

**The situation
of Chechen asylum seekers
and refugees in Poland
and effects of the
EU Dublin II Regulation**

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PRELIMINARY REMARKS

From 6 to 16 November 2004 we were in Poland to find out more about the situation of asylum seekers and refugees. We then continued our research by telephone, over the Internet and via written inquiries. This exercise had been prompted by depressing descriptions provided by Chechen refugees of spells of imprisonment, a lack of medical care and other basic problems. Chechen refugees are indeed leaving Poland for these reasons, although following Poland's accession to the EU there is now very little chance of an asylum procedure taking place in Germany or in any other EU State. As a result of the EU Dublin II Regulation¹ and the fingerprint matching facility introduced at the same time in the EURODAC system, Poland has, since 1 May 2004, undoubtedly in most cases had to take such refugees back again. Nevertheless, the descriptions provided by refugees indicated striking problems in Poland.

This report is aimed at decision-makers with responsibility at a national and European level and includes a request to fight for an improvement in the situation of the predominantly Chechen asylum seekers and refugees entering the EU via Poland. Our report is intended to provide information on the reception and living conditions of refugees in Poland, in order to raise the visibility of the current need for action and support. This is not meant as a condemnation of Poland, but rather as an appeal to support Poland in improving reception conditions. Furthermore, this report is intended to shed light on practice in transposing the Dublin II Regulation. The underlying question is the extent to which the current practice of handing over Chechen asylum seekers to Poland, without considering their reasons for further migration or allowing for health and mental problems or family ties, is in accordance with humanitarian principles.

At the end of the report, we have formulated central demands which, in our view, arise in light of the situation in Poland and handover practice.

We would like to acknowledge our contacts in Poland for their openness and support.

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¹ Council Regulation (EC) No 343/2003 of 18.2.2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 50 of 25.2.2003, p. 1).

Schedule of research in Poland

Monday, 08.11.04

- 11.00 a.m. Meeting with Jan Węgrzyn (Director of the Office for Repatriation and Aliens/Urząd do Spraw Repatriacji i Cudzoziemców – URiC)
- 2.00 p.m. Visit to the Central Initial Reception Centre for Asylum Seekers in Podskowa-Lesna – Dębak and meetings with Krzysztof Kruszynski (acting head of the Office for the Organisation of Refugee Centres, URiC) and with asylum seekers

Tuesday, 09.11.04

- 10.00 a.m. Meeting with Janosch-Johannes Prekowski (Twinning advisor at the Polish Ministry for Internal Affairs and Administration for the Federal Office for Migration and Refugees, BAMF) and Wolfgang Steiner (acting project leader for the twinning project, BAMF Nuremberg)
- 1.00 p.m. Visit to the Controlled Home for Aliens (Strzeżony Ośrodek dla Cudzoziemców) in Grojec – Lesznówola and meeting with Henryk Wierzbicki (Commander of the Województwo police in Radom, head of the establishment)

Wednesday, 10.11.04

- 10.00 a.m. Meeting with Tomasz Lipski (departmental manager of the border police office, border police headquarters in Warsaw, Zakład Operacyjno-Sledczy, ZOS) and Andrzej Jakubaszek (coordination of Dublin handovers, ZOS)
- 2.00 p.m. Meeting with Agnieszka Kosowicz (public relations consultant, UNHCR Warsaw) and Andrzej Lorek (Coordinator of the refugee programme, Caritas Lublin)
- 7.00 p.m. Meeting with Malika Abdoulvakhabova (Polish-Chechen refugee aid organisation OCALENIE)

Thursday, 11.11.04

- 11.00 a.m. Meeting with Sister Manuela and Sister Etra (Centre for the assistance of migrants and refugees, Caritas for the diocese of Warsaw, Sisters of the Scalabriniane mission)

Sunday, 14.11.04

- 5.00 p.m. Meeting with Dahngbay Zuu and Simon Mol (Refugee Association Poland, Stowarzyszenie Uchodźców w Rzeczypospolitej Polskiej)

Monday, 15.11.04

- 11.00 a.m. Meeting with Andrzej Pilaszkiwicz (Head of the Department for Asylum Procedures, URiC)
- 1.00 p.m. Meeting with Emilia Małys (Dublin Department, URiC)
- 2.00 p.m. Meeting with Andrzej Wójtowicz (Director of the Polish Ecumenical Council)
- 4.00 p.m. Meeting with Rafał Dzieciołowski (Polish-Chechen Refugee Aid Organisation OCALENIE)
- 6.00 p.m. Meeting with Agnieszka Jasiakiewicz and Bartołomej Smotek (Street Law Clinic, University of Warsaw)

Tuesday, 16.11.04

- 10.00 a.m. Meeting with Jerzy Marciniak and Patrycja Prześlakiewicz (Countries of Origin Information Unit, URiC)

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1 THE SITUATION OF ASYLUM SEEKERS AND REFUGEES IN POLAND

The situation of asylum seekers in Poland changed fundamentally on 1 May 2004, when the country became a Member State of the EU. Since Poland's accession, asylum seekers who have entered the EU via Poland are returned there in accordance with the Dublin II Regulation. The Dublin II Regulation stipulates that the EU State first entered by the asylum seeker or with whose visa he has been able to enter the EU legally is, as a rule, responsible for implementation of the asylum process.

To achieve the evidential basis for this Regulation, Poland has received 13 devices for taking and storing fingerprints in the EURODAC system. Since then, fingerprints have been taken from every asylum seeker and alien apprehended after gaining illegal entry and have been entered in a central computer. When such individuals are picked up in another EU State, information on previous stays in Poland is in most cases available via what is known as a EURODAC match. A formal resettlement process is then initiated in accordance with the Dublin II Regulation.

Despite the change in legal situation, many asylum seekers are leaving Poland in the hope of finding asylum in another EU State. During the period from July to December 2004 alone, Poland received a total of 1 320 resettlement applications from other EU States in accordance with the Dublin procedure, 1 182 of which were accepted². The majority of applications came from Germany. Hundreds of asylum seekers were picked up by Polish border police when they tried to cross the border illegally, with some being taken into custody³.

As a result of the introduction of the Dublin II Regulation as well as the relatively high access rates for Chechen asylum seekers⁴, Poland, a country whose own population is in part severely afflicted by poverty and unemployment, is currently faced with sharply rising numbers of refugees. While an average of around 1 500 asylum seekers were accommodated in the national reception centres in May 2004, this number had already doubled to 3 132 by the beginning of 2005.

2 Information provided by telephone by the Dublin Department of URiC on 10.02.2005.

3 We have no definite figures. However, we know of many failed attempts from conversations with refugees. A large proportion of the numbers of pick-ups by Polish border police presumably relate to refugees attempting to leave Poland illegally. The daily statistics regularly indicate that one or two dozen aliens have been apprehended whilst crossing the border illegally (cf. www.sg.gov.pl).

4 The number of new applications in 2004 rose to 8 058, representing an increase of 14% in comparison with the previous year.

Why are so many asylum seekers leaving Poland despite their lack of prospects in view of the Dublin II Regulation and the dangers of crossing the border illegally? What is the situation of refugees in Poland? These questions formed the starting point for our research in Poland.

1.1 Asylum applicants and their origin – a few figures

Poland acceded to the Geneva Refugee Convention in the version of the New York Protocol in 1991. By the end of 2002, 47 000 people were applying for asylum in Poland. Since 2000, Chechnya has become by far the main region of origin of asylum seekers in Poland. Whereas only about 180 Chechen applicants were recorded between 1994 and 1999, the corresponding figure in 2001 was about 1 300; in 2002, the figure was nearly 3 000, whilst in 2003 Chechen applicants accounted for 5 333 out of a total of around 6 900 applicants. In 2004, a total of 8 058 people submitted asylum applications, including 7 182 Chechens. Half of these Chechen refugees are children.⁵

Table 1 Number of applicant asylum seekers in Poland in 2004

| Period | 1st quarter | 2nd quarter | 3rd quarter | 4th quarter | Total in 2004 |
|----------------------|-------------|-------------|-------------|-------------|---------------|
| Number of applicants | 1 319 | 1 770 | 2 145 | 2 845 | 8 079 |

Table 2: Asylum seekers from the Russian Federation 2003–2004 by age⁶

| Age | 0-4 | 5-17 | 18-59 | over the age of 60 | total |
|-------------------|-------|-------|-------|--------------------|--------|
| 2003 | 1 064 | 1 559 | 2 917 | 29 | 5 569 |
| 2004 | 1 455 | 1 949 | 3 760 | 18 | 7 182 |
| Total | 2 519 | 3 508 | 6 677 | 47 | 12 751 |
| Total in per cent | 20% | 28% | 52% | 0.36% | 100% |

The vast majority (95%) of Chechen refugees enter Poland at Terespol via the Belarusian-Polish border without a valid visa. Since they are not entitled to protection under the Geneva Refugee Convention in Belarus, they cannot be turned back at the border. In order to enter Poland, however, they must make a written asylum application directly at the border. This application should set out the grounds for asylum in detail. Staff at the URiC Asylum Department have informed us that grounds for escape cited in a written application often do not match what is stated verbally later on. This

⁵ The statistics are taken from the websites of URiC (www.uric.gov.pl) and UNHCR (www.unhcr.pl).

⁶ Source: UriC statistics: www.uric.gov.pl.

reportedly leads relatively frequently to considerable doubt regarding the applicant's credibility. Refugees explained to us that their written statements were incomplete because, for example, they had not been clear about the importance of these statements and they had been afraid at the border that their declarations might end up in the wrong hands.

Owing to the continuing violence in Chechnya, the compulsory closures of the refugee camps in Ingushetia, the increasing 'cleansing' in the areas adjoining Chechnya and the aggravation of the situation in the northern Caucasus, partly owing to the victims at the school in Beslan, the number of Chechen refugees has risen markedly over the last year. Owing to the possibility of applying for asylum at the border, Poland is a relatively easily accessible country of first asylum for Chechens. According to asylum seekers and their supporters, crossing the border is not always easy, however. These individuals mentioned that repeated attempts were sometimes made to gain permission to cross the border.

In a panel discussion⁷, Jan Węgrzyn alluded to the fact that in 2003, based on calculations by URiC, three quarters of Chechen asylum seekers did not wait for the outcome of their applications and left Poland. This trend also allegedly continued after 1 May 2004, despite the entry into force of the Dublin II Regulation.

According to information from officials and advice centres, Chechen refugees face only a minor risk of being deported to the Russian Federation from Poland. This makes the issue of why so many Chechen asylum seekers are not awaiting the outcome of their applications in Poland all the more pressing.

1.2 Asylum applications and imprisonment of applicants

More precise details of the sequence of events involved in the asylum process in Poland within the various decision-making bodies are not provided here. Problems arising during the decision-making process do not differ fundamentally from those in Germany. A material difference exists, however, in the imprisonment of asylum seekers directly after their entry, which is provided for by law.

All asylum seekers who gain entry without a visa run the risk of imprisonment. The reception of asylum seekers in a closed establishment for an initial period of 30 days is provided for by law. Such asylum seekers may be transferred to the camp at Lesznowola or to any of the over 20 establishments at which aliens may be held on remand pending deportation⁸. These are border protection or police establishments for individuals whose stay has not been clarified or whose deportation is to be safeguarded. The aim is to be able to directly deport individuals whose asylum requests are considered clearly unfounded. The imprisonment can be repeatedly extended by 90 days. Individuals who lodge

⁷ Cf. Center for International Relations (CSM): 'Uchodźcy z Czeczenii w Polsce. Przystanek czy nowy raj utracony?' (In Eng.: Chechen refugees in Poland. A new home or a new paradise lost?/Original Polish-German translation by B.E.), Warsaw 2004 (www.csm.org.pl). Summary of the podium discussion on 01.10.2004 with Krystyna Iglicka (CSM), Irena Rzeplińska (Helsinki Foundation), Paweł Hut (Council for Refugee Matters) and Jan Węgrzyn (Director of URiC).

⁸ Details of the number of detention centres varied in the sources and in information provided by our contacts.

an application for asylum only after entering the country illegally may be directly granted a custody ruling for 90 days. The law specifies that a period of imprisonment of one year must not be exceeded.

According to Andrzej Pilaszkiwicz (URiC), Chechen refugees who gain entry via Terespol and apply for asylum at the border are not detained in practice, as the 700 or so places in the guarded establishments are insufficient. Nevertheless, all applicants should indeed first be detained and reviewed in order to determine whether they pose a danger and whether their request for asylum is justified. Implementation of the initial hearing for a decision on the asylum process is still provided for in the detention-like facility. Unaccompanied minors (under the age of 18) and individuals whose psychophysical state makes it reasonable to assume that they have been a victim of violence or are disabled are legally exempted from this standard imprisonment (Article 47(5) and Article 54(3) of the Alien Protection Act). Experience shows that an expert assessment of these grounds for the exclusion of custody is often difficult and depends on the qualifications of the staff responsible.

URiC, the border police and UNHCR reported plans to establish four new closed camps similar to the one at Lesznowola along the eastern border. It was felt that the holding of hearings on site should be simplified by setting up a branch of URiC near the eastern border and the closed camps. Kętrzyn, Białystok, Biała Podlaska and Przemyśl are envisaged as locations for the closed camps. According to information from URiC, the construction of these camps is being supported financially by the EU.

Legal basis for the imprisonment of asylum seekers

From the 'Act of 13 June 2003 on granting protection to aliens within the territory of the Republic of Poland' (Alien Protection Act)⁹:

Chapter 2

Detention of an alien and placement of him/her in the guarded centre, or in the arrest for the purpose of expulsion during the proceedings for granting the refugee status.

Article 40

An alien applying for granting the refugee status shall not be detained unless he/she:

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

Article 41

⁹ USTAWA z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej (Dz. U. Nr 128, poz. 1176).

With reservation of Article 47 section 5¹⁰ and Article 54 section 3¹¹, an alien referred to in Article 40 shall be placed in the guarded centre or in the arrest for the purpose of expulsion. The arrest for the purpose of expulsion shall be applied if the circumstances determined by the Border Guard indicate that it is necessary for the reason of state security and defence as well as for the public security and policy.

Article 42

1. The ruling on placement of an alien in the guarded centre or in the arrest for the purpose of expulsion shall be rendered by the court, for the period of 30 days.
2. In cases when an application for granting the refugee status is submitted by an alien placed in the guarded centre or in the arrest for the purpose of expulsion in consequence of execution of the court's ruling, rendered on the basis of the Act of 13 June 2003 on Aliens, the court shall extend the period of the alien's stay for 90 days. The day of submission of an application for granting the refugee status shall be regarded as the first day of the period of extended stay.
3. If the decision on refusal to grant the refugee status is delivered to the alien prior to the expiry of the period referred to in sections 1 and 2, the period of stay in the guarded centre or in the arrest for the purpose of expulsion may be extended for a specified period of time, necessary to execute the decision on expulsion. The period of stay in the guarded centre or in the arrest for the purpose of expulsion may not exceed one year.
4. The ruling extending the period of stay in the guarded centre or in the arrest for the purpose of expulsion shall be rendered, upon request of the President of the Office, the agency of the Border Guard or of the Police, by the district court, competent with respect to the seat of the requesting authority.

[...]

Article 44

1. An alien may be released from the guarded centre or from the arrest for the purpose of expulsion in cases referred to in Article 107 section 1 of the Act of 13 June 2003 on Aliens, or on the basis of the decision of the President of the Office rendered ex officio or upon request of an alien, if the evidence of the case indicates on the probability that an alien meets the conditions for being recognized as the refugee, specified in the Geneva Convention and the New York Protocol.
2. The President of the Office shall not render the decision referred to in section 1 if residence of the alien on the territory of the Republic of Poland constitutes a threat to the state security or defense or to the public security and policy or if the circumstances referred to in Article 1 section F of the Geneva Convention have arisen.

[...]

Imprisonments may also arise from illegal attempts to cross the border in order to leave Poland. Such cases concern not an offence by an alien, but a criminal offence. However, we have no definite information on the practice of imprisonment following illegal attempts to cross the border into other EU States. According to information from the national agencies, imprisonment does not usually take place following handover on the Polish side; instead it is again possible to resume or continue the asylum process. Nevertheless, we are aware of individual cases in which subsequent imprisonment

10 Article 47 (5) prohibits the imprisonment of unaccompanied minors in closed camps or establishments for remand purposes pending deportation.

11 Article 54 (3) prohibits imprisonment in a closed camp or for the purpose of deportation if the alien's physical or mental state makes it reasonable to assume that he has suffered violence or is disabled.

occurred. According to the Criminal Code, provision is made not only for financial penalties but also for a term of imprisonment of up to two years, and up to three years in the case of a group offence. According to Ernest Zienkiewicz, the UNHCR lawyer, it is in practice not unusual for suspended prison sentences of several months to be handed down for illegal border crossing. Any subsequent illegal crossing of the border or an attempt to do so would accordingly necessarily result in a prison sentence.

From the Criminal Code of 6 June 1997

(Translation by B.E.)

Article 264 [illegal border crossing; types of qualification]

§ 1. Whosoever crosses the border of the Republic of Poland in contravention of the regulations shall be subject to a fine, a restriction on freedom of movement or a prison sentence of up to two years.

§ 2. Whosoever commits a criminal offence pursuant to section 1 and in so doing uses violence, threats of violence, malice aforethought or the cooperation of others shall be liable to a prison sentence of up to three years.

§ 3. Whosoever organises the crossing of the border of the Republic of Poland jointly with other individuals in contravention of the regulations shall be liable to a prison sentence of between six months and eight years.

1.2.1 The closed reception and deportation remand camp at Lesznów

The closed camp at Lesznów (Radom Wojewodschaft¹²) has existed for nine years. This camp, which is protected with NATO wire and located in the middle of a forest, is under police control. Armed police officers dressed in black ensure that peace and law and order are maintained. The high fences, big steel door and large numbers of police create the impression of a prison. The camp comprises a section with 100 places for men and a more congenial-looking building with 31 places for single women and families. Lesznów is the only closed facility for aliens in Poland in which families may be kept in custody together with their children.

According to information from Katarzyna Zdybska¹³ of the Halina Niec Human Rights Association, a total of 279 aliens were held in Lesznów between 1 September 2003 and 26 January 2004, 153 of whom had applied for asylum. The main countries of origin of the applicants were Russia (49), India (30), Afghanistan (19), Pakistan (9) and China (8). As of 26 January 2004 those being held in custody had been held for between 2–4 weeks and four months and even longer. According to Zdybska, all had been sentenced by the courts to 90 days' imprisonment, which may be, and often is, extended by the courts.

¹² 'Wojewodschaft' is the name for the administrative, regional units into which Poland is subdivided.

¹³ Cf. Katarzyna Zdybska: 'Strazony ośrodek dla cudzoziemców w Grójcu', in: Helsińska Fundacja Praw Człowieka (Ed.): Prawa cudzoziemców umieszczonych w aresztach w celu wydalenia i strażonym ośrodku. Report. Warsaw 2004, pp. 82-92.

Unlike the open reception centres run by URiC, Lesznowola is run by the police and is under the aegis of the Wojewodschaft in Radom. It is funded from the Wojewodschaft police budget. According to information provided by the camp commander, Mr Wieszbycki, a total of **PLZ 6.50 (approx. €1.60) per person per day is allocated for care**, around €1 less than in the URiC's reception centres. Inmates receive **no pocket money**. Although the doors of the rooms are not locked, residents can leave the centre no more than twice a day – at lunchtime and in the afternoon – for a walk in the yard. Sports fields and playgrounds can then be used. Although visits are in principle possible with the camp commander's consent, they are generally limited to between a few minutes and half an hour.

Owing to the risk of escape, only limited medical care is available. Although a paediatrician, a specialist in internal medicine and two nurses are available part-time to provide direct medical care in the camp, our inquiries revealed that hospital referrals would be made only in cases of life-threatening disorders, since 90% of those handed over would escape from hospital even after major operations.

Refugees in custody informed us that the food was poor; the midday meal reportedly consisted mainly of potatoes with water. They were rarely given fruit and vegetables. Their children had reportedly not received milk at the weekends or on public holidays. They are also reportedly not given **new clothing or footwear, even when this is urgently needed.** Detainees may allegedly make telephone calls only with money of their own, since they do not receive any pocket money. The poor conditions in the camp have now prompted a hunger strike. In response to our inquiries, the camp commander told us that there are considerable financial constraints for which he is not personally responsible.

Contrary to the information that Chechen refugees were definitely not imprisoned when they applied for asylum at the border, we came across **a Chechen family with a baby and a 4-year-old daughter** who had gained entry via the Ukraine and had applied for asylum at the border with a valid passport, but without a visa. They had been detained at the border for two days before being taken to Lesznowola by court order. They received no explanation for this decision. We had already come across a similar case in Germany, where a Chechen family with a baby had reported that, despite applying for asylum at Terespol after gaining entry with a passport but without a visa, they initially had to spend a month in the closed camp at Lesznowola before being transferred to the central reception centre for refugees at Dębak.

According to the camp commander, only a small proportion (around 20%) of the aliens held in detention are deported from Lesznowola. The average length of stay has reportedly increased since the introduction of the Aliens and Alien Protection Act and currently averages 4–5 months. According to the commander, there are currently four people who have been held there for over a year whose deportation is no longer possible owing to the reporting of false information. The increase in the length of stays are allegedly causing further problems as inmates fail to cope emotionally with the situation. As a result there was also reportedly no capacity to cope with new arrivals, with the consequence that those concerned were in some cases detained for longer at the border or by the local police.

1.2.2 Current practice relating to the detention of asylum seekers

Detention in Lesznowola as well as in other detention centres is in principle based on a court ruling. Grounds for detention are: illegal entry into Poland, illegal attempts to leave Poland for the West and ensuring deportation. An appeal can be lodged against such detention. Outside a court, the Chairman

of URiC has powers to rule on a release from custody if he deems the asylum application to be pertinent. We were told that chiefly Chechens, Afghans and Iraqis were granted release from custody within the first month.

According to Katarzyna Zdybska, many held in detention are unaware that, where an application for asylum is lodged, they can instance Article 44(1) of the Alien Protection Act in conjunction with the Geneva Refugee Convention and apply for release from custody. The legal advisors of the Halina Niec Human Rights Association visit Lesznawola about once a month. In addition a payphone accepting cards is freely available. Nevertheless, only those with enough money to arrange for a phone card to be brought in from the weekly shopping trip can make telephone calls. The facility for consulting a lawyer, UNHCR or a human rights organisation free of charge from the public telephone is, according to Katarzyna Zdybska, often not mentioned to those held in custody.

Unfortunately, we have no data on the total number of asylum seekers in custody in Poland. Nevertheless, detention practice in Poland is illustrated by the results set out in the following box for the project to monitor Polish NGOs, which was conducted in the first few months following the introduction of the new Aliens Acts by the Halina Niec Human Rights Association jointly with Caritas, the Helsinki Foundation and other NGOs, to investigate the situation in some of the detention centres and remand centres for aliens pending deportation.¹⁴

The situation in some of the detention centres and remand centres for aliens pending deportation

The dates for the review period:

1. from 1 September 2003 to 13 January 2004
Remand at the Walerian Czuma border control point in Okęcie/Warsaw pending deportation
 - 171 people held in custody during the review period
 - 81 of whom have applied for asylum
 - 50 applicants were released from custody by virtue of Article 44(1) of the Alien Protection Act having regard to the Geneva Refugee Convention (see legal text above in the grey box)
 - main countries of origin: Russia/Chechnya 38, Sri Lanka 10, Pakistan 10, Afghanistan 7
 - 43 were deported
2. from 1 September 2003 to 19 January 2004
Remand at the border control point in Krosno Odrzańskie pending deportation
 - 88 people held in custody during the review period
 - 5 of whom have applied for asylum
 - main countries of origin: Vietnam 15, Pakistan 7, India 6, Ukraine 5, Somalia 4
3. from 1 September 2003 to 23 January 2004
Remand at the police headquarters in Suwałki pending deportation
 - 40 people held in custody during the review period
 - 19 of whom have applied for asylum
 - main countries of origin: Russia 18 (including 16 Chechens), Vietnam 5, Pakistan 7, Ukraine 3, Armenia 3

¹⁴ The results of the monitoring project have been published by the Helsinki Foundation. Cf. Helsińska Fundacja Praw Człowieka (Ed.): Prawa cudzoziemców umieszczonych w aresztach w celu wydalenia i strzeżonym ośrodku. Report. Warsaw 2004.

4. from 1 September 2003 to 26 January 2004
Remand at the police headquarters in Lublin pending deportation
 - 104 people held in custody during the review period
 - 68 of whom have applied for asylum, according to informal data from the Commander
 - main countries of origin: Russia 36 (including 33 Chechens), Pakistan 16, Ukraine 9, India 8, Moldova 7, Bulgaria 6, Somalia 4
5. from 1 September 2003 to 21 January 2004
Remand in Wojewodschaft police custody in Katowice pending deportation
 - 44 people held in custody during the review period
6. from 1 September 2003 to 31 January 2004
Remand at the police headquarters in Szczecin/Stetin pending deportation
 - 101 people held in custody during the review period
 - 45 of whom have applied for asylum
 - 4 applicants were released from custody by virtue of Article 44(1) of the Alien Protection Act
 - main countries of origin: Ukraine 27, Pakistan 21, India 10, Russia 6, Afghanistan 4, Kyrgyzstan 4, Somalia

Even without being able to cite precisely how many applicants for asylum are currently initially held in custody immediately after making their application at the border or submitting it to the authorities within Poland and how many of them remain in detention for more than a month or three months, it became clear during our discussions that an extension of this practice is being sought with the establishment of further closed camps on the eastern border of Poland.

Detention practice reduces the asylum seekers' confidence that Poland would be a safe country to receive them. Holding a hearing of grounds for asylum under detention conditions makes it difficult in particular for individuals who have experienced persecution to report with confidence their experiences and the threat posed by the authorities in their country of origin.

If the asylum application is regarded as potentially justified, the asylum seeker is transferred to the central initial reception camp at Dębak near Warsaw and is then transferred to one of the 16 refugee centres that now exist. The current lack of space in the closed establishments means that Chechen refugees may in most cases be directly admitted to the public reception centres after applying for asylum at the border. Other refugee groups such as the Chinese, Indians, Pakistanis and in particular individuals without identity documentation are kept in custody, in some cases for months.

1.3 Accommodation in national reception centres during the asylum process

The reception capacity of the national reception centres was already exhausted in mid-November 2004. Whilst around 1 500 asylum seekers on average were still accommodated in the camps in May, this number rose steadily to 2 500¹⁵ by the beginning of November. During 2004, five new centres were erected. By the beginning of January 2005, 3 132 asylum seekers were living in 14 facilities

¹⁵ Daily statistics per reception centre for the months from May until 5 November from the URiC.

which, according to UNHCR, were designed to hold only around 2 750 people. An indication that the situation regarding existing accommodation was deteriorating was provided by information that, in the camp at ul. Ciołka in Warsaw, beds were being put in the canteen in the second week of December and, despite a severe lack of space, in other rooms as well. Refugees also reported a lack of beds in some instances and the fact that people had to sleep on the floor. This situation should have eased by January 2005 as a result of the opening of two new centres in Warsaw and the fall in monthly numbers of new applicants.

During the discussions, representatives of the authorities indicated that to date they have not had to leave any applicants without care. All received a roof over their heads and were looked after. The situation for asylum seekers in the national reception centre is relatively good in comparison to those for whom a decision on their application has been made. According to information from Jan Węgrzyn, the monthly expenditure per asylum seeker is around €250 (PLZ 1 050). These costs can be broken down as follows: €3.50 per overnight stay and €2.50 in care costs daily, just under €20 in pocket money and an average of €30 on medical care each month.

Nevertheless, there is a lack of capacity and financial resources. The open protest by 150 refugees at the initial reception camp in Dębak at the end of November was aimed at the restrictive decision-making practice and inadequate reception conditions. At the beginning of January, we received letters along these lines from Chechen refugees from the centres in Moszna, Linin and Wołomin (see Annex). The asylum seekers complain that many of them received no pocket money, that they did not have enough warm clothing, that there was in some cases a lack of heating and hot water, that sanitary facilities were deficient, that the food was inadequate and that there were no qualified staff to provide medical care. In particular the medical care for children, war-disabled individuals and the seriously ill was allegedly inadequate.

Other issues identified by the management of URiC include a lack of resources for essential staff. For example, only one social worker is employed in each centre, with the exception of the initial reception centre in Dębak, with this individual simultaneously having to undertake general administrative work.

Another problem, which sometimes leads to anxiety and actual threatening situations, is related to the high concentration of Chechen refugees in the centres in Poland. In specific cases, the individual threat posed by other Chechen refugees is bringing about an exodus from Poland. This is understandable given the events in Chechnya and the splintering of the Chechen population into different political groupings. Human rights organisations such as MEMORIAL and the Society for Threatened Peoples (GfbV) refer to a Chechenisation of the conflict, which means that Chechens on different sides are becoming victims and perpetrators. In the camps in Poland housing around 100–300 refugees, the majority of whom are Chechens, members of the enemy groups come across one another. In some cases, rumours and accusations lead to justified worries about acts of revenge.

Although it would in theory be possible to accommodate refugees outside the reception centres in the event of specific problems and threatening situations, the potential perpetrators would have to be named to make the threat credible and to be able to maintain protection by the Polish authorities. This would, however, sharply increase the risk of attacks on those making the reports or, if the latter were out of reach, on their relatives in Poland and in particular in Chechnya. To avoid an escalation of the violence that might include other family members, those concerned would rather do anything they could in order to evade a confrontation with hostile individuals.

The difficulties that exist in the reception centres differ sharply between centres and from one case to another. A general problem is, however, the hopelessness of the situation once the asylum process has come to an end, if applicants are forced after an average of 6–8 months to leave the reception centres and – if recognised as refugees – receive social and financial support for no more than one year or – where short-term residence status is granted – virtually no support of this kind.

1.4 Decision-making during the asylum process

The Polish Aliens Act makes provision for three forms of protection for asylum seekers: **recognition of asylum in accordance with the Geneva Refugee Convention (GRC)**, an individually granted **short-term residence status (pobyt tolerowany)** in the event of a danger to life and limb in accordance with the **ECHR**, and short-term residence status (pobyt tolerowany) as temporary **protection for war and disaster refugees**.

Short-term residence status has provided a way of granting protection and resolving the unfeasibility of deportation only since the new Alien Protection Act of 1 September 2003 entered into force. It is granted – solely at the request of a Polish institution (ex officio) – by the **Wojewoden** ? ??? or on the basis of a decision by the Chairman of the URiC or the Council for Refugee Matters.

URiC is the authority that decides in the **first instance** on the application for asylum. The applicant is given an opportunity in an oral hearing to put forward his or her grounds for asylum and to verify these with the aid of evidence and witnesses. The hearing does not generally take place until several weeks after entry into Poland. A decision should be taken within six months. An appeal may be lodged against this decision with a suspensory effect within an administrative procedure.

Table 3 Decision-making during the asylum process 2001–2003

| | 2002 | | | 2003 | | | 2001–2003 | | | Applications abandoned and withdrawn | |
|--------------------|-----------|-----------|--------------|-----------|----------|--------------|-----------|----------|--------------|--------------------------------------|-----------|
| | Applicant | negative | positive GRC | Applicant | negative | positive GRC | Applicant | negative | positive GRC | 2003 | 2001–2003 |
| Total | 5 153 | 4 706 | 280 | 6 909 | 3 163 | 219 | 16 608 | 10 745 | 756 | 4 366 | 6 689 |
| Russian Federation | 3 048 | (unknown) | 225 | 5 569 | 1 696 | 187 | 10 125 | 3 806 | 599 | 4 297 | 5 489 |

The **second instance**, the **Council for Refugee Matters** (Rada do Spraw Uchodźców), annuls negative decisions by the URiC extremely rarely. Only 64 positive decisions were taken by the Council during the years 2001–2003 compared with 4 565 rejections (1.4%). The subsequent **judicial third instance**, the administrative court in Warsaw, reversed only 4 rejections in 2001 and 2003.

Table 4 Decisions by the Council for Refugee Matters 2001–2003 (source: URiC)

| | 2001 | | | 2002 | | | 2003 | | | Total | | |
|--------------------|----------|----------|-----------|----------|----------|-----------|----------|----------|-----------|----------|----------|-----------|
| | positive | negative | dismissed |
| Total | 12 | 1 879 | 47 | 26 | 1 835 | 76 | 26 | 851 | 38 | 64 | 4 565 | 161 |
| Russian Federation | 1 | 112 | 8 | 19 | 536 | 61 | 24 | 379 | 36 | 44 | 1 027 | 105 |

In Poland the rate at which Chechens are recognised as refugees in accordance with the Geneva Refugee Convention is low. Between 1994 and 1999 only four applicants were granted refugee status, whilst the figure for 2002 was 209, and the recognition rate is currently around 9%. If Chechen asylum seekers who have again left Poland before a ruling is made are deducted from the negative decisions, however, the recognition rate pursuant to the GRC is, according to Jan Węgrzyn¹⁶, the Director of URiC, around 20%. Unlike in Germany, asylum seekers who credibly come straight from Chechnya are, according to representatives of the authorities, not deported to Russia. According to UNHCR, URiC quotes the current recognition rate for Chechen asylum seekers, including short-term residence status, as being as high as 80%¹⁷. However, we have been unable to account for this information on the basis of the statistics published.

Based on all refugee groups, a total of 299 people were granted refugee status (GRC) and 818 were granted short-term residence status (pobyt tolerowany) in 2004. UNHCR has published statistics for 2004 up to and including November for applicants from the Russian Federation in relation to decision-making practice which document the use of the newly established short-term residence status with reference to Chechen asylum seekers. Up to the end of November 2004 a total of 596 Chechens had been granted short-term residence status.

Table 5 Applicants from the Russian Federation, January–November 2004 (UNHCR)

| | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Total |
|--|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-------|
| Number of applicants | 268 | 320 | 389 | 923 | 308 | 371 | 546 | 512 | 886 | 792 | 896 | 6 211 |
| Recognised refugees | 6 | 7 | 27 | 7 | 24 | 18 | 21 | 16 | 28 | 34 | 23 | 211 |
| Short-term residence status (pobyt tolerowany) | 6 | 74 | 52 | 84 | 43 | 25 | 27 | 62 | 75 | 79 | 69 | 596 |
| Rejections | 123 | 164 | 183 | 199 | 135 | 119 | 62 | 95 | 151 | 151 | 84 | 1 466 |

16 'Polska nie interesuje Czeczenów' Interview given by Jan Węgrzyn to Agnieszka Kosowicz in the UNHCR journal: *Sprawy uchodźców. Ziemi z obcej. Warsaw, June 2004.*

17 Cf. Agnieszka Kosowicz, UNHCR Poland: Hunger strike reveals strains in Polish asylum system. UNHCR News Stories, 13.12.2004 / www.unhcr.pl.

In relation to the statistics, UNHCR forcefully points out that applicants who are no longer in Poland must expect negative decisions. Their absence should not reportedly mean, however, that refugees requiring protection are not involved. This information should be viewed having regard to the situation of refugees returned to Poland under the Dublin procedure.

Whilst recognised refugees (GRC) are granted a right of residence for two years together with a passport, short-term residence status is granted for one year on the basis of individually recognised grounds. Rights of residence are extended if the need for protection persists. The social and economic situation of those concerned, depending on the right of residence and individual circumstances (i.e. depending on factors such as age, health and number of children), ranges from precarious to catastrophic.

1.5 Existential problems following decisions during the asylum process

1.5.1 Following granting of refugee status in accordance with the Geneva Refugee Convention (GRC)

Refugees who are granted refugee status in accordance with the Geneva Refugee Convention (GRC), receive **special welfare benefits**, medical insurance and services designed to promote integration, such as language courses and support in finding work and accommodation, **for a maximum (!) of one year**. During this period the head of the household may receive up to PLZ 1 149 (approx. €280), and other family members between PLZ 517 (approx. €130) and PLZ 804 (approx. €200), if rented accommodation has been found. Maximum payments per family in the first half of the year¹⁸ are PLZ 1 953 for two people, PLZ 2 527 for three people, PLZ 2 871 for four people and PLZ 4 019 for six people. This means that a total of no more than €700 per month is available to a family of four. This must cover all outgoings such as rent, language courses, schoolbooks, clothing, food and travel expenses.

Recognised refugees have told us of major problems in finding affordable accommodation. On request, the stay in the reception centre can be extended by up to three months. In this case, however, such refugees receive only about PLZ 420 (approx. €100) per person. After this three-month extension, refugees must leave the camp and provide evidence of an official registered address to continue receiving welfare benefits. The Centre for Family Assistance (centrum pomocy rodzinie) helps them to find work and accommodation, and they are also entitled to social housing, if available. Nevertheless, it appears to be difficult to find affordable and reasonable accommodation in a place where there is at least a minimal chance of a job. If a dwelling offered by the Centre for Family Assistance is turned down or vacated, or the refugees in question refuse to meet other cooperation

¹⁸ Slightly less is paid in the second half of the year: PLZ 1 755 for two people, PLZ 2 273 for three people, PLZ 2 584 for four people, and PLZ 3 618 for six people.

requirements or engage in inappropriate behaviour, entitlement to welfare benefits may be lost even before the end of the first year.¹⁹

We have not addressed the situation of recognised refugees at length, since they fare comparatively well in the first year. Nonetheless, this one year passes quickly.

Krystyna Iglicka, an employee at the Center for International Relations and Head of the 'Migration and Internal Security' project characterises the situation of recognised refugees (GRC) as follows:

'After a year refugees begin to live in poverty or in marginalised social conditions in our country. In terms of work, discrimination becomes immediately apparent in view of the level of unemployment. In Poland it is very difficult to find legitimate work if you cannot speak Polish or are unregistered.'²⁰

If recognised refugees (GRC) lose their welfare benefits after a year, they end up in almost the same oppressive situation experienced by most refugees who are granted short-term residence status immediately after the end of the asylum process.

1.5.2 Living with short-term residence status (pobył tolerowany)

As the recognition figures for 2004 show, Chechen refugees are in most cases not granted refugee status, but short-term residence status (pobył tolerowany). Although this short-term residence status allows them to stay in Poland legally and entitles them to attend school, receive education and work, if they must leave the reception centre immediately after receiving such a decision they do not know what they are to live on or where they can live, and their medical care situation is also unclear to them. Krystyna Iglicka describes their situation in the following terms:

'People with short-term residence status can stay in Poland legally, but do not have any travel documents with which they could go abroad. In theory they are entitled to work, to receive social assistance and medical care, but only if they have a registered address. As for most refugees, such an entitlement for this ethnic group is only theoretical, since they have no way of registering.'²¹

Formally, recognised refugees and refugees with short-term residence status are classed as potential benefit recipients according to the Social Assistance Act of 12 March 2004 (Dz.U. No 64 Poz. 593). The receipt of benefit is, however, subject to possession of a registered domicile, a requirement intended to prevent the multiple drawing of income support in different locations. Individuals granted short-term residence status receive no housing benefits from the State. They are thus in a hopeless situation:

A Chechen woman with short-term residence status told us of her experiences: her husband was in a Russian camp and was now struggling with severe health problems. He allegedly had diabetes and a

19 Information from the Wojewodschaft administration in Warsaw (www.mazowieckie.pl), Department of Social Policy (wydział polityki społecznej): Pomoc integracyjna dla uznanych uchodźców (Integration assistance for recognised refugees).

20 From: Center for International Relations (CSM): 'Uchodźcy z Czeczenii w Polsce. Przystanek czy nowy raj utracony?' (in Eng.: Chechen Refugees in Poland. A new home or a new paradise lost?/Original Polish-German translation by B.E.), Warsaw 2004 (www.csm.org.pl). Summary of the podium discussion held on 01.10.2004 with Krystyna Iglicka (CSM), Irena Rzeplińska (Helsinki Foundation), Paweł Hut (Council for Refugee Matters) and Jan Węgrzyn (Director of URiC).

21 From: see previous footnote.

spinal disorder. They had lived with other refugees in a hostel for the homeless in Warsaw for nine months. Alcoholics and drug addicts were living on the floor below. Although she earned a little money as a cleaner, she received no social security. When her husband was seriously ill in hospital he fortunately received the treatment he urgently required, but there were major disputes with the authorities, who initially demanded that the family pay for the treatment themselves.

Without a registered address, refugees with short-term residence status and temporary protection can receive only symbolic State support. Małgorzata Gebert, head of the PAH (Polska Akcja Humanitarna) refugee advice centre, explained to us the complexity of the problems faced by refugees granted short-term residence status, saying that they cannot register as unemployed and therefore receive no regular income support and are not covered by the national medical insurance system (telephone conversation of 11 February 2005).

The level of symbolic support ranged between PLZ 20 and 70 (€5/18) per person per month. Under such conditions families with small children and the sick in particular get into serious existential difficulties in a foreign country without the support of relatives and close acquaintances.

We have no data on the accommodation of people granted short-term residence status and the benefits that they draw. More precise information on the number of refugees in hostels for the homeless, hostels for mothers and their children and other social facilities as well as their financial and health situation would be desirable. In Poland there is only one small refugee hostel for individuals granted short-term residence status, which is run by Polska Akcja Humanitarna. It is assumed that, as a result of the increased granting of short-term residence status in recent months, demand for accommodation and care has risen sharply. Further on-the-spot research would be needed to clarify this. Based on our experience, advice centres for asylum seekers and people granted asylum know little about the fate of those granted short-term residence status at the end of the process.

Refugees have informed us of Chechens having decided to return to Chechnya in desperation. Others choose to move on to western countries despite the hopelessness of their situation and the great danger of spending several months in custody.

The Alien Protection Act and the legal principles for asylum seekers and refugees are currently being redrafted by the Sejm²² committees. Social improvements are expected, particularly for refugees granted short-term residence status. Nevertheless, it is still unclear whether real improvements will result and when these will come into effect.

1.5.3 Half of Chechen refugees are children and young people under the age of 18

In view of the lack of State statistics and the difficult economic situation it is important to take account of the age structure of the Chechen refugee group. Nearly half of Chechen refugees applying for asylum in Poland in 2003 and 2004 were under the age of 18, with babies and small children under the age of five accounting for as much as 20%. This situation places particular demands on resettlement conditions and social support following the asylum process. In particular, without significant State support, single parents, families with small children and families with many children end up in a hopeless situation in view of the high level of unemployment and the widespread poverty of Poland's own population.

²² 'Sejm' is the name of the Polish Parliament.

In conversations and letters refugees referred, amongst other things, to the problems of a lack of schooling and poor educational opportunities. On the other hand, social workers and advisors complained of a lack of motivation on the part of Chechen children with regard to school attendance. The problems are on both sides. Without a feeling of being on solid ground or having prospects for one's life in Poland it is difficult to see any point in learning Polish or having their children integrate in schools. In addition, school attendance also makes material demands.

As a result of the insecure situation of refugees after the end of the asylum process it is to be feared that educational opportunities will be missed by many refugee children who have had only limited access to schooling in Russia and Chechnya in recent years. The assessment by advisors that Chechen families supposedly lack interest in education is surprising. Based on experience of the provision of advice in Germany, the predominant impression is that clear educational motivation exists in most Chechen families, and that the latter attach great importance to schooling and the further education of children.

The deficiencies in the health system are of particular importance.

1.6 Problems in psychosocial and medical care

The question of psychosocial and medical care is of particular importance for people who have fled their country because of war and persecution. Since the start of the first Chechen war a good 10 years ago, about one fifth of the 1 million or so Chechens have lost their lives. For more than 10 years the people have not known what it means to live in peace and without anxiety. They know only the opposite: thousands have been taken away by the security forces and have disappeared without trace. All actually bear the physical and mental scars of the bombings, torture and fear of death. Almost every family has experienced death or torture or includes missing persons or traumatised individuals. The children, too, have witnessed brutal violence. It is precisely because of their children that parents forsake their homelands in pursuit of protection and a future for their children.

Clear post-traumatic problems such as insomnia, anxiety, nightmares, depression and suicidal thoughts are widespread in Chechen refugees. Like all severely traumatised refugees, they urgently need secure living conditions and psychosocial care to help them deal with what they have experienced. Otherwise, it is to be feared that the psychological and psychosomatic consequences will become chronically embedded.

Psychological consequences are an aspect of war and violence and the destruction of the basic principles of life. Another aspect is shattered bones and serious injuries. Life in Chechnya and in the refugee camps has for years been characterised by precarious living conditions in temporary accommodation, a poor supply of food and a lack of medical care. Correspondingly great is the need for medical treatment. The treatment of war wounds, cancer and serious diseases of the internal organs is expensive and has to date not been guaranteed in the State budget for asylum seekers and refugees in Poland.

At the time of the asylum seekers' hunger strike an employee of the administration in Dębak pointed out to UNHCR that basic medical care was simply not sufficient for many asylum seekers, since a

growing number of seriously ill patients were allegedly coming to Poland and the cost of necessary medical care was rocketing²³. Malgorzata Gebert of Polska Akcja Humanitarna told us that not only the funding of operations but also the necessary medical treatment of many small children and the relatively high rate of premature births among Chechen asylum seekers are not adequately guaranteed (telephone conversation of 11 February 2005).

It should be borne in mind that the Polish population itself is suffering under the disastrous financial situation of the Polish health system. In her analysis of the impact of the health system reforms the journalist Gabriele Leser diagnoses a sharp mismatch between the Polish Constitution, which guarantees every citizen, regardless of his or her material situation, equal access to the services of the public health system, and the actual situation, in which the necessary medical care can often be obtained only privately. Accordingly, by mid-2004, the problem arose that a number of hospitals had spent their State-guaranteed annual budget and were able to accept only those patients who could bear the costs of their treatment themselves. Owing to the parlous state of the public health system, 70% of all dental patients and 40% of all gynaecological patients now opt (according to Gabriele Lesner) for private treatment and meet the costs themselves.²⁴

1.6.1 Deficiencies in the health care of refugees – three examples

A 10-year-old boy with a war injury of the jaw

During our visit to the initial reception camp in Dębak we were introduced to a 10-year-old boy. His jawbone had been shattered during a bomb raid. Although he had already undergone surgery in Russia, the mobility of his jaw had been steadily worsening in recent months. He can now open his mouth just wide enough to produce a narrow opening. His father reports that he can now eat only mushy food.

On 11 November we asked Sister Manuela (head of the Caritas Help Centre for Migrants and Refugees in Warsaw) to try to arrange medical treatment for the boy. It was initially difficult to find a specialist who could give an accurate diagnosis and specific information on the treatment needed. When this information became available at the beginning of January as a result of the special commitment by Sister Manuela the next urgent question was who could fund the necessary operation. We were told that the boy would not be operated on without a sponsor. Sister Manuela was able to contact sponsors in Canada who would probably assume the expense of the operation.

A young father with a spinal injury

A 25-year-old father of two small children told us that he had already been examined in Russia for his extreme back pain resulting from a spinal injury. It had reportedly been explained to him that he would have to undergo surgery as a matter of urgency as there was a danger of paraplegia from a projecting vertebra.

23 Cf. Agnieszka Kosowicz, UNHCR Poland: Hunger strike reveals strains in Polish asylum system. UNHCR News Stories, 13.12.2004 / www.unhcr.pl.

24 Cf. Gabriele Leser: Constant reforms are making the health system sick. Past liberalisation has completely failed/patients and doctors are the ones who suffer. In: Sächsische Zeitung, 18.9.2004.

We advised him to seek a reliable specialist diagnosis and information on the specific treatment required. Six weeks later he telephoned to tell us that he had since experienced a week of excruciating pain. He stated that he had found a specialist, but that he would himself have to pay PLZ 350 (approx. €85) for the X-ray to diagnose his condition. He was in a position to borrow the money, but was unsure whether the expense was worthwhile if he was not subsequently treated. Out of fear of possible paralysis he decided to pay for the X-ray.

Malika Abdulvachabova (of the refugee aid organisation OCALENIE) informed us that, according to information from the doctor, three of the man's vertebrae were in danger of slipping and damaging nerves. Two operations were reportedly urgently required. The costs amounted to around PLZ 12 000 (around €4 000) for the first operation and PLZ 30 000 (around €7 500) for the second one. Sister Manuela of Caritas did what she could in this case, too. Once the precise diagnosis was available, treatment was promised by URiC.

A baby with a fast-growing strawberry mark on the head

A baby was diagnosed in another EU State as being in urgent need of treatment owing to a fast-growing strawberry mark on the head. The baby had to undergo expensive surgery repeatedly over a period of several months. During its previous stay in Poland, the family had tried in vain to obtain the necessary medical care for their child. They said that although their child had been medically examined, further medical treatment had been refused.

Conclusion

These examples show that access to an expensive specialist examination, even in the case of serious illness, can be a virtually insurmountable problem for refugees. Without the support of Sister Manuela and Malika Abdulvachabova there would not have been a sound diagnosis or any prospect of treatment in the first two cases. Accordingly, the first problem that arises is to demonstrate the need for treatment by sound medical diagnosis in such a way that it must be taken seriously by the competent authorities. Nevertheless, even where there is a clear need for treatment, funding such treatment is an important issue. State care does not generally cover expensive treatments. Treatment is not guaranteed for refugees without adequate financial resources of their own.

1.6.2 Psychosocial and therapeutic care for asylum seekers and refugees

According to information provided by Caritas Warsaw in a letter dated 22 December 2004 (see Annex), there are currently no psychologists working in Polish centres for asylum seekers. There are plans to appoint a psychiatrist at some time in the future, who would be responsible for all centres in Poland, which are widely dispersed. Of all the refugee aid organisations operating in Poland, only Caritas employs two psychologists who are available to asylum seekers or refugees in Poland. One psychologist works in Lublin (eastern Poland, Lubelskie Wojewodschaft), offering free psychological assistance and therapy for asylum seekers and refugees. The other psychologist comes to Warsaw twice a week and offers free psychological assistance as part of a project covered by the European Refugee Fund (which runs until July 2005), which is available only to recognised refugees. To provide this therapy, this psychologist has had to refer her clients to specialists.

Owing to the twin qualifications required (therapeutic training and a good knowledge of Russian), it took Caritas Warsaw three months to find a psychologist who could provide psychological

consultations and diagnoses under this project, which is tailored to recognised refugees. It had not been possible up to now to find a specialist to provide these therapies. Warsaw is by far the city with the most refugees who have completed the asylum process.

In Poland there is a single centre for the treatment of victims of political persecution (Ambulatorium dla Osób Prześladowanych ze Względów Politycznych). This centre is affiliated to the Department of Psychiatry at Jagiellonen University in Cracow, and has specialised in the treatment of holocaust victims and victims of political persecution by the Communist regime in Poland. Owing to the considerable needs of the centre's main clientele, foreign refugees with refugee status living in the vicinity of Cracow could be treated only in exceptional cases.²⁵

Payment of costs

Owing to the limited national budget for the medical care of asylum seekers, the Office for Repatriation and Aliens, which administers the budget, has to date not agreed to pay the costs of treatment by registered specialists and clinics.²⁶ According to information from its Director, Jan Węgrzyn, it is currently not possible for the costs of treating asylum seekers to be borne by the national budget.²⁷ The Warsaw Centre for Family Assistance was unable to give us a definite answer on whether the national medical insurance scheme (Narodowe Fundusz Zdrowia) would bear the costs of treating recognised refugees under the integration programme. It is not currently possible to provide treatment for refugees with short-term residence status who do not have a registered address and to have the costs of this borne by the national budget.²⁸

In summary, reference is made to the conclusion by Caritas Warsaw (see Annex): 'In our opinion there is no real opportunity for asylum seekers to obtain psychological assistance and correct therapy.' This certainly applies to refugees with short-term residence status and temporary protection.

(Appended to this report is the detailed opinion of the North Rhine-Westphalia Refugee Council issued in 22 December 2004 relating to the psychosocial and therapeutic care of asylum seekers and refugees in Poland together with the letter from Caritas Warsaw and an accompanying letter from the National Association of Psychosocial Centres, BAFF.)

25 The Centre Director, Dr Krzysztof Rutkowski, informed us by telephone on 22.12.04 that there had been occasional cases of a medical diagnosis having been carried out by the Centre for Victims of Political Persecution for recognised foreign refugees. In these cases therapy had not yet been provided and could in principle be performed only for individuals living in the Cracow area (Malopolska Wojewodschaft).

26 Information provided via telephone on 20.12.04 by Agnieszka Kopycka, Office for Repatriation and Aliens, responsible for the administration of social security payments for asylum seekers.

27 Information provided by telephone on 21.12.04.

28 Information provided by telephone on 21.12.04 by Malgorzata Gebert, Polish Humanitarian Aid, Refugee Counselling Centre, Warsaw.

2 RETURN OF ASYLUM SEEKERS TO POLAND BY VIRTUE OF THE DUBLIN II REGULATION

Central to what follows is the issue of the return of asylum seekers to Poland by virtue of the Dublin II Regulation. It should be borne in mind in this context that a large proportion of refugees do not wait for their asylum process in Poland to be completed, but move on to countries in the West. It is clear from Polish statistics on resettlement applications submitted to Poland from other EU States which countries this primarily includes (source: URiC, telephone conversation of 10 November 2005). The number of applications between 1 July and the end of December 2004 is specified here; May and June 2004 have been counted separately by URiC. (Children under the age of 16 who travel with their parents are not counted separately in the applications, so the number of individuals exceeds the number of applications.) In all, 1 320 resettlement applications were submitted to Poland over the period from July to December 2004, 1 182 of which were accepted.

Most resettlement applications to Poland come from Germany (432); in second place comes Austria (320), followed by Belgium in third place, and the Czech Republic and France in fourth; the Czech Republic should in this context be regarded as a transit country to Austria.

The problems of refugees in Poland presented in the previous section are important, but not the sole reasons, for refugees to move on to EU States. For many Chechen refugees the desire to be with close relatives is an important motive for their decision to leave Poland. Living as an isolated nuclear family (father, mother, children who are still minors) is not in keeping with the way of life usual in Chechnya, where sons live with the parents and families of brothers in close companionship (where possible, in terms of space). Under these conditions cousins grow up like brothers and sisters. Attaining one's majority and starting a family of one's own is not synonymous with separation from one's parents. There is considerable mutual responsibility and a sense of belonging between parents and children, brothers, sisters and cousins. The proximity of relatives is a central need owing to this culturally ingrained way of life. The attempt to reach close relatives should also be viewed in the light of the extremely traumatic experiences of many Chechens and their associated deep mental insecurity. It represents an attempt to find security and support once more through the proximity of relatives.

Reality at the borders and the mechanism whereby refugees are returned to Poland is in this respect at odds with the desire for familial security and stable living conditions. Many refugees also end up spending weeks or months in remand centres in Germany and Poland pending deportation. As a result of the Dublin II Regulation and the EURODAC fingerprint matching system, which can be accessed across Europe, asylum seekers who have gained entry via Poland currently have almost no opportunity of completing an asylum process in another EU State. The principles of the Dublin II Regulation are outlined only briefly below.

2.1 The Dublin II Regulation and EURODAC

2.1.1 Objective

The Dublin II Regulation (Council Regulation (EC) No 343/2003 of 18 February 2003) came into force in Poland in May 2004. It governs national jurisdiction within the EU for the examination of an asylum application. The general principle of this Regulation can be outlined by stating that, as a rule, the Member State that is or can be held responsible for the entry of the person concerned into EU sovereign territory is responsible for examining the asylum application.

2.1.2 Right of autonomous entry and humanitarian clause in the Dublin II Regulation

In the case of the separation of a family, provision for reuniting the family in a Member State is, under the objective criteria of the Dublin II Regulation (Articles 7 and 8), made only if the marital partner or the children under the age of majority in this State are either still awaiting the first decision on the asylum process or have been granted refugee status.

In all other cases only the right of autonomous entry of a Member State or the humanitarian clause may apply:

The **right of autonomous entry** (Article 3(2)) enables each Member State voluntarily to take responsibility for the examination of an asylum application for a particular individual.

The **humanitarian clause** (Article 15) states that every Member State may bring together family members as well as other dependent relatives on humanitarian grounds, based in particular on family or cultural considerations, even where it is not responsible under the objective Dublin criteria.

Let us now examine the practice of the German-Polish Dublin procedure, in which national responsibility and resettlement is applied for and examined.

Kommentar: Note: delete, where applicable

2.2 The Dublin procedure in German-Polish practice

If a refugee in Poland submits an application for asylum or is apprehended as an illegal alien in the country, his or her fingerprints are entered in the computerised EURODAC system. If a refugee submits an application for asylum or is apprehended in Germany, the fingerprints are taken again and then compared with the EURODAC records. A match with fingerprints taken in Poland, known as a EURODAC match, represents, according to estimates by URiC, the basis in about 90% of cases for a resettlement application and the possibility of a return to Poland. Most resettlement applications from Germany (395 out of 432 between July and December 2004) were approved by the Polish side over the previous year. The Dublin II Regulation accordingly has a major impact on German-Polish Dublin practice in connection with EURODAC. In the absence of a EURODAC match a range of other proof and circumstantial evidence can be used by the requesting Member State in the resettlement application²⁹.

²⁹ A full list of proof and circumstantial evidence in the Dublin Regulation is contained in the Annex to the EU ordinance implementing the Dublin II Regulation. (Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and DV\558915EN.doc 25/39

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Although, according to figures issued by the Polish border controls over the period July–December 2004, only 126 people were returned to Poland from Germany, the number of asylum seekers who can be returned from Germany has risen sharply in recent months owing to the high rate of positive responses. Under the Dublin II Regulation the sending country has six months to return the refugee.

According to information from the Eisenhüttenstadt procedural advice centre supported by Diakonischen Werk Niederlausitz e.V., German-Polish Dublin procedures are running increasingly quickly as at the beginning of February 2005. Chechen asylum seekers have recently been returned from Eisenhüttenstadt more and more speedily. Especially in remand centres for aliens pending deportation and initial reception in Eisenhüttenstadt on the Brandenburg-Polish border, the consequences of the entry into force of Dublin II in Poland are clearly visible. Over the period October–December 2004 alone, the procedural advice centre for Diakonie Niederlausitz in Eisenhüttenstadt recorded more than 50 Chechen asylum seekers³⁰. With a few exceptions, these are German-Polish cases under the Dublin Regulation, i.e. individuals undergoing what is known as a Dublin procedure in the initial reception centre or neighbouring remand centre for aliens pending deportation and who are awaiting their return to Poland. We will examine this procedure in the next section, initially in purely formal terms.

2.2.1 The return procedure pursuant to the Dublin II Regulation

In Poland the Dublin procedure is implemented by the Office for Repatriation and Aliens (URiC). In Germany implementation of the Dublin procedure has been entrusted to the Federal Office for Migration and Refugees (BAMF).³¹ In the event of proof or circumstantial evidence for entry via Poland or generally if Poland is responsible, the Federal Office lodges an application to take charge of or take back the refugee concerned with the Dublin Department of URiC.

URiC examines the application from the Federal Office for Migration and Refugees (BAMF) and generally approves it if there is a EURODAC match or other proof. Under the Dublin II Regulation the Polish Dublin Department has two months in which to do this. In the event of urgent inquiries (for example, if a refugee has been apprehended in Germany and subsequently detained) this period of time is shortened. For a department employing only six people (only three on substantive examination) this means a huge workload in view of the rising number of cases.

As soon as URiC declares itself willing to take charge of or take back the individual concerned and neither the objective exceptional arrangements for families and unaccompanied minors nor the humanitarian clause for bringing families together or other humanitarian cases of hardship apply, the Polish asylum authority gives its consent to the Federal Office for Migration and Refugees (BAMF). The Federal Office then sends URiC a copy of the Laissez Passer for the asylum seeker and informs URiC whether the transfer is to take place by air or land. URiC notifies the Polish border police that a transfer is to be initiated, sends a copy of the Laissez Passer to the Polish border police and asks over

mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national.)

³⁰ This number covers only individuals to whom advice has been given and applies to both reception centres and remand centres for aliens pending deportation.

³¹ Asylum Competence Order (AsylZBV) of 4.12.1997 (Federal Gazette I 2852; last amended by the Order of 26.2.2003, Federal Gazette I 302)

what period of time the transfer may take place. Notification to this effect is then sent to the Federal border police via BAMF.

Where there is a EURODAC match there will be no possibility on the German side for a voluntary exit from the country pursuant to the Dublin procedure. To guarantee deportation the practice of the German authorities responsible for aliens is to place the refugees in a remand centre for aliens pending deportation for a period of between several days and two weeks, in so far as the refugees are not already in custody.

Refugees are currently returned over land via the Görlitz/Zgorzelec, Pomellen/Kołbaskowo, Fort/Olszyna and Frankfurt(O)/Świecko border crossings and by air via Warsaw airport, to which the Warschau/Okecie detention centre in the transit area is assigned. When the individual concerned is handed over to the Polish border police and enters Polish sovereign territory, responsibility for implementing the asylum procedure passes to Poland.

This, in broad terms, is the formal sequence of events. The question now arises as to what extent this sequence of events under the Dublin process ensures that serious grounds for use of the right of autonomous entry or use of the humanitarian clause do not exist. During a refugee's stay in Germany the initial hearing by the Federal Office for Migration and Refugees provides an important option for those concerned to adduce such grounds themselves. We would therefore like to examine briefly in the next section the types of case in which this hearing takes place. This account is based on Dublin cases processed in procedural advice centres or Psychosocial Centres (PCs) in Eisenhüttenstadt, Berlin, Düsseldorf and Bielefeld.

2.2.2 Hearing practice of the Federal Office and requirement to provide information on returns

As a rule, following entry into the country, an initial hearing is carried out by the Federal Office's competent external office if the asylum seeker is referred to it by the Federal border police or reports to it himself or herself after entering the country.

The initial hearing is not carried out in all cases, however. In many cases individuals concerned who, after crossing the border illegally, are still apprehended near the border and lodge an application when apprehended are taken into preventive detention. It is not out of the question for certain Federal border police departments on the eastern border of Germany not to pass on asylum applications to the Federal Office in Nuremberg in such cases, but to provide only the personal details recorded and EURODAC records. In such cases the Dublin procedure can be conducted by the Federal Office solely on the basis of police investigations, since the asylum application is not available.

If the asylum application is passed on to the Federal Office, initial hearings can also be held whilst the asylum seeker is detained. If the applicant for asylum is on remand pending deportation, initial hearings no longer take place in some cases, even when an application for asylum is lodged. An initial hearing by the competent external agency of the Federal Office is generally held if the individual concerned is in a reception centre. Generally speaking, the initial hearing takes place first of all and then the file for implementing the Dublin process is handed over to the external agency of the Federal Office in Dortmund responsible for this.

Unfortunately it is often impossible to conduct a procedural consultation with those concerned before the initial hearing or during the Dublin procedure and inform them of the sequence of events and their rights in the first hearing and the Dublin procedure.

The individual concerned is himself in most cases informed of the return only on the date of deportation, although Article 19(2) of the Dublin II Regulation prescribes a prenotification requirement.³² For those concerned and also for the procedural advice centres involved which wish to inform Polish NGOs of handovers in advance, it is crucial for the party concerned in Germany to be notified of his or her return to Poland. This advance notification is, in cases where the humanitarian clause (Article 15 of the Dublin II Regulation) may be applied, the only way for the individual concerned to take advantage of procedural advice centres and lawyers before he or she is returned to Poland.

The question arises, however, as to the extent to which interventions pursuant to a Dublin procedure may apply to individuals whose treatment and care in Poland cannot currently be guaranteed. These primarily include traumatised individuals and victims of torture.

2.2.3 Traumatised individuals and victims of torture in the Dublin transfer

If the Federal Office receives medical reports of serious illnesses and cases of trauma (according to information from the Federal Office in Nuremberg), it passes on such information to the competent bodies (in the case of Poland, this would be the Polish asylum authority URiC and the Polish border police) in the receiving country in connection with the Dublin transfer (via BGS).

In Germany, however, the problem is that during initial reception it is extremely difficult to arrange for asylum seekers suspected of having suffered Post-Traumatic Stress Disorder (PTSD) or traumatising experiences that have led to their fleeing to undergo an official medical or specialist examination or to initiate treatment in psychosocial centres (PCs), particularly because PCs are overloaded or too far away.

In Austria, on the other hand, there is regular access to an official medical examination to check for traumatising in initial reception centres at the request of the asylum seeker (according to information provided by telephone on 24 January 2005 by Michael Genner of the refugee aid organisation Asyl in Not in Vienna).

If no official medical/specialist findings or corresponding findings by a PC exist, it cannot be ruled out that the individuals concerned will be taken into custody in Poland after they are handed over. Although provision is made in Poland for an official medical examination to establish fitness to be kept in prison prior to any imprisonment, the existence of traumatising will, however, scarcely be able to be determined by a summary trial.

³² The breach of the information requirement laid down in Article 19(2) by the Federal Office or the authority for aliens has been reprimanded by both the administrative court of Gießen (judgment of 11.11.2004, 4 E 3267/04.A) and the administrative court of Wiesbaden (judgment of 18.08.2004, 5 E 1231/04.A (V)). The judgment of the administrative court of Wiesbaden, which, on this basis, *inter alia*, reverses the handover decision of the Federal Office, also emphasises that the breach of the information requirement would also prevent the voluntary departure of the individual concerned, which is to be made possible by Article 19(2) of the Dublin II Regulation.

German implementation of the Dublin II Regulation makes no provision for exceptional arrangements for traumatised individuals or victims of torture. Such arrangements are also not explicitly mentioned in the humanitarian clause of the Dublin II Regulation and can only be subsumed in general terms (facility for adopting examination of the asylum application on humanitarian grounds) under the capability provision of the humanitarian clause.

Here Dublin practice in Germany differs from that in Austria, which is exemplary on this point.³³ The exceptional arrangements for traumatised individuals and victims of torture in the Dublin procedure are here based directly on the Austrian Asylum Act, which obliges Austria (in Section 24 b of the Austrian Asylum Act) to implement the asylum procedure for traumatised individuals and victims of torture. The respective individuals requiring treatment are on this basis removed from the Dublin procedure in Austria whilst they are handed over to other Dublin States from Germany.

2.2.4 What happens after handover in Poland?

After the Dublin handover the individual concerned may be imprisoned for illegally crossing the border or under deportation orders. The Helsinki Foundation for Human Rights confirms that imprisonment takes place following Dublin handovers in Poland (telephone conversation with the Helsinki Foundation, Bartołomiej Tokarz, on 24 January 2005). A rule determining the cases in which an individual is imprisoned has not so far been discernible to the Helsinki Foundation in Warsaw.

According to information from the Polish border police, refugee minors (up to the age of 18) are in any event not taken into custody, and neither are refugees for whom there are medical grounds, especially if traumatisation has been confirmed by a medical report. A judicial review of remand in custody and a medical examination take place before every imprisonment.

Whether the individual concerned is handed over by the border police to an open reception centre or to a remand centre for aliens pending deportation or to the closed Leznawola camp also depends on the status of the asylum process in Poland. To this end, URiC mentioned a number of regulatory procedures during our discussion.

Most cases relating to handovers from Germany to Poland concern Article 16(1)(c) of the Dublin II Regulation: the asylum seeker has, whilst his or her application is under examination in the competent Member State, withdrawn from Polish sovereign territory without permission. In these cases the asylum seeker is generally transferred directly by the Polish border police to the initial reception centre at Dębak after being transferred to Poland.

The prognosis for a transfer to Dębak is generally good if the asylum process in Poland has not in the meantime been terminated in the applicant's absence and also if short-term residence status has been granted. In January 2005, however, we also became aware of a Dublin case (Usman A.) who was taken into custody in Poland after handover, although his asylum procedure in Poland was still

³³ It should merely be mentioned here that a proposal vehemently criticised by Austrian human rights and refugee aid organisations to amend the corresponding Section 24b of the Asylum Act exists, put forward by the Austrian Ministry of Internal Affairs, which would weaken protection for traumatised individuals and victims of torture if transposed (information provided by Asylkoordination Österreich e.V. and Asyl in Not e.V. by telephone at the beginning of February 2005).

continuing at the time of handover. The imprisonment was in this case explained by the Polish refugee advisors in the following terms: on being returned to Poland, the individuals concerned generally receive a deportation order. Even if deportation is deferred owing to an ongoing asylum procedure, the deportation order itself constitutes a sufficient reason for imprisonment. The asylum procedure may then be followed through during the prison sentence.

If the asylum seeker has withdrawn his asylum application in Poland before entering Germany illegally (Article 16(1)(d) of the Dublin II Regulation), it becomes more likely that the Polish border police will hand him over not to Dębak but to a remand centre for aliens pending deportation or, if sufficient places are available, to the closed Leznowola camp. The option exists, however, of lodging an application to resume the asylum process at the border, which, according to information from Polish NGOs, is generally granted. The risk of imprisonment consequently falls.

If the asylum process in Poland has in the meantime been terminated with rejection of the asylum application and rejection of the short-term residence status (Article 16(1)(e) of the Dublin II Regulation), once again the individual concerned will not automatically be handed over to Dębak following transfer to Poland by the Polish border police. As a rule, he is placed on remand pending deportation. The asylum seeker may appeal to the second administrative instance (Council for Refugee Matters) against the adverse decision by the Polish asylum authority URiC.

The Helsinki Foundation for Human Rights (telephone conversation of 24 January 2005) also asked that it be borne in mind that an accelerated asylum procedure can also be performed in the absence of the asylum seeker in Poland. In this case the probability of an adverse decision increases.

If German and Polish refugee advice centres intervene in good time and applications to resume the asylum process, extensions to the time allowed for appeals or appeals against adverse decisions are initiated before handover, imprisonment may possibly be avoided in Poland. Early contact with Polish advice centres is also important so that they can take over these cases (including cases of imprisonment) in Poland as speedily as possible. Particularly in the case of imprisonment, access to legal advice is substantially limited. This has been clearly shown by the monitoring report by Polish NGOs.

2.3 Core demands for greater transparency in the Dublin procedure and exceptional arrangements for traumatised individuals and victims of torture

We need greater transparency in the Dublin procedure as a basis for effective cooperation between German and Polish NGOs:

It is desirable that German procedural advice centres, where appropriate in cooperation with Polish NGOs, should intervene even before handover. This would ensure that they could inform those concerned in individual cases about the chances of reuniting the family or other exceptional humanitarian arrangements specified in the Dublin II Regulation. In view of the psychosocial and therapeutic care not guaranteed in Poland, in-depth advice is necessary to identify conspicuous psychological stress disorders in traumatised individuals and torture victims and to initiate relevant statements and treatments or to avoid imprisonment in Poland.

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The provision of advice during a Dublin procedure is also important so that information on those concerned can be handed over to Polish NGOs as soon as possible and procedural powers of attorney initiated as far as possible in advance in order to make it easier for Polish NGOs to access those concerned following handover.

These desirable opportunities for advice and close cooperation with Polish NGOs are only possible, however, if corresponding requirements are met on the German side:

- a German advice centre would also need to have free access to those concerned in remand centres for aliens pending deportation;
- those concerned would need to be informed of their handover to Poland by the Federal Office and the authorities responsible for aliens;
- if traumatisation is strongly suspected, handover would need to be deferred until a specialist opinion on the need for treatment was available.

Access to the initial hearing should, in the case of an asylum application in Germany, be guaranteed in all cases to allow in each individual case for an adequate examination of the humanitarian clause and other grounds for not granting handover to Poland.

The existence of a EURODAC match should not result in the Dublin procedure being followed almost automatically in these cases.

In the case of traumatised individuals and torture victims, special protective arrangements should be formulated by analogy with the Austrian example. In view of the fact that psychosocial and therapeutic care is not currently guaranteed in Poland, such individuals should not be handed over to Poland under the Dublin procedure.

Where families are to be reunited it would be desirable to take account of Chechen refugees' substantially broader concept of family and to apply the humanitarian clause accordingly.

2.4 Inadequate distribution of the burden across Europe in the Dublin II Regulation: a supplementary European resettlement scheme for Chechen refugees is required, in the view of the Polish asylum authority

The recommendations set out above require changes in the sequence of events that take place in the German-Polish Dublin procedure. If, however, the problems set out in the first section of this report are considered, the question arises as to whether we need a subsidiary European system for compensating burdens in order to compensate for the greater burden arising from the Dublin II Regulation for Poland as a receiving country. The Polish asylum authority itself openly mentions this matter.

Our Polish partners openly highlight the deficiencies in the Polish asylum system as a matter of major importance. The reasons cited for such deficiencies principally include financial constraints on the

overburdened Polish budget, inadequate support from European support programmes (which we will briefly further outline below) and, in particular, legal control mechanisms for European asylum policy, which do not yet promote the regular granting of European protection for asylum seekers and refugees.

These European control measures now prominently include national competence for the examination of asylum applications in the EU, which is regulated in the Dublin II Regulation. In the view of Jan Węgrzyn, Director of the Polish asylum authority, this is also leading the core EU States to delegate their responsibility to a relatively large extent, often leaving the economically weaker new Member States – such as Poland – on their own with the increased numbers of people seeking access. In no other new EU Member State (apart from Slovakia) are the adverse effects of the Dublin II Regulation already so tangible as in Poland.

In the opinion of the Director of the Polish asylum authority, a European mechanism is needed to equalise the burden, the oft-quoted mechanism of ‘burden sharing’. This should initially be a **European resettlement scheme for Chechen refugees. This resettlement scheme should grant refugees social support in accordance with the asylum procedure. It should therefore, in the view of the Polish asylum authority, cover both recognised refugees and refugees granted short-term residence status.**³⁴

A resettlement scheme of this kind is dependent on national resettlement rates in the old EU Member States. Implementation of the scheme should ensure that those concerned consent to resettlement in another EU State and can, under the resettlement scheme, also be reunited with family members from whom they have become separated whilst fleeing.

In addition, in the view of URiC, Poland needs financial transfer support that goes beyond the standard EU support schemes owing to capacity problems in the resettlement of asylum seekers and the currently inadequate increase in staff numbers at the asylum authority and social workers in the centres.

These support schemes are therefore outlined below in the context of European asylum policy, which determines the objectives for the support. Initially, support programmes that benefit primary State institutions are mentioned, followed by those from which Polish NGOs could also benefit. Our intention is, at the end of the report, to outline development potential to bolster Polish NGOs, whose work in protecting refugees in Poland is of crucial importance.

3 FINANCIAL TRANSFER PAYMENTS MADE BY THE EU TO POLAND IN CONNECTION WITH ASYLUM AND MIGRATION AND TWINNING PROJECTS UNDER THE EU PHARE SCHEME

³⁴ This position was adopted by the Director of the Polish asylum authority both during our meeting in Warsaw and in a subsequent telephone conversation at the beginning of February 2005.

EU policy shapes the Polish asylum system at two central levels:

- in European legislation relating to asylum and migration, and
- through financial transfer payments and the accompanying training of the Polish authorities in this area.

A core area of existing EU laws relating to justice and internal affairs that are to be transposed concerns, for Poland, the safeguarding of the country's eastern border. This is taking place in connection with Poland's accession to the Schengen Area. In addition it is expected that, especially after joining the EU under fast-track conditions, Poland will change from a transit country to a target country for asylum seekers. The limitation of secondary movement is part of the explicit objective of the EU Directive laying down minimum standards for the reception of asylum seekers³⁵ on the one hand and the Dublin II Regulation on the other.

Financial resources from the most important EU support scheme, the PHARE scheme, serve to transpose the shared existing EU legislation in new EU Member States and accession countries. (The following details of the EU PHARE support scheme are based principally on EU documentation taken from the Internet: <http://europa.eu.int/comm/enlargement/>).

In the sphere of justice and internal affairs, PHARE financial resources have been used in Poland and other accession countries since 1997. In the sphere of training by authorities of the EU Member States, the so-called twinning element of the PHARE schemes, such resources have been used since 1999. The PHARE schemes are due to come to an end in Poland in 2006, and are already being directed towards the new accession countries of Romania, Bulgaria and Croatia.

The main areas in which financial resources from PHARE (and PHARE twinning) are being used in Poland in relation to asylum and migration – a core element in the area of justice and internal affairs – are as follows (as at the end of 2004):

- border protection (including training courses for border police)
- the consolidation of material reception conditions for asylum seekers (particularly accommodation capacity) and training courses for social workers
- bolstering of the Polish asylum authority through training courses, and
- the establishment of a separate structural facility for the asylum authority for receiving asylum applications and holding interviews: to run until 2006).

After 1997 the design of the PHARE scheme was geared towards the requirements of accession to the EU (this focus is termed 'accession-driven'): funding priorities were geared towards the priorities of the EU accession partnerships, in which, in accordance with the Treaty of Amsterdam (1997), the area of justice and internal affairs and in particular border protection occupied a prominent role.

³⁵ Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers in Member States (OJ L 31 of 6.2.2003, p. 18)

Jan Wegrzyn, Director of the Polish asylum authority URiC, criticises the EU PHARE schemes for not currently being able to absorb the overload in reception capacity at refugee centres. In addition, in the view of Mr Wegrzyn, there is a further important issue that cannot be resolved by the PHARE schemes: the Polish budget is currently unable to make sufficient money available for the urgently required increase in staff at the asylum authority and for social workers working in the asylum accommodation facilities.

Additional EU resources are currently being directed towards the construction of four new closed camps on the eastern border of Poland, which are expected to be completed by the end of 2006. This represents a major structural reorganisation of the Polish resettlement system for asylum seekers, which will further aggravate the detention regime for asylum seekers in Poland.

Since 2004, a comparatively small proportion of EU financial support has been of benefit in the provision of advice and medical care and the integration of asylum seekers and refugees. This money has been obtained through the EU EQUAL support schemes (since 2005) and the European refugee fund (since 2004), from which Polish NGOs may also benefit for the first time to an appreciable extent. (Under the PHARE schemes, it was possible even before 2005, according to information provided by Norbert Grehl-Schmitt, Caritasverband f.d. Diözese Osnabrück e.V., for NGOs to be involved in EQUAL projects via PHARE. We do not know the extent to which this was the case in Poland.)

3.1 Germany (BAMF) as a partner of Poland in the PHARE twinning project:

Under the PHARE twinning projects, the training partnerships between authorities of the old EU Member States and the accession countries/new Member States, the influence of German authorities (i.e. in relation to asylum and migration, particularly that of the Federal border police and BAMF) has been greatest in Poland.³⁶

In Warsaw we met Janosch-Johannes Prekowski, the Federal Office advisor for the Polish Ministry of Internal and Social Affairs in the last twinning project (2002/IB/JH 02), which is still ongoing, together with Wolfgang Steiner, the acting manager of this twinning project, from the Federal Office in Nuremberg. The twinning project is due to be completed at the end of March 2005 and focuses on training courses for the Polish asylum authority URiC. In addition to training courses on general legal provisions such as the European Convention of Human Rights (ECHR), there is a focus on special procedures such as accelerated procedures or special hearing procedures for unaccompanied refugee minors, traumatised individuals, torture victims and women who have suffered gender-specific persecution. In addition, the Dublin Department has been trained in the implementation of the Dublin procedure. In the view of the Federal Office representative, URiC is thus 'fully trained'.

³⁶ Germany's main rivals for the border protection projects were, in particular, France, and to some extent also Great Britain.

Nevertheless, a number of deficiencies were also mentioned, such as the fact that URiC does not distribute written transcripts of hearings to asylum seekers after the hearings have taken place. The considerable expertise of the Dublin department is emphasised particularly, as is that of the national specialist for Chechnya, Mr Marcziniuk, a trained theologian from whom the Federal Office could 'learn quite a lot'. He is therefore reportedly also being invited to the Asylum Information Centre in Nuremberg as an expert analyst to improve German understanding. This is one of the results of the close cooperation between the Federal Office and URiC in connection with the ITD training courses (ITD = information, transmission and documentation) and the establishment of an ITD database for countries of origin, which has already been installed successfully in Romania. Similar projects to establish such a database for countries of origin are reportedly planned for Bulgaria and Croatia.

At the end of the year, the focus of the twinning project coming to an end was on the drafting of an integration manual which, according to Mr Steiner and Mr Prekowski, is to be drawn up for Poland jointly by the German Federal Office for Migration and Refugees, the Polish ministries concerned, Wojewodschafte, Caritas Poland and UNHCR Warsaw. At the time of our research on Poland, Mr Steiner informed us that he would visit several Polish asylum seeker accommodation facilities as part of his research with the aim of identifying the status of implementation of the EU Directive laying down minimum standards for the reception of asylum seekers.

4 REFUGEE AID ORGANISATIONS IN POLAND

Over the last 10 years a small group of NGOs has developed in Poland to support refugees by providing legal aid and social advice.

If the profile of activities and history of the development of these NGOs is examined, three types of organisations can be identified: humanitarian organisations focusing on social advice and humanitarian aid, human rights organisations concentrating on legal advice, and the latest generation of NGOs: refugee self-help organisations and NGOs whose work is in part decisively shaped by refugees.

4.1 Humanitarian organisations

The mainstay of humanitarian refugee aid in Poland is provided by Caritas. Its so-called aid centres for migrants and refugees are currently established in four Polish towns: Zgorzelec on the western border, Białystok and Lublin in eastern Poland and Warsaw, the latest location (since 2004), which is home to the largest number of refugees in Poland. The main emphasis of Caritas' operations is the provision of social advice, humanitarian and in particular medical aid for asylum seekers and refugees. Caritas also provides legal advice on matters of asylum and alien law in the town of Białystok, where

it is the only NGO, and in Warsaw and Lublin, where it represents an important addition to human rights organisations and university legal advice centres.³⁷

Besides Caritas, the refugee advice centre of Polish Humanitarian Aid (Polska Akcja Humanitarna, abbreviated to: PAH) also offers social advice and medical aid in Warsaw. In Poland, PAH also runs the only refugee centre for refugees with short-term residence status. It currently has 38 places.

4.1.1 NGO substitute for national gaps in care

Humanitarian aid provided by Caritas is not infrequently taken up by asylum seekers, refugees granted short-term residence status and other recognised refugees in locations where State services do not exist or are inadequate, with the prime example being medical care.

Caritas also provides a central refuge for refugees with short-term residential status who, following release from the State centres without a registered address, experience difficulties simply surviving. Caritas Poland is financed by falling UNHCR contributions but also, via cooperation arrangements with Caritas Europe, the German Caritas association and Caritas in Cologne and Wuppertal.

4.2 Human rights organisations

In relation to the provision of legal advice to asylum seekers and refugees, the facilities provided by legal clinics attached to several faculties of law in Poland (Warsaw, Cracow and Lublin) represent an important addition to the advisory services provided by the traditional human rights organisation, the Helsinki Foundation for Human Rights, in Warsaw. UNHCR has played a major part in setting up the legal clinics, which fulfil a dual role: as university institutions for the specialist training of law students in international refugee law and also as fora in which law students can first demonstrate their voluntary commitment in advising refugees.

Almost every legal advisor to asylum seekers and refugees in Poland passes through these professional colleges. Training courses on international refugee protection are also provided by the Helsinki Foundation for Human Rights and by the Halina Niec Human Rights Association. The Helsinki Foundation also has a special status in the Sejm consultation procedure pursuant to the Polish Aliens and Alien Protection Act.

There are currently around 10 specialist lawyers who can also represent clients before the courts, all of whom work for NGOs. In addition, only a small number of other legal advisors are employed by these NGOs. According to information from the Helsinki Foundation for Human Rights (telephone conversation of 24 January 2005), there are currently around 15 such individuals (including the human rights lawyers mentioned above).

³⁷ The centre in Zgorzelec, on the other hand, is exclusively dedicated to the humanitarian care of migrants apprehended on the Polish border or handed over from Germany. Caritas Warsaw is the only NGO that has to date been involved in transposing the State integration scheme for recognised refugees. The scheme is administered by the Wojewodschafte and implemented by the so-called centres for family assistance.

The day-to-day experience of refugee advisors was described to us by Andrzej Lorek (Caritas Lublin) and Agnieszka Kosowicz (UNHCR Warsaw): the legal advisors currently operating in Poland are extremely overloaded with work owing to the rising numbers of asylum applicants and refugees. Legal advice centres exist in Warsaw (Caritas, legal clinic, Helsinki Foundation), Lublin (Caritas and legal clinic), Białystok (Caritas) and Cracow (Halina Niec Human Rights Association). The 16 accommodation centres for asylum seekers are, however, distributed over a wide area, with the greatest density in the Wojewodstwa of Mazowieckie and Podlasie. Advisors must therefore cover large distances. Provision for some centres inevitably remains inadequate.

Even more problematic is legal advice for asylum seekers in the remand centres for aliens pending deportation provided by police and the border police and in the closed Lesznowola camp. A young NGO, the Halina Niec Human Rights Association, has emerged from the Cracow Legal Clinic college. It is the only NGO in Poland specialising in advising asylum seekers in custody. Besides providing advice in remand centres for aliens pending deportation and in the closed Lesznowola camp, the Cracow human rights organisation is heavily involved in monitoring custody conditions and in the implementation of EU Directives in the Polish asylum system.

All legal advisors of the Polish NGOs meet regularly at UNHCR once a month for exchange purposes.

4.3 Self-help organisations

In recent years refugees in Poland have started organising themselves and integrating their self-help work in existing structures. The first fruit of this process has been the foundation of the Refugee Association Poland (Stowarzyszenie Uchodźców w Rzeczypospolitej Polskiej) in Warsaw. Besides promoting self-help, this organisation sees its main role as educating young Poles about human rights. Refugees organised within the Refugee Association would like to show Polish schoolchildren what it means to live as an asylum seeker and refugee in Poland and – as our contacts Dahngbay Zuu and Simon Mol repeatedly stress – it is just as important for them to show what asylum seekers and refugees living in Poland can potentially contribute to a country which, despite its multicultural pre-war past, now has a great deal of catching up to do in terms of the coexistence of different cultures.

The Polish-Chechen foundation OCALENIE in Warsaw operates to a large extent on the basis of the social advice and care work provided by a Chechen woman who has been living with refugee status in Poland for several years. Malika Abdoulvakhabova is the first point of contact for many Chechen asylum seekers and refugees in Poland. Her address is passed around within the Chechen community, which means that she receives numerous requests for help on a daily basis from compatriots being held on remand pending deportation, husbands and wives who have been separated by imprisonment and who are now looking for their spouse in Poland, pregnant women who, having only short-term residential status, are not permitted to give birth in hospital, or whole families threatened by homelessness following their release from centres.

The foundation OCALENIE has hitherto consisted solely of voluntary staff. In terms of the provision of medical care, it collaborates closely with Caritas Warsaw (Sister Manuela), whilst in the matter of legal advice it collaborates chiefly with legal advisors in Warsaw, those in Lublin and Białystok and the Halina Niec Human Rights Association in Cracow.

4.4 Funding of NGOs

The footing on which NGOs in Poland operate is far from secure. Private support groups and networks on which they could fall back scarcely exist and financial support from UNHCR in new Member States such as Poland is increasingly being cut back in favour of the future accession countries of Romania, Bulgaria and Croatia, the States of Ukraine and Belarus bordering on the eastern side, and refugee protection.

In future much will depend on how the existing NGOs hold their own in the acquisition of European support funding. Divisions in power can swiftly arise in this connection, further weakening the work of the Polish NGOs. In nearly all EQUAL development partnerships in Poland, NGOs currently play only a marginal role compared with Polish ministries and authorities (information provided by telephone in January 2005 by Norbert Grehl-Schmitt, Caritasverband f.d. Diözese Osnabrück e.V., which is currently coordinating the establishment of an international EQUAL partnership with the new Member States of central Europe).

5 SUMMARY AND REQUIREMENTS

As the EU State situated furthest to the east, Poland is faced with sharply rising numbers of refugees. The capacity of reception centres has had to be more than doubled since Poland joined the EU on 1 May 2004. Although refugee numbers for last year are lower than in Germany with a total of 8 058 new applicants for asylum, including 7 182 Chechen refugees, this increase means a significant additional burden in view of the serious problems in the Polish health and social security system. Serious deficiencies are therefore arising in connection with the medical and social care of asylum seekers and refugees.

Although recognised refugees (GRC) receive integration aid for one year that exceeds the income support rate for Polish citizens, the problem of finding affordable housing and a secure job at the end of that year represents an insurmountable hurdle for most.

Refugees granted short-term residence status on whom deportation handicaps have been inflicted under the European Convention of Human Rights are faced with a hopeless situation as soon as they leave the refugee centres at the conclusion of the asylum process. Without a fixed registered address they are left without income support and medical insurance.

There is a lack of financial resources for medical care in the areas of cost-intensive specialist treatments, surgery, therapies for serious illnesses and the care of premature babies. Urgently required medical treatment is not generally guaranteed. Psychosocial and therapeutic care for traumatised individuals and torture victims is not currently guaranteed in Poland.

The sick, single parents and families with a large number of children end up in a hopeless situation. Half of all Chechen refugees are children. Asylum seekers in reception centres have drawn attention to the problems by means of hunger strike and several open letters.

Despite the relatively small risk of being deported to the Russian Federation, many refugees are leaving Poland. Some try to reach close relatives in other EU States. Many want to escape a specific threatening situation involving other Chechens in the centres. Others hope that they will be resettled as refugees in other EU countries since, in view of the lack of social and medical care in Poland, they see no other way out for themselves.

As a result of the introduction of the fingerprint matching facility in the EURODAC system on 1 May 2004, there is, however, unlike in the past, barely any chance of an asylum procedure being carried out in another EU country. The existentially hopeless situation is prompting some Chechen refugees to return 'voluntarily' to Chechnya.

When asylum seekers are returned to Poland on the basis of the Dublin II Regulation, the reasons that have induced those concerned to leave Poland are generally ignored. Such individuals are not always given an opportunity to put forward their motives to the Federal Office during a hearing. In the second half of 2004 alone, Poland received 1 320 resettlement applications from other EU States, 1 182 of which were approved.

Terms of imprisonment sometimes lasting several months are being handed down in Poland and Germany in connection with the illegal crossing of borders and to safeguard the return of those concerned. Refugees returned on the basis of EURODAC matches are in principle regarded in Germany as deportees. Many Chechen refugees have suffered extreme violence and lost members of their family. Early-morning deportations under police escort and imprisonments awaken memories of violent experiences and severe anxiety and result in further traumatising.

In view of this situation, the following central requirements arise:

- ◆ Additional EU resources are urgently required to improve reception and living conditions for asylum seekers and refugees in Poland. These should include schemes for refugees with short-term residence status at the end of the asylum process.
- ◆ The arrangements for traumatised individuals in Austria provide a positive example. Modelled on the Austrian example, special protective arrangements should be put in place for traumatised individuals and torture victims. In view of the fact that psychosocial and therapeutic care is not currently guaranteed in Poland the latter should not be returned to Poland as part of a Dublin procedure.
- ◆ Owing to the urgent need of many refugees for treatment and the problems in the Polish health system, structural aid to improve the system, which would also benefit asylum seekers, is required in particular.
- ◆ Support for the construction of the four new closed camps along the border using EU funds should be critically reviewed. Imprisonment at the beginning of the asylum process places extreme mental strain on refugees who have experienced persecution.
- ◆ In general, the practice of imprisoning refugees, sometimes for several months, for illegally crossing the border should be urgently reviewed. Ensuring that qualified advice is provided within the centres is a minimum requirement in this regard.

- ◆ The Dublin procedure should be transparent and comprehensible for refugees. Refugees should be informed of the legal principles, the sequence of events and the decision in good time. The existence of a EURODAC match should not lead to the Dublin procedure being followed almost automatically.
- ◆ Where an application for asylum is lodged in Germany, access to the initial hearing should be guaranteed in all cases in order to allow for an adequate examination of the humanitarian clause and other grounds militating against the asylum seeker being returned to Poland.
- ◆ Handovers pursuant to the Dublin procedure should take account of the fact that some refugees will have experienced extreme violence. Imprisonments and dawn raids by police can cause further traumatisation and should be avoided.
- ◆ An EU resettlement scheme for Chechen refugees – particularly to reunite families with children who have attained their majority and close relatives or to care for the seriously ill and trauma victims – is urgently required.
- ◆ Generous use of the right of autonomous entry and the humanitarian clause of the Dublin II Regulation for reuniting families are in keeping with the family and cultural needs of people of Chechen ethnic origin in particular. This aspect should be borne in mind as a matter of urgency and scope for taking advantage of these facilities should be utilised.

6 SOURCES

Annex (available from the authors)

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