reception center or granting to an alien a financial benefit to cover his / her own costs of stay
- granting the medical care.

The assistance may also include granting assistance in voluntary repatriation from the territory of the Republic of Poland.

According to Article 60 of the Act in the case when the procedures concerning the granting of refugee status to married couples staying in the centre together with minor children are being carried out separately, the stay of any spouses staying in the centre may not come to the end prior to the expiry of 14 days from the date of rendering the final decision in the proceedings completed later.

The social assistance is not granted to an alien who resides on the territory of the Republic of Poland on the basis of a fixed period residence permit, a permit to settle or the long-term resident's EC resident permit or he/she has been placed in the guarded centre or held in custody for the purpose of expulsion, has been preliminarily arrested or has been imprisoned. It is also possible not to grant any social assistance if the application for refugee status indicates arguments for refusal of granting refugee status.

The mentioned above social benefits are usually (not always because there is a group of asylum seekers who enjoy the financial benefits but they stay outside the centre for health or safety reasons) provided by the centres for asylum seekers. Nowadays there are 17 centres. The main reception centre is in Podkowa Leśna - Dębak near Warsaw. If an alien intends to apply for the social assistance they must apply to the Reception Centre for Aliens Applying for Refugee Status in Podkowa Leśna –Dębak. Then he/she is usually moved to another accommodation centre.

Under Article 63 sec. 2 the President of the Office may delegate its responsibility for running the centres to social organizations, foundations, associations as well as natural and legal persons.

The Office of Repatriation and Aliens is the owner of 3 of the 17 centres. The other centres are rented by the Office from private companies. However, all of them are under supervision of the Office or conducted by the personnel of the Office. The Office for Organization of Reception Centres (Biuro Organizacji Ośrodków) is a coordinator of the work of all the centres. It is located within the structure of the Office for Repatriation and Aliens.

Analysing the practical side of the issue it should be noticed that there is the problem with getting to the centre in Debak remains (there is no means of transport from the train station in Otrebusy). The tickets to Debak are bought by the Border Guard but this situation is not legally regulated in the Act. The Border Guard is providing the train tickets for the journey from the border to the centre due to its own rules.

- Q.11. A. Explain if you have different types and levels of reception conditions following the different stages of the asylum procedure (this implies that you have to give briefly the necessary explanations about the asylum procedure). Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis of the Dublin II regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspensive or not) against a refusal of the asylum request. Indicate what the main differences of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and explain what the evolution of reception conditions is following the different stages of the procedure.

The procedures for granting refugee status shall be initiated upon an application submitted personally by the alien to the President of the Office for Repatriation and Aliens. An alien shall submit an application for granting the refugee status through the commanding officer of the Border Guard division, the territorial scope of activity of which includes the city of Warsaw, or through the commanding officer of the Border Guard checkpoint. Prior to sending the application for granting refugee status to the President of the Office for Repatriation and Aliens, the authority admitting the application shall determine, whether: at the moment of submitting the application the alien was authorized to enter the territory of the Republic of Poland or he/she has legally stayed therein; the circumstances referred to in art. 1 sec. F of the Geneva Convention have arisen; shall provide for the performance of medical examinations and necessary sanitary treatments of the alien's body and clothes. An application for granting refugee status shall be immediately sent to the President of the Office, no later, however, than within 48 hours from the moment of submitting an application by the alien. Usually it is on the same day. Then they apply for social assistance. The decision on the social assistance is issued by the President of the Office for Repatriation and Aliens. Then they go to the Central Reception Center. Then they may be transferred to other centers.

The decision on granting or refusal to grant the refugee status should be rendered within the time limit of 6 months from the date of the submission of the application. The decision on the refusal to grant refugee status for the reason of manifestly unfounded application should be rendered within the time limit of 30 days from the date of submission of the application.

They are allowed to stay in the center for all stages of the procedure and it does not matter if it is pending before an organ of the first (President of the Office of Repatriation and Aliens) and second instance (Refugee Board). The organ of the first instance is placed within the structure of the Ministry of Interior and Administration. The Refugee Board is an organ consisting of 12 experts appointed by the Minister of Justice and Minister of Foreign Affairs.

They enjoy the social assistance until the final administrative decisions are issued towards all members of the family and during the next 14 days from delivery of such a decision.

If a person receives two negative decisions issued by the President of the Office for Repatriation and Aliens instance and the Refugee Board may submit a complaint to the administrative court and then to the Supreme Administrative Court. Both courts verify the

legality of the administrative decisions – if the decisions are in accordance with law. However, the refugee cases are very specific and the courts must refer to the merit of a case (definition of a refugee) if they intend to verify the formal aspects of a case.

It must be stated that according to Article 16 of the Act on Protection in the decision on refusal of granting refugee status an alien is granted a tolerated stay permit or is ordered to leave the territory of Poland within the time limit specified in the decision, not exceeding 30 days. However, if an alien appeals against the decision of the first instance the Refugee Board shall specify the new time limit, not exceeding 14 days. It means that he/she can submit a complaint to the administrative court but she/he should leave Poland. They may appoint their legal representative for the period of the judicial proceeding but in practice it is not of great importance because they are out of the territory of Poland. On the other hand, they may always apply for permission for stay/visa due to general rules for aliens reasoning that they want to be present before the court but there is no guarantee that obtain the permit to stay.

During the procedure before the courts they are not granted any social assistance stipulated in the Act on Protection. Concluding, social assistance is granted through all the administrative procedure and not during the judicial proceedings.

It must be stressed that it does not matter if he or she never was in Poland before and applies for the refugee status first time or he/she has been transferred to Poland due to the Dublin mechanism. He/she has the right to the same conditions of reception. According to the information provided by the Office for Repatriation and Aliens 1197 persons (87% of the Russians citizens who declare Chechen nationality) were transferred to Poland from Czech Republic (428), Germany (413), France (89), Belgium (73) in 2005.

Completely different, however, is the situation of an alien who is not authorized to enter the territory of the Republic of Poland. In such a case he/she shall submit an application for granting refugee status during the border control upon entry to the Republic of Poland, through the commanding officer of the Border Guard checkpoint.

According to Article 40 of the Act on protection an alien applying for granting refugee status shall not be detained unless he or she submits an application for granting refugee status during the border control, not having the right of entry on territory of the Republic of Poland or staying illegally. They are detained also if prior to submission of an application they have crossed or have attempted to cross the border contrary to the laws or have obtained the decision ordering to leave the territory of Poland or the decision on expulsion. He/she is also detained if it occurs (after submission of the application for refugee status) that for example his/her residence constitutes a threat to the security of Poland or is undesirable or he or she has broken the law (*inter alia* he or she has taken an employment against Act on promotion of employment and institutions of the labour market of 20 April 2004) and other reasons specified in Article 88 of the Act on Aliens of 13 June 2003.

This group of aliens is placed in the guarded centers or in deportation arrests and they cannot apply for any social assistance in the meaning of the Act on protection. But it should be stressed that the unaccompanied minors and applicants who are presumed to be victims of violence or disabled may not be placed in a guarded center or deportation arrest.

- B. Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid.

As it was stated above the described reception conditions refer to both stages of the administrative procedure - before the President of the Office for Repatriation and Aliens and Refugee Board - and exclusively towards the aliens who are not detained.

4. GENERAL RULES ON RECEPTION CONDITIONS

- Q.12. A. Are material reception conditions provided in kind, in money or in vouchers or in a combination of these elements (see article 13, §5 which is an optional provision)? Distinguish between the different elements (housing, food, clothes, health, transportation, pocket money,...). **If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases.** Specify in your answer if reception conditions are different from the general system of social aid for nationals or aliens and if yes, if and when (which stage of the asylum procedure) can asylum seekers have access to the general system of social aid?

According to Article 61 of the Act on Protection the person who is placed in the center shall be provided with travel fares and meals. The fares are provided in order to enable the person to take part in the procedures for granting refugee status or attend medical examination or prophylactic vaccinations and in other particularly justified cases.

They there are also provided with teaching materials or aids for children enjoying education and care of public institutions, primary schools, gymnasia or grammar schools as well as covering of the expenses arising out of charges for education in such institutions, schools or gymnasia.

Moreover, they are entitled to permanent financial assistance for the purchase of toiletries and covering out-of-pocket expenses.

It is also possible that an alien referred placed in the center may be provided with an equivalent in money in return for food. It is provided in case when due to his/her health state he / she should obtain dietary alimentation for a period specified in a medical report, and this alimentation may not be provided by the center. It is also provided if he/she stays in the center together with children under 7 years of age or a minor child of an alien enjoys education and care of public institutions, primary schools, gymnasia or grammar schools. They may also be provided the one-time financial assistance for the purchase of clothing and footwear.

In cases when children under 7 and minor children attend schools they receive money for them in cash. As the personnel of the reception centers and school teachers noticed, quite often the parents do not spend the received money on food for their children and as a result their children are undernourished. That is why there is an idea to transfer money to schools, which would provide them the food (for example breakfast or lunch).

According to the Regulation of the Minister of Interior and Administration of 14 August 2003 amended by the Regulation of 8 August 2005 (Journal of Laws 2003, no. 146 item 1428 and 2005, no. 157 no. 1322) persons staying in the reception center receive 20 PLN for the purchase of toilet articles and 50 PLN pocket money every month. They may also receive an allowance for cloth and footwear – 140 PLN. The NGO-s noticed that it is not enough, especially in the case of growing children.

The mentioned equivalent in money in return for food is 9 PLN per day.

There are also situations when the asylum seekers do not stay in the reception centers they receive a benefit of 25 PLN per person for each day of stay. However, if an asylum seeker stays with his/her family this amount is different. When the family consists of 2 people the benefit is 20 PLN, 3 people– 15 PLN, 4 and more family members it is 12,50 PLN.

- B. **Can the reception conditions in kind, money or vouchers be considered as sufficient “to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence” as requested by article 13, §2 of the directive (which is a mandatory provision but leaves a certain space to Member States)?** In order to help to assess the respect of this rule when reception conditions are provided in money, include if necessary in your answer points of comparison with the minimum amount of social aid guaranteed for nationals in your Member State.

An answer to this question is quite difficult because of the meaning of the “standard”. It is possible to compare the income for the people living outside the centre to the level of Poland’s social minimum and the standard of living of the Polish citizens. Providing that the minimal salary is 899,10 PLN gross the help provided for the arriving to Poland asylum seekers should be recognized as sufficient. It must be remembered that if they stay in the reception centre they do not pay for food, accommodation and medical care. If they stay outside the centre they receive money for every day of stay, sometimes it is more than a Polish citizen is able to earn each month.

5. PROCEDURAL ASPECTS

- Q.13. A. **Does the national legislation specifically provide that a request for international protection is presumed to be under the Geneva Convention unless explicitly requested otherwise? (see article 2, b which is a mandatory provision)**

According to Article 56 of the Polish Constitution of 1997 “foreigners shall have a right of asylum in the Republic of Poland in accordance with principles specified by statute. Foreigners who, in the Republic of Poland, seek protection from persecution, may be granted the status of a refugee in accordance with international agreements to which the Republic of Poland is a party”. The international agreements mean the Geneva convention and the Protocol. The Act on Protection refers to the Convention directly in its chapter II.

- B. Explain if the scope of application of reception conditions is extended to other asylum seekers than refugees in the sense of the Geneva Convention, in particular to persons asking for subsidiary protection or to other forms of protection like humanitarian statuses (see article 3, § 4 which is an optional provision)? If not, explain briefly which the differences between these special regimes and the directive are.

However, therefugee status and asylum are not all the kinds of the protection which may be granted to aliens in Poland. The Act on Protection contains, apart from the above mentioned solutions also two other possibilities of protection, namely the so called “tolerated

stay” and “temporary protection”. Thus, the Act on Protection regulates: refugee status, asylum, tolerated stay and temporary protection.

Ever since the Act on Protection entered into force (1 September 2003) there was no need to apply rules concerning temporary protection. It must also be added that aliens arriving to Poland apply for territorial asylum extremely seldom. (Nowadays there are 6 aliens in the territorial asylum). The Act on Protection does not contain any rules on assistance for persons applying for this kind of protection. From time to time the idea of liquidation of this kind of protection appears in the Ministry of Interior and Administration.

So in fact the two types of protection should be taken into consideration.

Under Article 13 sec. 1 of the Act on Protection refugee status in the Republic of Poland shall be granted to an alien who fulfils the conditions for being recognized as a refugee, as specified in the Geneva Convention and the New York Protocol. So, there is the direct reference to the Geneva Convention.

It must be stressed that the other kind of the protection – tolerated stay – is closely connected with refugee status – it does not have an independent nature (except a situation when the Voivode [governor of a province] issues a decision of expulsion of an alien or in extradition cases).

An alien is not eligible for tolerated status himself/ herself (except in the above mentioned situation of expulsion). He or she must apply for refugee status but as a result of the procedure he/she may obtain refusal of granting refugee status and granting a permit for tolerated stay in Poland. Most of the applicants of Chechen nationality is in such a situation.

In these cases the permit is rendered *ex officio* by the President of the Office for Repatriation and Aliens or, in second instance by the Refugee Board, in one decision “on refusal of refugee status and the granting of a permit for tolerated stay”.

The tolerated stay is a type of humanitarian status. According to Article 97 of the Act on Protection an alien shall be granted the permit for tolerated stay if his/her expulsion may be effected only to a country where his/her rights contained in Articles 1-7 of the ECHR could be under threat. Moreover this kind of protection shall be granted to an alien whose expulsion is unenforceable due to reasons beyond the authority of executing the decision on expulsion or beyond an alien (for example in case when there are not any direct flights to the country of an alien's origin, see: the judgement of the EctHR in the case *Shamsha and Shamsha v. Poland*)

That is why an alien enjoying the reception conditions in the reception centres or the other kind of social assistance may become “ a refugee” or “an alien who possess a permit for tolerated stay in Poland”. It is obvious that conditions of their reception are the same.

- C. Are there specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision)?

Articles 90 – 96 of the Act on Protection refer to the “asylum”. Foreigners may apply for this type of the protection within of the territory of Poland or outside the Poland’s territory. These foreigners are not entitled to the social assistance except the unaccompanied minors if they apply for asylum in Poland.

Q.14. Are reception conditions available as from the moment one asylum application is introduced? How is article 13, §1 which is mandatory legally understood? Do asylum seekers have to satisfy any other condition in order to get reception conditions?

The answer should be positive because after the submission of the application aliens are sent to the Reception Centre in Dębak. Theoretically they must prove that they do not have any resources to cover the costs of their stay in Poland, but in practice their declaration about the lack of any resources are very difficult to verify.

Q.15. Explain when reception conditions end, for instance after refusal of the asylum request (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspensive effect)

As it was stated before (see: answer to Q. 11), an alien, in relation to whom the procedure for granting refugee status has been initiated, shall be provided, upon his/her request, with the assistance for the period of the procedure and for the period of 14 days from the date of delivery of the final decision in this case. However, if there is a family and if separate procedures are conducted in the case of each of them the period of 14 days is counted from the delivery of final decision in case of the last member of a family.

Q.16 Are there special rules or practices regarding reception conditions in case of successive applications for asylum introduced by the same person?

There are not any other rules or practices referring to the persons who have submitted successive applications.

Q.17¹. Information of asylum seekers about their rights and obligations in terms of reception conditions, in particular about established benefits (see article 5 which is too large extend a mandatory provision; do not confuse this question with the information to be provided to asylum seekers about the asylum procedure):

A. Are asylum seekers informed, and if yes about what precisely?

Asylum seekers are informed immediately (this information is confirmed by the Halina Niec Human Rights Association – a very active NGO) and rather precisely. However, it is quite difficult to assess each case.

B. Is the information provided in writing or, when appropriate, orally?

The information is provided orally and in writing. It should be remembered that almost 90% of applicants in Poland speak (or at least understand) Russian. That is why there are not

¹ To be answered with the help of UNHCR local office competent for your Member State or to be completed on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

any problems with informing them in both forms - orally and in writing. If an asylum seeker speaks any exotic language the information is provided with assistance of an interpreter.

Information in a few basic languages is available in Debak. Moreover some NGOs such as Helsinki Foundation for Human Rights deliver information in the form of leaflets translated into numerous foreign languages.

B. Is that information in general provided in a language understood by asylum seekers? Specify the list of languages in which it is available

As it is stated before 90% of asylum seekers arriving to Poland are Russian speaking persons. That is why the written information is provided mainly in Russian but it is also provided in Arabic, Chinese and English. It results from the fact that asylum seekers usually understand these languages. It may also be added that the reception centers “specialize” in certain languages and for example Arabic speaking asylum seekers are placed in one reception center. In practice, the center in Siekierki in Warsaw gives shelter to people with other than Chechen nationality.

C. Is the deadline of maximum 15 days respected?

The deadline is fully respected. They receive the information immediately. It may also be added that some applicants are well informed before they come to Poland because the information on procedure and assistance is provided at the Office for Repatriation and Aliens web site in English and the Act on Protection is also translated into Russian. It may be also added that the information on the Polish Office for Repatriation and Aliens (URiC) Web Page is available also in Russian (not only in English).

Q.18². Information of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extent a mandatory provision):

A. Is there a list of organisations dressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?

The list of NGO-s is accessible in each center but as the representative of the Halina Niec Human Rights Association noticed, not all the NGOs working for refugees and asylum seekers are itemized on these lists. They usually provide legal assistance and social assistance (the Polish Humanitarian Action) or medical assistance. They work permanently or incidentally (educational programmes) .

B. Is the information provided to the asylum seekers, and if yes, in writing or, when appropriate, orally?

This kind of information is provided in writing and orally with other information about the conditions of reception. However, it usually depends on an individual situation for example there are illiterate asylum seekers or they speak a very exotic language. The Act on Protection in Article 22 obliges the authorities admitting the application to inform an alien in

² To be answered with the help of UNHCR local office competent for your Member State or to be completed on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

a language understandable to him/her about the principles and procedures, about his/her rights and obligation during the procedure.

C. Is that information in general provided in a language understood by asylum seekers? Specify if possible the list of languages in which it is available.

The rules referring to information about NGO-s are the same as in the case of the general information on reception conditions.

D. How many organisations are active in that field in your Member State?

At least 17 NGO-s. However, forms of their activity are very various. They may be divided into three groups: there are NGO-s which provide legal assistance (the Halina Niec Human Rights Association – Stowarzyszenie im. Haliny Nieć, the Helsinki Foundation – Fundacja Helsińska, the Polish Association of Legal Education – Polskie Stowarzyszenie Edukacji Prawnej, the Polish Association of Legal Intervention – Polskie Stowarzyszenie Interwencji Prawnej, the Students’ Law Clinic in Warsaw, Krakow, Bialystok and Lublin). There are NGO-s which provide material and legal assistance, such as the Polish Red Cross or Caritas. The medical and psychological assistance is provided by the Polish Medical Mission, The *Salvation* Foundation “Ocalenie”. The *Nobody's Children* Foundation “Dzieci Niczyje” focuses on assistance to the unaccompanied minors. The Proxenia Association takes up many initiatives, such as writing reports, organization of seminars, conferences, information actions, etc. There are NGO-s which help in other ways, for example organizing teaching Polish language for children (the Polish Humanitarian Action or *Linguae Mundi*). The Polish Humanitarian Action simultaneously provides other forms of assistance, of course. The A - venir Foundation should be mentioned as organization that also offers material and social help.

The NGO-s which work for asylum seekers

UNHCR partners:

1. *The Polish Humanitarian Action* - Polska Akcja Humanitarna (social assistance, education) ,
2. *The Halina Niec Human Rights Association* – Stowarzyszenie im. Haliny Nieć (legal assistance),
3. *The Helsinki Foundation* – Fundacja Helsińska (legal assistance),
4. *A-Venir Foundation* (social and legal assistance)

Cooperators:

5. *The Polish Association of Legal Education* – Polskie Stowarzyszenie Edukacji Prawnej (legal assistance), ,
6. *The Polish Association of Legal Intervention* – Polskie Stowarzyszenie Interwencji Prawnej (legal assistance),
7. *The Students’ Law Clinics* in Warsaw, Krakow, Bialystok and Lublin (legal assistance)
8. Caritas (legal and social assistance)
9. *The Salvation Foundation* - Fundacja “Ocalenie” - (assistance for children mainly psychological)
10. *The Nobody's Children Foundation* - Fundacja “Dzieci Niczyje” (psychological help)
- Medecins Sans Frontieres* - Lekarze bez Granic (psychological help)
11. *The One World Association* - “Jeden Swiat” (education)

Others:

- 12. *The Polish Red Cross* (education)
- 13. *The Polish Medical Mission* - Polska Misja Medyczna (medical and psychological assistance)
- 14. Proxenia Association (integration)
- 15. Amnesty International (lobbying and education)
- 16. *Foundation Linguae Mundi* – Fundacja Nauki Języków Obcych – Centrum Nauczania Języka Polskiego dla Cudzoziemców (education – Polish language lessons) .
- 17. *Muslim Union* – Związek Muzułmański

Q.19. Documentation of asylum seekers (see article 6):

- A. What kind of document is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove of identity?) (see §1 of article 6 which is a mandatory provision)**

According to Article 32 of the Act on Protection an alien who submitted an application for granting refugee status shall be issued a provisional identity certificate – “zaswiadczenie tożsamości”. The certificate confirms an alien’s identity and entitles him/her to stay on the territory of Poland.

This document replaces a passport or another travel document because an alien who submits the application for granting refugee status is obliged to deposit his travel document (as well as one of his/her children) to the President of the Office of Repatriation and Aliens.

- B. Are there situations or specific cases in which another equivalent document or even no document is issued? (in particular is there an exception for “procedures to decide on the right of the applicant legally to enter the territory” as made possible by §2 of article 6)?**

The Act on Protection does not contains any provisions on other kinds of documents. There are not any specific provisions in the Act on Aliens. Persons who are placed in the guarded centers or in arrests for deportation are obliged to deposit their documents but they do not receive any other documents.

- C. For how long is this document in principle valid and is it necessary to renew it after a certain period?**

The document mentioned in Article 32 of the Act on Aliens is valid for 30 days. When it expires successive identity certificates are issued to an alien for periods of maximum 6 months until completion of the procedure for granting refugee status.

- D. What is the deadline for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected³?**

The document is delivered immediately and the deadline of 3 days is fully respected. This information is also confirmed by the NGO-s and the UNHCR.

³ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

E. Is it possible for an asylum seeker to get a travel document for serious humanitarian reasons (see §5 of article 6 which is an optional provision)?

None of the Acts of 2003 contains any provisions referring to §5 of Article 6.

F. Is there a central system of registration of asylum seekers and is it or not separate from the registration of aliens? If yes, describe it briefly (content) and indicate in particular if it is an electronic database.

Article 132 of the Act on Aliens and Article 119 of the Act on Protection refer to the registers.

Information System has central character and is available for Office for Repatriation and Aliens as well as for the Border Guards (“POBYT”).

There are many separate registers, among others, the register of procedures on granting the refugee status and on granting assistance to aliens applying for granting refugee status.

Q.20. Residence of asylum seekers⁴:

A. Is in principle an asylum seeker free to move on the entire territory of your Member State or only to a limited part of it and in case, which part? (see article 7, §1 which is a mandatory provision)

There are not any provisions limiting the free movement of asylum seekers within the entire territory of the Republic of Poland (providing that they are not detained, of course).

However according to the Article 45 of the Act on Protection, the President of the Office for Repatriation and Aliens may oblige an alien to stay in a specific place (only in case when an alien was detained or should be detained but he/she is not placed in the guarded centre or arrest). In practice, this law is not being used .

B. About the place of residence (see §2 of article 7): explain to which extend the person is free to choose her residence and if this depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance processing of application, attribution of reception conditions,...).

The possibility to choose the place of residence does not depend on the stage of the procedure. It depends on the submission of the application for social assistance. If an asylum seeker does not apply for the assistance he or she may choose the place of his/her residence. However, he/she is obliged to inform the Office about each change of the place of residence. It is obvious due to the procedural rules and the asylum seeker is informed in an understandable language about this obligation at the beginning of the proceedings. (There is some written information in the form of an application for refugee status).

However, if an asylum seeker applies for social assistance his/her choice of the place of residence is limited. There are 17 reception centres and they are placed first in the central reception centre in Debak then in one of the other 16. They are usually persons of the same nationality or ethnic or language groups who are placed in the same centres. The family unity is also respected. It must be remembered that persons residing in the centre must observe the rules of stay in the centre but, as it was stated before, reception centres are not closed centres.

It must also be added that there is a group of asylum seekers who, according to Article 64 of the Act on Protection, enjoy social assistance (financial benefit) but who do not stay in

⁴ Nota bene: the case of detention is covered by other questions and should be ignored under this question.

the reception centre. They do not stay in the centre due to their health state acknowledged by a medical report or if there is a need to assure an alien's safety. According to the information obtained at the Office there were 504 asylum seekers in May 2006 and 472 in mid June 2006 who stay outside the centre and enjoy the financial benefits.

C. About the place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7): explain which are the general rules about the determination of this place (to which extend are the decisions determining the place taken individually and do they take into account the personal situation of the asylum seeker?) and to which extend the person is free to choose it and if it depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance attribution of reception conditions, processing of the application,...).

As it was stated before if an asylum seeker applies for social assistance his /her choice of a place of residence is limited. It does not mean that he/she does not have any influence on a decision on placing him/her in the center (not the first one – the central reception center in Debak but in others). There are not provisions in the Act on Protection on impartiality of decisions on reception conditions. It cannot be stated that that the decisions in these cases are not taken individually. The decisions on providing the material assistance are the decisions in the meaning of the Code of the Administrative Procedure. It means that an organ rendering such decisions is obliged to act impartially and individually. It arises directly and indirectly from the principles of the Code (Articles 7, 10, 11)

Various aspects are taken into consideration in taking decisions on reception, for example, situation of the family of the asylum seeker, state of health, understanding of languages, etc. It may be stressed that an asylum seekers may apply for being placed in a concrete center (for example because many of his/her acquaintances stay there).

D. If all asylum seekers are not placed in accommodation centres because of capacity limits, explain how the persons are distributed between accommodation centres and other accommodation facilities (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker,...)⁵

In all these cases the President of the Office takes the decisions. According to Article 63 of the Act on Protection it is possible to delegate NGOs to run the centers. That would also be possible in a crisis situation. Worth of mentioning is the fact that such a crisis situation happened in 1996. At that time the Polish Humanitarian Action opened its own center “Dom Uchodźcy” in Warsaw but usually rejected asylum seekers had stayed there (but it should be remembered that the law on aliens was completely different at that time).

The UNHCR representative noticed that in year 2005 due to the increase of the aliens number (*inter alia* as Dublin II became effective, in order to supply adequate accommodation, the number of centres rose to 17 and in present there are 16 centres).

⁵ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

- E. How can an asylum seeker ask to leave temporarily the place of residence or of reception or an assigned area? How is the individual AND impartial character of the decision ensured? (see §5 of article 7 which is a mandatory provision)

As it was stated before the reception centres are not closed (they may leave the centre for a certain time if they give reasons for leaving it), but it must be remembered that a stay in centres is closely connected with providing social assistance. They are also bound by the rules of order in a centre. That is why asylum seekers are not interested in leaving centres. However, providing that for health or safety reasons they may be placed outside the centres and receive money for accommodation and food. If they can stay outside centres from the beginning of the procedure the more they can temporarily change their place of residence during the pending procedure if it turns out that it is necessary for their health or safety. The decisions in such cases must always be taken individually.

- Q.21. A. Do rules on reduction or withdrawal of reception conditions exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16, § 1 and 2 which are optional provisions)? Distinguish in your answer between cases of reduction and withdrawal and explain which conditions can be reduced and if access to emergency health care is always ensured as requested by article 16, §4, last sentence.**

The reduction or withdrawal of reception conditions is regulated by Article 65 and 66 of the Act on Protection. The President of the Office has the competence to withhold in the whole or in part the assistance based on placing in the reception centre or granting the financial benefit if an alien is in possession of his/her own financial means sufficient to cover his/her needs or after being granted the assistance, has crossed the border contrary to the law.

The last situation is quite a frequent situation because many of asylum seekers are not interested in remaining in Poland they usually want to go to the western countries of the EU. That is why in the case when having been granted the assistance he or she cross or attempt to cross the border he or she after being granted the assistance crossed or attempt to cross the border contrary to the law for the second time, the President of the Office may, upon the alien's request, grant him/her a financial benefit in the amount of 1/3. The same situation is in the case when an alien refuses to undergo the medical examination or sanitary treatment of the body and cloth and cannot be placed in the centre (this situation is not provided for by the Directive).

The assistance is withheld if an asylum seeker is subject to a preliminary arrest or imprisonment. Withholding the assistance shall also take place if an alien has grossly violated the rules of social coexistence in the centre (this situation is not provided for in Article 16 sec. 1 and 2 of the Directive but it seems rather obvious) or without giving a reason, has stayed outside the centre for a period exceeding 3 days.

- B. Has article 16, §2 dealing with refusal of reception conditions for unreasonably late applications for asylum been transposed by your Member State (or was this case already applicable before transposition)? Are there cases in practice⁶?**

⁶ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

The Act on Protection does not provide for the possibility to refuse the reception of condition in case of unreasonable late applications.

C. How is it ensured that decisions of reduction or withdrawal are taken individually, objectively AND in particular impartially (for instance through and independent arbitrator) (see article 16, §4 which is a mandatory provision)?

There are not any independent arbitrators but all the decisions are administrative decisions in the meaning of the Code of Administrative Procedure, which means that an asylum seeker has the right to appeal against such a decision. The decision should be taken impartially and individually under provisions of the Code.

D. Is statement 14/03 adopted by the Council at the same moment as the directive respected (see the documentation pack you received at our meeting in Brussels in April)?

There were not any special amendments implementing the statements 14/03. But it is obvious that in this case the ECHR should be respected. The obligation of ensuring that no one is subject to inhuman dignity or degrading treatment arises also from the Polish Constitution.

E. Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome⁷?

According to information obtained at the Office the complaints about the conditions of receptions are usually admitted, so there are not many cases before the courts. At present there are 3 pending cases before the administrative court. In practice, the situations of refusal of performances take place when an alien stays outside the center.

Q.22. A. Appeal against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can be introduced, describe the system of appeal in general and include in particular in your answer the information given to asylum seekers about possibilities of appealing, deadline for appealing, if the appeal has or not a suspensive effect, if there are different steps (for instance first an administrative appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?

All the decisions on granting social assistance are taken by the President of the Office for Repatriation and Aliens. In cases concerning granting or refusal to grant refugee status the President acts as an organ of the first instance and an alien has the right to appeal against his decision to the Refugee Board and then to the administrative courts. In cases referring to social assistance the appeal to the Refugee Board is excluded on virtue of Article 81 of the Act on Protection. The Act on Protection does not contain any specific provisions on the

⁷ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

appeal procedure in social assistance matters. It means that the appeal may be submitted according to general rules provided for in the Code of Administrative Procedure. It means that an alien may submit an application for re-examination of a case to the President. It means that it is “a quasi-appeal”. If the second decision is negative an alien may submit a complaint to the administrative court or even to the Supreme Administrative Court.

B. Explain which are the possibilities for asylum seekers to benefit from legal assistance when they introduce such an appeal (see article 21, §2 which is a mandatory provision but leaves space to Member States)?

The legal assistance may be granted in accordance with general rules before the courts. A person who submits a complaint to the court may apply for free legal assistance if he/she proves that does not possess financial resources to cover the costs of the assistance. It should be added that in practice NGO-s help aliens in these matters.

C. Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones⁸?

There are not any decisive judgments. Judicial decisions have been mainly based on erroneous evaluation of the facts of case on the granting of performances (in general performances are granted at alien’s request).

D. Is a mechanism of complain for asylum seekers about quality of reception conditions in general (even if they are not personally concerned) organised? If yes, before which authority? Is it linked to the system of guidance, control and monitoring of reception conditions (see below question n° 39)?

The problem is that if there is no decision then there is not any possibility to make a complaint about it to the administrative courts. The quality of reception conditions is very subjective and it is very difficult to complain about it. There is always a possibility for aliens to complain to the President of the Office. Moreover, an alien may submit any complaints to a civil court if he/she believes that, for example, the quality of the reception conditions violates his/her dignity. In practice such situations have not taken place.

6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS

Q.23. Family unity of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but leaves space to member States and 14, §2, (a) which is a mandatory provision).

⁸ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

There is not any definition of a family in the Polish law but there are family law and the Family and Guardianship Code of 1969. The Code contains norms on personal and property relations between spouses and parents and children. It is very helpful with the interpretation of the “family” notion.

It may be stated that the family consists of persons who are bound by marriage or parentship. The ties between siblings and grandparents and grandchildren are also taken into consideration (but these ties are much weaker). There are not any differences between children born in wedlock and out of wedlock and if a couple has a child (children) they should be treated as a family but the problem is that unmarried couples /partnerships do not exist in the Polish law. However, aliens arriving nowadays to Poland usually create a very traditional model of family (persons of the Chechen nationality), so there are no problems with, for example, the way of accommodation.

In the context of Article 14 sec. 2 of the Directive it should be noticed that the mentioned Article 60 of the Act of protection seems to be controversial. It says that “In cases when the proceedings for granting the refugee status to married couples staying in the centre together with minor children are being carried out separately, the stay of spouses staying in the centre may not come to the end prior to the expiry of 14 days from the date of rendering the final decision in the proceedings completed later...”. The question which should be put toward this provision is why only married spouses with minor children are taken into consideration”. What about families with children over 18 years? And what about unmarried couples with minor children?

It seems that the provision of Article 60 is not compatible with the Directive – its Article sec. 14 2a as well as with the jurisprudence of the EctHR and the Convention on Rights of the Child.

Q.24. A. How is housing of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14, §1 which is a mandatory provision but leaves space for Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).

Housing for asylum seekers is organized only in accommodation centres, which corresponds with Article 14 sec. 1b of the Directive. However, very often these centres are organized in hotels rented by the Office but the Central Reception Centre in Debak is organized in former military barracks, restored and fully adjusted to the asylum seekers' needs

B. What is the total number of available places for asylum seekers?⁹ Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

There are about 3500 places in the centers. 350 aliens may be accommodated in the Central Reception Center (all the asylum seekers are sent to the Central Reception Centre first).

C. Is this number of places for asylum seekers sufficient in general or frequently insufficient?¹⁰

⁹ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

According to NGO-s the number of places is not sufficient (at least frequently) but the Office stresses the fact that the number of asylum seekers is decreasing in 2006.

On the other hand according to UNHCR this number with the decrease of applicants for refugee status is satisfactory for today (number of places 3,500, number of aliens – around 3,100). However it should be noticed that there was a crisis in 2004/2005 when the number of applicants for the refugee status rose radically. As a result the Office increased the number of centres adding three new centres – renting additional hotels.

- D. Are there special measures foreseen in urgent cases of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?

There are not any special provisions on urgent cases of a high number of news arrivals of asylum seekers but it seems that in such cases the Article 63 sec. 2 of the Act on Protection may be applied. The President of the Office may delegate its responsibility for running the centres to NGO-s and natural or legal persons. The Office is planning to open two new centres. However the plans for opening a new center by the Office for Repatriation and Aliens in Biala Podlaska implies possible closure of some of the rented centers.

Q.25. Accommodation centres (**important note: all the following questions are about open and not closed centres where asylum seekers are detained which are covered by another question**)

- A Are there different categories of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

There are two kinds of reception centres. First all the asylum seekers applying for the refugee status are placed in the Central Reception Centre in Debak then they are located in other centres – accommodation centres (ośrodki pobytowe)

Linin and Czerwony Bor (former military units) are two accommodation centres being owned by Office for Repatriation and Aliens. The rest are rented. The Office and the owner of the future centre (for example a hotel) conclude an agreement on the capacity of a centre. The unaccompanied minors under 13 years are placed in the in the custodian – educational centres.

- B. Is there a legal time limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?

There is not such a regulation in the Polish law.

- B. Is there a general regulation about the internal functioning of those centres and the rights and duties of the asylum seekers? If yes, is this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?

There is a special provision in the Act on Protection – Article 62 – “1. An alien placed in the center shall be obliged to observe the rules of stay in the center. 2. The minister

¹⁰ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

competent with respect to internal affairs shall specify by means of ordinance the rules of stay in the center, determining in particular the conditions of admissions an alien to the center and of paying visits to persons placed therein, the rules of distribution of meals, the rules of cleaning maintenance as well as the internal regulation of the center”.

The Minister of Interior and Administration has issued the rules of stay. It is the Minister Regulation on rules of stay in the center for aliens applying for refugee status (Rozporządzenie Ministra Spraw Wewnętrznych i Administracji w sprawie regulaminu pobytu w ośrodku dla cudzoziemców ubiegających się o status uchodźcy) – Journal of Law 2003 No 146 item.1425.

The rules refer to all centers (the central reception center and all the others).

- C. **Do the regulations foresee the possibility of sanctions against asylum seekers in case of breach of the rules? (see article 16, §3) If yes, which sanctions for which rules? Which is the competent authority to decide? How is it ensured that decisions are taken individually, objectively and in particular *impartially* (for instance through an independent arbitrator) as requested by §4 of article 21 which is mandatory provision? Which are the possibilities of appealing against those decisions if the system is different from the general one under question n°22? Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?**

11

As it was stated before an alien is obliged to follow the rules of stay. And the assistance may be withheld or limited if he or she has grossly violated the rules of social coexistence (Article 65 of the Act on Protection). However, it is difficult to define the “gross violation”. Violation of rules is one of the prerequisites of the withdrawal of the assistance based on placing an alien in the center so, the withdrawal may be applied only by rendering the administrative decision. The appeal procedure has been described in no. 22.

- D. **Are asylum seekers involved in the management of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision)**

There are not any rules on “self - government” of asylum seekers in the centers. However, due to information obtained from the centers the asylum seekers create their informal representatives (at least representatives of particular groups). It must be also added that according to paragraph 10 of the Rules of Stay each alien has the right to submit petitions, complaints and motions referring to her/his stay in the center.

- E. **Do specific rules exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see below)? If yes, which ones? Can working inside accommodation centres be considered as a (mandatory) contribution of the asylum seekers to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?**

¹¹ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

If an alien works for the centre as an interpreter or if he/she performs any cleaning works in the centre the pocket money paid every month may be doubled (100 PLN). It is not connected with the access to the labour market. The access to the labour market is regulated by the Act of 2004 on promotion of employment and institution of labour market.

However, it must be noticed that in the case when an asylum seeker takes any job the situation is unclear because the asylum seeker may apply for assistance (accommodation in the centre) if he/she has not any sufficient financial sources to cover the stay during the procedure. The problem lies in the assessment of “sufficient sources”. If they have the sufficient sources they should leave the centre, so decisions in these matters should be taken very carefully. The provision concerning a work permit entered into force on 14 June 2005. Article 30a of the Act on Protection guarantees an alien access to the labour market if a first instance decision has not been rendered within the time limit of one year from the date of submission of an application for granting refugee status.

Q.26. A. How can asylum seekers communicate with legal advisers, representatives of UNHCR and NGOs? (see article 14, §2, (b) which is a mandatory provision).

here are not any obstacles in contacts with UNHCR and NGO-s. The contact is guaranteed in Article 23 of the Act on Protection. There are not any regulations on legal advisers but in practice NGO-s provide legal assistance for asylum seeker. On the other hand there are not any obstacles for asylum seekers to contact with other legal advisers.

B. What are the rules about access of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14, §7 which is a mandatory provision)

A representative of UNHCR shall be allowed at any time to contact an alien applying for refugee status (Article 23 sec. 2). Representatives of NGO-s may also contact freely, but on the basis of the information obtained from NGOs, they are supposed to call the centre and fix the time of the meeting for practical reasons. It should be remembered that the centres are not closed and according to the Rules of Stay each person may visit an alien in the centre between 10.00 – 16.00 in a place appointed by a member of the centre staff . A visitor is obliged to produce his/her ID card (or another document) and explain the aim of the visit (paragraph 6 of the Rules). An alien may also meet his/her legal advisors outside the centre.

C. Can the access of legal advisers, UNHCR and NGOs be limited for security reasons or any other reason (see article 14, §7, last sentence)?

There are not any provisions containing *expressiss verbis* such a limitation.

The UNHCR has noticed that the real problem arises in the lack of financial resources to pay for the travels to NGOs offices (many of them outside the cities). NGOs do not have funds or possibilities of systematized visits in the centres.

Q.27. A. Is a medical screening organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (see article 9 which is an optional provision)

According to Article 58 of the Act on Protection an alien who applies for a place in the centre must undergo a medical examination and if necessary a sanitary treatment of his/her body and clothes. The kinds of this examination and the way of carrying out the examinations are described in the Regulation of the Minister of Health of 30 August 2004 (rozporządzenie w sprawie badań lekarskich oraz zabiegów sanitarnych ciała i odzieży cudzoziemców ubiegających się o nadanie statusu uchodźcy) Journal of Laws 2004, No 202, item. 2079.

Theoretically, according to paragraph 3 sec. 2 the HIV tests (and other tests) may be ordered by a doctor but there were not any cases of ordering the HIV tests. (The “medical screening,” conditions suitable for it are being created in the Debak centre are expected beginning – July 2006).

B. Do the legal provisions on reception conditions ensure that asylum seekers receive at least emergency care and essential treatment of illness as requested by article 15 §1 which is a mandatory provision? Do they have a further access to health care?

According to Article 67 of the Act on Protection an alien is supported with medical care within the scope of services to which persons covered by compulsory or voluntary insurance are entitled on the basis of the Act of 27 September 2004 on health care and services financed from public funds (Journal of Laws No 210, item 2135). The Act does not limit the medical care only to emergency situations. However, the scope of the medical service is determine in a contract concluded between the President of the Office and a provider of medical service. The medical care is not only provided in emergency situations or it bases on he essential treatment and but its scope is broader. The other thing is that the medical service in Poland is in rather bad condition.

C. What is the practice regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation centres (are doctors coming to the centres or do asylum seekers go to doctors outside)?¹²

Medical assistance is organized in all the reception centres on the basis of an agreements and in cooperation between the Office for Repatriation and Aliens in accordance with Ministry of Interior and Administration of Republic of Poland Central Hospital. As a rule, a doctor comes to every centre (at least twice a week). Moreover, during weekdays, there is at least one nurse in the centre.

A doctor’s duty is to deliver basic health care, and in other cases sending a patient to a specialist outside the centre.

In the case requiring hospitalisation, a patient is placed in a hospital.

¹² To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Q.28. A. What is the length of the period determined by the concerned Member State during which asylum seekers have no access to the labour market? (see article 11 which is a mandatory provision)

According to the new provision – Article 30a an asylum seeker obtains access to the labour market in the situation when the first instance decision has not been taken for one year and simultaneously if an alien has not contributed to so long proceedings.

B. After that period, are asylum seekers or not obliged to obtain a work permit? In case is there a limit for the administration to deliver the permits and how quick are they delivered? What is their length?

Asylum seekers need to obtain a work permit. Since 1 January 2006 the work permit has been issued by the respective marszałek województwa (chief of the self – government of a province [województwo] where the residence of an employer is located.

According to the Code of Administrative Procedure the decision should be taken within one month. If the case is very complicated this term may be prolonged until 3 months.

C. After that period, what are the conditions for access of the asylum seekers to the labour market? (in particular, are there rules concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised?

If he/she obtains the permit the rules on performing any job are the same as in the case of other aliens – third-country nationals. There are not any rules on working hours.

D. What are the rules in terms of priorities between asylum seekers on the one hand and nationals, EU or EEE citizens and legally third-country nationals on the other?

Providing that EU citizens do not apply for refugee status (the so called Spanish Protocol the Amsterdam Treaty), asylum seekers are treated as other third country nationals. Their possibilities to perform their professions are smaller than the possibilities of EU or EEE nationals. The limits arise from the Act on promotion of employment and institutions of labour market and the executive regulations to this Act. EU nationals do not need any permits or they need them due to transitional periods so it is a temporary situation. Third-country nationals always need a work permit. Moreover, the limitation arises from the rules on recognition of qualification and diplomas.

E. Do asylum seekers have access to vocational training, does this or not depend of their right to access to the labour market, and in case at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)

There are not any provisions on vocational training in the Act on Protection. There are not any provisions forbidding or limiting access to vocational training. That is why the two partnerships on pre-integration have been organized within Programme EQUAL. Asylum seekers may improve their professional qualifications, take courses on computing, language lessons and lessons on Polish society.

- F. Are the rules regarding access to the labour market adopted to transpose the directive more or less generous than the ones applicable previously?

Before the amendment of the Act on Protection of 2005, the asylum seekers had not had any access to work at all.

- Q.29. Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to reception conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (see article 13 §§ 3 and 4 which are optional provisions)

As it was stated before there are not any provisions referring to this problem and it is very difficult to assess if the resources are sufficient or not. On the other hand, taking into consideration the situation on the labour market in Poland, possibilities for an asylum seeker to find a job are rather small. If he/she takes one it is not well-paid and probably not sufficient to cover the cost of living in Poland. (It should be noted that there are usually many children in Chechen families - the main group of asylum seekers in Poland). However, it is pity that there are not any provisions that would make it possible to refund part of expenses if an asylum seeker works. Nowadays an asylum seeker may enjoy full assistance or does not enjoy any at all.

7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

- Q.30. **A. Which of the different categories of persons with special needs considered in the directive are taken into account in the national legislation (see article 17, §1 which is a mandatory provision): disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious physical or psychological violence? Include in your answer all other categories envisaged in national law.**

Chapter 4 of the Act on Protection refers to procedures with participation of aliens whose psychophysical state allows presuming that they have been victims of violence or of aliens with disabilities. It means that the definition of this group of asylum seekers is very flexible. It consist of all people with disabilities and victims of all kinds of violence (not only tortures). There is a separate chapter on unaccompanied minors (chapter 3). There are not any separate provisions on pregnant women, elderly people or parents with minor children. Their specific situation arises indirectly from other provisions, for example provisions of the Act on Aliens. Its Article 103 forbids detention of aliens if it may threaten his/ her life or health (it should be applied for example in the case of pregnant women). Moreover, pregnant women and elderly people may enjoy medical care on the basis of the above mentioned provisions.

- B. How is their specific situation taken into account (see articles 13, §2, second indent, 16 §4 second sentence and 17 which are mandatory provisions)?**

Article 54 of the Act on Protection regulates the specific situation of this group of asylum seekers during the procedure. Its section 2 states that: “if it is justified by the mental or physical state of an alien placed in the centre. He/she shall be provided with a transport in order to:

- 1) give testimonies and statements in the proceedings for granting the refugee status;
- 2) undergo medical treatment“

According to sec. 3 these group of asylum seekers cannot be placed in the guarded centres or arrests for the purpose of deportation.

It should also added that in the above mentioned cases only financial benefits may be limited or withheld Medical care cannot be a subject of such a limitation (not only in the case of this specific group of asylum seekers but also in the case of all the asylum seekers).

Moreover, according to Article 55 activities connected with assistance in the centre may be carried out by a person of the sex indicated by an alien and who has received a vocational training on the work with victims of crimes or violence and with persons with disabilities.

C. How and when are the special needs of the concerned persons supposed to be legally identified (see article 17 § 2 which is a mandatory provision and clarify how it has been interpreted by transposition)?

The needs of an alien should be identified just at the beginning of the procedure. According to Article 26 of the Act on Protection states that the authority admitting an application (in fact the Border Guard) is obliged to provide for the performance of medical examinations and necessary treatment of an alien’s body and clothes. It seems that it is the moment of identification of the alien’s state of health. It is not a new provision. This obligation existed before the amendment of 2005. Moreover, the medical examination is a condition for placing in the centre. The way and scope of the examination is regulated by the Minister of Health in the above mentioned Regulation of 30 August 2004. According to paragraph 2 of this Regulation the aim of the examination is, *inter alia*, a general assessment of the alien’s health.

Article 17 of the Directive requires establishing of a system of identification of the vulnerable, disabled and ill persons. It seems that such a system works in Poland. Each applicant is obliged to fill in a form. They must provide the following information:

“Have you ever been subject to physical or mental violence? – if the answer is positive, describe please the circumstances.”

“Your current health condition”

“ Mayor diseases and operations”

“Chronic diseases”

“ Identify the degree of disability” (Pages 8 and 11 of the form. The form is accessible at the Office website: www.uric.gov.pl)

Such a catalogue of questions gives a chance for identification of disabled, ill and other applicants “whose psychophysical state allows to presume that he/she has been a victim of violence” (according to Article 54 of the Act on Protection).

D. Is the necessary medical and other assistance provided to persons with special needs as requested by article 15, §2 which is a mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision?

As it arises from Article 57 sec. 1 p.3) and 67 of the Act on Protection. The medical assistance should be adequate to the alien's needs. However, NGO-s noticed that the psychological assistance which is provided to aliens with special needs is not sufficient.

Q.31.

About minors:

A. Till which age are asylum seekers considered to be minor?

The Act on Protection does not contain any definition of a minor but according to the law a minor is a person under 18. It arises from Article 10 of the Civil Code of 1964.

B. How is access of minor asylum seekers to the education system ensured? Is it at school or in case inside accommodation centres and can it be considered as similar to the conditions for nationals as requested by article 10, §1?

According to the Polish Constitution (Article 70 sec.1) each person has a right to education not only Polish citizens but also aliens residing in Poland. No one can be denied the right to education even if he/she is under 18. The most important provision is Article 94a sec. 2 p. 10) of the Act of 1991 on the education system (*ustawa o systemie oświaty*) Journal of Laws 2004, No 256, item 2572 with subsequent amendments. It guarantees that asylum seekers' children enjoy education in public schools at the primary, lower secondary schools and upper secondary schools. It should be stressed that the Article 94a has been amended on 22 April 2005. This amendment, which entered into force on 1 October 2005, allows the asylum seekers' children (it is obvious that the provision also refers to unaccompanied minors) to take the upper secondary education. Previously it was impossible because the provisions were very unclear.

All children at the age of 7 should start their education. That is why all the parents should be informed that their children should start their education or continue the education. Usually the staff of the centres informs (in an understandable language) the parents about this duty.

Conditions of taking up education in Polish schools are described by the Regulation of the Minister of National Education of 4 October 2001 (Journal of Laws No 131, item 1458) – *Rozporządzenie w sprawie przyjmowania osób niebędących obywatelami polskimi do publicznych przedszkoli, szkół, zakładów kształcenia i placówek*. The Regulation contains a provision giving the possibility to organize a placement exam in order to qualify children to an appropriate level of education if they do not possess any certificates or it is necessary to assess the children's capacity to take education.

If a minor does not know the Polish language or this knowledge is insufficient to attend a school, he or she should be granted free language lessons provided by a municipality. The language courses or additional lessons are granted for one year. These lessons are not instead of normal education, they are in addition to normal education. Children are obliged to attend all the lessons. No less than two hours of language lessons should be provided during a week.

Apart from the language lessons organized by the municipalities (in practice by schools) children staying in the centres may attend lessons organized there. Moreover, the social assistance for asylum seekers contains all the handbooks and other things necessary for attending school lessons.

C. Is access to education ensured not later than 3 months as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided) and till an expulsion decision is really enforced?

Not counting the time of the summer vacation the requirements of 3 months and 1 year are theoretically respected but the practical side of the issue is quite complicated and differs from the legal requirements which are presented above. According to the above mentioned Regulation the placement exams are organized only twice a year. Such a regulation is not adjusted to the needs of asylum seekers who arrive to Poland regardless of the schedule of the school year. NGOs indicate that in the case of asylum seekers such exams should be organized more often. Moreover, school authorities do not always organize additional language lessons. There are two reasons of such a situation. Firstly, there is a lack of money in the schools' and municipalities' budget. Secondly, every year there are fewer and fewer Chechen children speaking Russian. There are not teachers who are able to teach Chechen speaking children. That is why language lessons are organized mainly in the centres. Moreover, as an NGO – Stowarzyszenie Interwencji Prawnej - indicates in its Report (*Raport z monitoringu realizacji obowiązku szkolnego przez małoletnich cudzoziemców, przebywających w ośrodkach dla uchodźców*) very often parents do not intend to send their children to schools and there is no effective remedy to force them to do this (for example the limitation of the social assistance).

The other thing is that teaching programmes are not adjusted to children who do not know the Polish language sufficiently and there are not any programmes elaborated only for asylum seekers' children. In practice a little bit more than 50% of asylum seekers' children attend schools.

Not counting the time of the summer vacation the requirements of 3 month and 1 year are theoretically respected but the practical side of the issue is quite complicated and differs from the legal requirements which are presented above. According to the above mentioned Regulation the placement exams are organized only twice a year. Such a regulation is not adjusted to the asylum seekers needs who arrive to Poland regardless the schedule of the school year. The NGO-s indicate that in case of asylum seekers such exams should be organize more often. Moreover the authority of schools do not always organize the additional language lessons. There are two reasons of such a situation. Firstly, there is lack of money in the schools' and municipalities' budget. Secondly, every year there are less and less Chechen children speaking Russian. There are not teachers who are able to teach Chechen speaking children. That is way the language lessons are organized mainly in the centres. Moreover as the NGO – Stowarzyszenie Interwencji Prawnej - indicates in its Report (*Raport z monitoringu realizacji obowiązku szkolnego przez małoletnich cudzoziemców, przebywających w ośrodkach dla uchodźców*) that very often the parents do not intend to send their children to schools and there are not any effective remedy to force them to do this (for example the limitation of the social assistance).

The other thing is that the teaching programs are not adjusted to children who does not know the Polish language sufficiently and there are not any programs elaborated only for asylum seekers' children. In practice a little bit more than 50% of asylum seekers' children attend schools.

It may be added that in April 2006, the problem of access to education was discussed during the conference organized by UNHCR and Association for Legal Intervention (SIP) with the participation of Ministry of National Education (MEN), NGOs and teachers. As a continuation there have been study visits to Warsaw for teachers from other cities organized during June 2006.

- D. Is specific education (like language classes) available for asylum seekers, in particular to facilitate their effective access to the education system of the reception Member State (see article 10, §2 which is an optional provision)?**

As it was stated above the language classes are organized always in the centers and not always in schools. However, generally they have the possibility to learn the Polish language in order to start their normal education in the future (usually in the next semester or the next school year).

- E. Are minors in general accommodated with their parents or with the person responsible of them? (see article 14, § 3)**

Yes, they are.

- F. Do minors with special needs enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling?**

If they are under 13 they are placed in the custodian – educational centre. The psychologists usually work in the centres. If he or she is over 13 he/she stays at the accommodation centre the situation is unclear because there are not any provisions granting *expressis verbis* the psychological assistance but on the other hand in the procedures for granting refugee status the hearing, testimonies and explanations of the unaccompanied minor shall be effected in a manner considering the minor's age, maturity and mental state. That may happen in the presence of a psychologist or a pedagogue, who prepares an opinion on a psychophysical state of the unaccompanied minor.

However, NGO-s are of the opinion that the assistance of psychologists is not sufficient. It is very difficult to find any Chechen speaking psychologists.

- G. How and when is organised the representation of unaccompanied minors (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)**

According to the Article 47 of the Act on Protection the authority admitting an application for granting refugee status submitted by a minor without a legal representative shall apply immediately to the court with a motion for appointment of a guardian to represent the minor in the procedure. Moreover a custodian for an unaccompanied minor shall be appointed. The custodian supervises the provision of such a minor with appropriate accommodation conditions, access to education, medical care. The custodian shall cooperate on the arrangement of the minor free time and grant assistance in order to find the minor's family.

The custodian is appointed by the President of the Office and should have the qualification of a social worker.

- H. How is placement of unaccompanied minors organised (with adult relatives, a foster family, in special accommodation centres or other suitable accommodation)? (see article 19, §2 which is mandatory provision)**

As it was stated before they are placed in the custodian – educational center or in the center but always there is a special separated sector for them and usually for single mothers with minors. This sector is monitored all the time.

I. How is the tracing of the family members of the unaccompanied minors organised? Are measures taken to protect confidentiality of information when necessary? (see article 19, §3 which is a mandatory provision)

According to Article 48 of the Act of protection an appointed custodian is obliged, among others, to grant assistance in order to find the minor's family members, in contacting national and international NGO whose statutory aim is to act for the well-being of minors and refugees. There are also provisions on protection of personal data of aliens.

NGO-s indicate that the realization of this requirement is very difficult in practice paradoxically because of the norm on the protection of personal data. Moreover, because there are not enough appointed custodians, so they have no time for taking sufficient steps in order to find the minors' families. The other thing is the lack of financial resources for this aim.

8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

Q.32. Apart from detention covered by the next question, are there exceptional modalities for reception conditions in the following cases and if yes, which ones and for how long are they applicable, knowing that they should be “as short as possible” (see article 14, §8)?

No, there are not. The aliens may stay in the reception (usually at the beginning) or accommodation centers. They may stay outside centers. However they may be also detained.

A. Persons with specific or special needs, regarding in particular the period of assessment of those needs?

As it was stated before persons with special needs usually stay outside the centres but they may enjoy assistance. They receive the equivalent for food and accommodation.

B. Non availability of reception conditions in certain areas

In such cases aliens may be moved to other centers. But there cannot be any discussion about “certain areas” in case of Poland because the main rule is concentrate the centers around Warsaw and the Office - not further than 200 km.

C. Temporarily exhaustion of normal housing capacities

There are not any rules concerning this but in such a situation the provision on delegation to NGO to run other centres may be applied. Moreover, according to information obtained at the Office, it is prepared to open new centres. There is always a possibility to place more aliens in the existing centres but in this case there would be a problem with respecting the family unity.

D. The asylum seeker is confined to a border post

There are not provisions on keeping an alien at the border in the Act on Protection. An alien may be detained only on the basis of the decision rendered by a court. However, all the formalities at the border may take a lot of time, sometimes few or several hours, especially if an alien has crossed the border illegally. They are provided with food and medical assistance (if necessary). Staying at the border an alien is allowed to contact with NGO-s and the UNHCR.

However, border check points are not adjusted to the reception of big groups of aliens (information obtained from NGO-s). There are specified rooms but there is not enough space.

It seems that in practice the situation of an alien being confined at the border post may take place, especially in cases when he or she does not explain that he/she intends to apply for the protection. According to Article 101 of the Act on Aliens it may last 24 (maximum time of waiting for the delivery of the court's decision on detention) or even 48 hours, maximum within this time he or she should be transferred to the court and the motion on detention should be submitted simultaneously.

E. All other cases not mentioned in the directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the directive on temporary protection).

Chapter 3 of the Act on Protection refers to the rules of granting temporary protection within the territory of Poland. It contains general rules but it delegates the Council of Ministers to issue an executive regulation on the conditions of the temporary protection if aliens arrive to the Republic of Poland in great number. So there are not any general rules on temporary protection but the conditions will be adjusted to each event. So far such event has not happened.

Q.33. Detention of asylum seekers (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see articles 6 §2, 7 §3, 13, §2 2nd indent and 14 §8 which implies that the directive is in principle applicable in case of detention):

A. In which cases or circumstances and for which reasons¹³ (identity verification in particular if the persons have no or false documents, protection of public order or national security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be detained during the asylum procedure till his request has been finally rejected. Quote precisely in English in your answer the legal basis for detention of asylum seekers in national law.

According to Article 40 of the Act on Protection an alien applying for refugee status may be detained only if:

“1) he/she submits an application for granting refugee status:

¹³ Please specify if article 18 §1 of the directive on asylum procedures of 1 December 2005 following which “Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum” is or not respected (even if it has not yet to be transposed).

- a) during the border control, not having the rights of entry on the territory of the Republic of Poland;
- b) staying on the territory of the Republic of Poland illegally;
- 2) prior to the submission of an application
- 3) for granting the refugee status he/she:
 - a) crossed or attempted to cross the border contrary to the laws;
 - b) obtained the decision on the obligation to leave the territory of the Republic of Poland or the decision of expulsion.”

Section 1) a) covers all the cases of false documents or lack of documents.

B. Has your member State adopted measures to transpose §3 of article 7 which is an optional provision? If yes, how has this provision been legally understood (is it a case of detention or an obligation to stay in and not leave a certain place?) and for which reasons can an asylum seeker be “confined” in such a place?

Yes. It is possible on the basis of Article 45 of the Act on Protection, the President of the Office may (it is not an obligation) *ex officio* or upon request of an alien to render the decision to release from the guarded center or the arrest for the purpose of expulsion and render the decision ordering to stay in a specified place or in the location, which he/she may not leave without the permission of the president of the Office, up to the day of rendering the final decision in the procedure for granting refugee status. An alien may be also obliged to report to the authority indicated in the decision at specified intervals of time.

This decision may be taken if evidence of the case indicates the probability that an alien meets the conditions for being recognized the refugee status or if there are the prerequisites contained in Article 107 of the Act on Aliens.

There are following prerequisites:

- 1) the reasons justifying application of those measures ceased to exist;
- 2) any of the circumstances referred to in Art. 103 of the Act on Aliens have arisen (a decision on placing an alien in the guarded centre or in arrest shall not be rendered if it may cause a serious threat to his/her life or health)
- 3) application of those measures is not possible because of the circumstances other than referred to in art. 103 of the Act on Aliens
- 4) the decision on expulsion of the alien from the territory of the Republic of Poland has been reversed or invalidated;
- 5) an alien has been granted the refugee status or asylum;
- 6) an alien has been granted the permit for tolerated stay;

an alien has been preliminary detained or if any other legal measure resulting in deprivation of liberty has been imposed on him/her.

C. Are there legally alternatives to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?

On the basis of the Act on Protection and the Act on Aliens – the only possibility was mentioned above – the report to the authorities but as it was stated before the possibilities from Article 45 are not apply in practice.

D. Which is the competent authority to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.

According to Article 42 sec. 1 of the Act on Protection only the court (the district court) is competent to decide on the placement of an alien in the guarded centre or in the arrest for expulsion.

E. For how long and till which stage of the asylum procedure can an asylum seeker be detained?

It is possible that an alien will be detained during the whole procedure, it does not matter if the case is in the first or second instance. However, there are two situations which should be described. If an alien who stays in Poland illegally or has crossed the border illegally applies for the refugee status the court renders the decision about detention for 30 days.

Secondly, if an alien is detained and during the detention he/she applies for the status the court shall extend the period of alien's stay for 90 days (since the day of the submission of the application). If the decision on refusal refugee status is delivered to an alien the period of detention may be prolonged in order to execute the decision on expulsion but it cannot be longer than one year.

F. In which places (can we call them “closed centres”?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the location of the “closed centres” at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?

There are guarded centres and arrests for expulsion. They are situated inside the country. Asylum seekers are placed with other illegal immigrants. The Police is usually the owner of the arrests and other centres or the Border Guard if they are situated near the border or at the border for example at the Warsaw Okęcie airport.

Asylum seekers are usually placed in the Guarded Centre in Lesznowola. The conditions are various depending on the place (See: *the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT visit in Poland in 2004 the response of the Polish Government of 2 March 2006 CPT/Inf (2006) 11*)

G. Does UNHCR and NGOs have access to the places of detention and under which conditions?

According to Article 43 sec. 2 of the Act on Protection the representative of UNHCR and NGO-s may personally contact an alien and have access to the place of detention. This provision is not applied if it is justified by necessity of providing public security and policy or observation of organizational rules in the guarded center or in the arrest.

If due to security reasons the authorities of the arrest or the guarded center refuse an alien personal contact with the representatives of the UNHCR or NGO-s, the authorities should inform about this fact the Office and the UNHCR.

In practice (information from the Halina Niec Human Rights Association) the access to the arrests and detention centres is limited because representatives of NGO-s need to apply for a permit to visit an alien. The time of such a visit is limited – max. 1 hour it means that it is impossible to provide legal assistance for many aliens.

H. What appeal(s) can asylum seekers introduce against the fact he is detained? Is article 18 of the directive on asylum procedures of 1 December 2005 following which “Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review” respected (even if it has not yet to be transposed)?

The Act on Protection in its Article 2 1) and 10) states that the arrest for expulsion and the guarded centres should be understood within the meaning of the Act on Aliens. The Act on Aliens refers to the Code of the Criminal Procedure. It should be understood that an alien may submit the complaint against the decision on detention.

I. Is the directive on reception conditions considered to be in principle applicable to the places where asylum seekers are detained? In particular which information do they receive about their rights, which access do they have to legal advice and health care?

The rules on reception are not applied to the detention places. However, according to Article 43 sec. 1 an alien should be informed in a language understandable for him /her about the organizations, which statutorily deal with refugees’ affairs and shall be allowed a correspondence or telephone contact with these organizations. According to section 2 an alien particularly in purpose of being granted the legal assistance may contact personally with UNHCR and the mentioned organizations.

However, the delegation of the CTP (see: the Report mentioned above) noticed that not in all the detentions such information in various language were available. They have the access to the health care. The conditions of the detention are regulated in the Regulation of the Minister of the Interior and Administration of 24 August 2004 (Journal of Laws 2004, No 190, item 1953).

J. Apart from freedom of movement, what are the main differences between normal reception conditions and exceptional modalities for reception conditions in case of detention, knowing that they should be “as short as possible” (see article 14, §8)? If it is about closed centres, are the regulations of those places in line with the requirements of the directive (is article 13, §2, second indent of the directive following which “Member States shall ensure that standards of living is met (...) in relation to the situation of persons who are in detention” respected?).

None of the provisions reflects *expressis verbis* Article 14 § 8 of the Directive, but the time limit of 30 days for placing an alien in the detention suggests that it is “as short as possible”.

Referring to Article 13 §2 the conditions in detention centres are much worse but they are provided at least with food and health. They have also contact with UNHCR and the NGO-s. Due to Article 103 of the Act on Aliens asylum seekers with special needs may not be detained.

K. Are measures taken to avoid detention of asylum seekers with special needs (if yes, which ones?) or are special measures taken because of their needs?

Yes, it is possible, as it was stated in the answer to question 33 B. The most important provision is Article 44 of the Act on Protection with connection of Articles 107 and 103 of the Act on Aliens.

The most important is that the unaccompanied minors and applicants who are presumed to be victims of violence or disabled may not be placed in a guarded centre or deportation arrests.

L. Can minor asylum seekers be detained together with relatives? Can unaccompanied minor asylum seekers be detained? If yes, are there special measures which take into account that children are concerned?

In a situation of illegal stay or arrival to Poland, minors coming with their relatives can be detained in a guarded center (unaccompanied minors cannot be detained at all) with their relatives. They may be allowed to stay together (in one room). It is stated in Article 115 sec. 2 of the Act on Aliens.

M. In particular is article 10 regarding access to education of minors respected in those places?

There are not any possibility to take up the education in detention centers but it must be remembered that if aliens who have not any permit to enter Poland and they apply for the protection at the border, they are detained for 30 days (or are not detained at all) . The other situation is when aliens apply for the protection during their detention. They may stay in the guarded center without the access to education much longer - 90 days.

N. How many asylum seekers are for the moment detained in your Member State? Which proportion does this represent in comparison of the total number of asylum seekers at the same moment?

Presently (mid June) there are 33 applicants for refugee status in Lesznawola – the guarded centre. There are not any data about applicants detained in the deportation arrests (it should not be more applicants in arrests than in the guarded centre). It is difficult to access because the numbers are changing every day. In the second week of June 2006 there were

3304 aliens in reception and accommodation centres and 472 aliens outside the centres who enjoyed the reception conditions.

9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS

Q.34. Explain if the system of providing reception conditions is centralised or decentralised (which levels of government do provide practically reception conditions?) (do not confuse this question with question number 3 about the competence to make rules about reception conditions).

The system is fully centralized. The Office of Repatriation and Aliens and one of its departments – the Office for Organization of Reception Centers. The Office is in the structure of the Ministry of Interior and Administration.

Q.35. In case, are accommodation centres public or/and private (managed by NGOs? If yes, are the NGOs financially supported by the State?)¹⁴

The centers are not managed by NGO-s (however, there is such a possibility). The Office has its own centers or it rents hotels or other centers with the personnel (for example, cooks, cleaning service, secretariat, etc.) but the social worker is always an employee of the Office, as well as a Polish language teacher or a nurse.

Doctors and nurses are hired by the Ministry of Interior and Administration of Republic of Poland. Hospitals provide the medical assistance on the basis of an agreement with the Office for Repatriation and Aliens.

Q.36. In case, how many accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?¹⁵

There are 17 centres. 3 of them belong to the Office, the rest of them are rented.

Q.37. Is there in the legislation a plan or are there rules in order to spread the asylum seekers all over the territory of your Member State to avoid their concentration in some areas like big cities or to share the costs of their reception between central, regional and local authorities?

There is not such a legislation. The idea is to concentrate the centers around Warsaw (in distance up to 200 km). But if an asylum seeker does not enjoy the assistance he or she is allowed to live where he/she wants.

Q.38. Does a central body representing all the actors (like NGOs) involved in reception conditions exist? Does it play a consultative role for the State authorities, a coordination role for the actors or any other role?¹⁶

¹⁴ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

¹⁵ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Despite the fact that the system may be named centralized the Office which the main actor cooperates with the NGO –s, for example NGO-s were consulted during the works on the Act on Protection and its amendments.

The UNHCR stresses the growing importance of NGOs that work in the centres, among them Doctors Without Borders and NGOs working in the EQUAL programme.

Q.39. **A. Which is the body in charge of guidance, monitoring and controlling the system of reception conditions as requested by article 23 which is mandatory provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?**

The Office controls the reception conditions and considers all the complaints for the Reception conditions in the centres. However, it may also be noted that in the case when a decision is taken (for example on withdrawal of the reception conditions or about a limitation on them) an asylum seeker may apply for renewal of the decision and then (if the second decision is not satisfactory) may complain to the court. (In practice there are very exceptional situations).

B. Has your Member State (like the Czech Republic did recently) approved quality standards (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms with radio, television, newspapers, books, computers, accessibility of telephone, existence of recreative rooms for children,...) to be respected in particular in accommodation centres?¹⁷

There are not any quality standards but there are Regulations of the Minister of Interior and Administration on the rules of stay in the reception centres, on the conditions of accommodations of unaccompanied minors and standards of protection in a centre for asylum seekers, there is also the Regulation on conditions of stay in a detention centre. Moreover, the Act on Protection refers to the rules and the Act on Aliens describes some of the condition of stay in the detention centre or arrest for expulsion (Articles 112 –122).

C. **How is this system of guidance, control and monitoring of reception conditions organised?**¹⁸

The monitoring of the conditions in the reception centres is conducted by NGOs and UNHCR. The systematic actions of UNHCR and NGOs are restricted due to the lack of financial resources.

¹⁶ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

¹⁷ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

¹⁸ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

- D. Does the body in charge of guidance, control and monitoring produce reports about the level of reception conditions? If yes, how frequently and are they public?¹⁹

The Office tends to give a very general information. However, each year the President of the Office submits the report on the activity of the Office in the field of asylum. There is the information about the reception conditions. Moreover, NGO-s publish their own independent reports, for example the Helsinki Foundation issues the series “Raporty – Ekspertyzy -Opinie”, [Reports, Expertise, Opinions].

Generally there are lack of reports provided by NGO-s due to the above reasons.

- Q.40. A. What is the total number of asylum seekers covered by reception conditions for the last year for which figures are available (see article 22 obliging Member States to calculate those statistics about which we also asked the Commission to require them from Member States for mid June)?

The average number of people living in the centres every month is about 3,300 (mid June 3304) and 472 aliens outside the centres. The total number of aliens in the procedure is about overall 4,500.

- B. What is the total budget of reception conditions in euro for the last year for which figures are available?²⁰

In 2005 the Office spent about 42 618 000 PLN (it is almost 11 000 000 euro), including 1 818 000 thousands PLN for medical treatment (about 466 153 euro).

- C. What is the average cost of reception conditions in euro per asylum seeker for the last year for which figures are available?²¹

It about 1000 PLN per person (on average).It is about 250 euro per month per person.

- D Are the costs of reception conditions of asylum seekers supported by the central/federal or federated government or are they shared with regional and/or local authorities?

The costs are covered from the central budget.

- E. **Is article 24 § 2 of the directive following which “*Member States shall allocate the necessary resources in connection with the nationals provisions enacted to implement this directive*” respected?**²²

¹⁹ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

²⁰ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

²¹ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

²² To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

The sources are concentrated in the Office as the main actor in providing the assistance for asylum seekers.

Q.41. A. What is the total number of persons working for reception conditions?²³

According to the UNHCR information about 100 people are responsible for the reception in the centres (including social workers, doctors, nurses and teachers)

C. **How is the training of persons working in accommodation centres organised? Does it take into account specific needs of unaccompanied minors when relevant as well as the gender dimension? (see article 14 §5, 19 § 4 and also 24 §1 which are mandatory provisions)?**²⁴

In 2003 UNHCR organized for Office for Repatriation and Aliens workers training on how to deal with unaccompanied minors. In 2005 UNHCR organized training for social workers on conflict resolution, negotiation, and mediation with gender dimension in mind. In June 2006 UNHCR will organize training for social workers on HIV/AIDS. All trainings are/were financed with UNHCR financial resources.

D. Are there rules about the deontology of persons working in accommodation centres, in particular on confidentiality?²⁵

According to information supplied by the Office and the UNHCR, the Office for Repatriation and Aliens workers hired in the centres are public workers and as such are bound by the rules for public workers. In addition, Article 9 of the Act on Protection is being applied here.

10. IMPACT OF THE DIRECTIVE

Legal impact of the transposition of the directive:

Q.42. Specify if there are or not big problems with the translation of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated? (please note that this question has in particular been added to the questionnaire concerning the new Member States)

The UNHCR Office in Warsaw has observed that the directives' translations (not only this one) are in many cases literal translations, e.g.:” asylum” translated as “azyl”, and not as “status uchodzczy.” This question is discussed while working on the acts' projects, and

²³ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

²⁴ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

²⁵ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

practically it requires a new directives' translation for the purpose of institution that is preparing the legal act's project.

Q.43. Where there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the directive (if yes, specify what the nature of those rules was (legislation, regulation, administrative instructions,...))?

Yes, there was always the Act (a statute - ustawa). From 1997 till 31 August 2003 the Act on Aliens. It referred to the reception conditions but rather not in detail (there were appropriate regulations). The Act on Protection and the Act on Aliens were adopted on 13 June 2003. They were both amended on 22 April of 2005 (among others in order to transpose the Directive). The Act on Protection is completed by 12 executive regulations issued by the Minister of Interior and Administration.

Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms (for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past)?

It is rather difficult to find any differences in the quality of norms referred to the reception conditions. It must be remembered that the Act on Protection was adopted on 12 June 2003, it is just after the issuance of the Directive and that is why the Act was to some extent adjusted to the requirements of the Directive, mainly in the aspect of Poland's endeavors to become an EU Member State. Poland had to take into consideration all the future EC law.

Q.45. Did the transposition of the directive imply important changes in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.

There are two eminent changes in the Polish law which are connected with the transposition of the Directive – the first one: owing to Article 30a of the Act on Protection an asylum seekers has obtained the possibility to take up any employment (after one year of procedure pending in the first instance). Secondly – the upper secondary education is guaranteed for minors who or whose parents apply for refugee status (Article 94 a of the Act on educational system).

Political impact of the transposition of the directive:

Q.46. Explain briefly if there has been an important debate about the transposition of the directive (in particular in the Parliament, but possibly also in the government, between political parties, including in medias, etc; underline in case the main points which have been discussed or have created difficulties)

It is quite difficult to talk about the debate on transposition spread out all over the country. The year 2005 was the year of the double (parliamentary and presidential) elections,

so it was difficult to notice this kind of a debate. But on the other hand the draft of the amendment of the Act on Protection and especially the Act on promotion of employment and institution of labour market were consulted with NGOs. The Helsinki Foundation was very active in this field.

Undoubtedly the very active role of the UNHCR in the debate on the transposition should be stressed here.

Q.47. Did the transposition of the directive contribute to make the internal rules stricter or more generous? In particular, did your Member State use the occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable than the provisions of the directive (if yes, try to give the more important examples).

Two very important changes have been introduced into the Polish law in 2005, which was the result of the transposition of the Directive. First, it is the possibility for an asylum seeker to take up work (after one year if the case is still under consideration of the first instance). Secondly, minors are allowed (at least potentially) to take up their education on the upper secondary school level. So, it may be concluded that the Directive has contributed to the generosity of the State towards asylum seekers.

However, providing that in practice it is very difficult for an asylum seeker to obtain any work and there are financial problems with providing the effective education for children, it would be safer to state that the transposition did not have any influence on deterioration of the reception conditions.

11. ANY OTHER INTERESTING ELEMENT

Q.48. What are in your view the weaknesses and strengths of the system of reception conditions in your Member State?²⁶

The main weakness of the reception system in Poland is the a lack of financial resources. More financial resources could improve the education system for asylum seekers' children and unaccompanied minors. It would be possible to organize extra intensive courses of Polish as well as English languages. It would also be possible to cover costs of language training of psychologists. Generally speaking, social assistance would be higher (140 PLN for clothes is not enough).

More financial resources would make it possible to employ more well qualified social workers who would be able to take care of asylum seekers, especially with special needs, and unaccompanied minors.

Moreover if NGO-s would be financed from the national budget, their assistance for asylum seekers could become more complex and long – lasting.

Q.49. Mention any good practice in your Member State which could be promoted in other Member States²⁷

²⁶ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

²⁷ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

It seems that the most important thing is the fact that asylum seekers may enjoy the same reception conditions during all the administrative procedure, even if they receive the negative decision in the first instance. Secondly, an extremely important principle is that all the administrative decisions are under the judicial control.

Taking into consideration the fact that Poland is very often the country of first asylum and many asylum seekers are sent back to Poland on the basis of the Dublin mechanism, it should be noted that the same reception conditions for all asylum seekers should be recognized as a good practice.

The idea of concentration of all the centers around Warsaw may be controversial but it has some advantages because usually all the governmental institutions (like the Office of Repatriation and Aliens) are located in Warsaw. Moreover, in the UNHCR Office and the main NGOs working for asylum seekers also work in Warsaw. It means that it is easier for asylum seekers to visit all the institutions, and on the other hand, the centers are more accessible for representatives of the UNHCR and NGO-s.

Moreover, the positive description is possible when dealing with the possibility of extending the stay in the reception centre up to three months from the date of issuing the decision, including a person with tolerated stay, as its aim is to give this person additional time to prepare oneself for the life outside the reception centre.

Q.50. Please add here any other interesting element about reception conditions in your Member State which you did not had the occasion to mention in your previous answers.

The new tendency may be observed that every year more and more NGO-s are active in the field of the protection of asylum seekers, and, what is maybe even more important, that the government is not reluctant to cooperate with them.

However it is very disappointing that the financing of NGOs from the national budget is only in a very small percentage and is mostly financed by various international organizations and institutions, such as UE or UNHCR.