Detention - Poland

Overview

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Relevant EU legislation

Poland is bound by the recast Asylum Procedures Directive (APD), the recast Reception Conditions Directive (RCD) and the Dublin III Regulation and has transposed their provisions through the following acts:

- The Act on granting protection to foreigners on the territory of the Republic of Poland of 13 June 2003 | Ustawa z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej, Dz.U. 2025 poz. 223 z późn.zm.
- The Act on Foreigners of 12 December 2013 | Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach, Dz.U.2021 r. poz. 2354 z późń. zm.
- The Ordinance of the Ministry of the Interior of 4 November 2015 on the form of application for international protection | Rozporządzenie Ministra Spraw Wewnętrznych z dnia 4 listopada 2015 r. w sprawie wzoru formularza wniosku o udzielenie ochrony międzynarodowej, Dz.U.2015 poz. 1859

National legislation

Poland transposed the recast Reception Conditions Directive (RCD), the recast Asylum Procedures Directive (APD) and the Dublin III Regulation through the Act on Granting Protection to Foreigners of 13 June 2003 | Ustawa z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej, Dz.U. 2003 Nr 128 poz. 1176, Dz.U.z 2012r., poz. 680 as amended by the Act of 10 September 2015 | Ustawa z dnia 10 września 2015 r. o zmianie

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ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw, Dz.U. 2015 poz. 1607.

Chapter 6 of the Act on Granting Protection to Foreigners covers the detention of asylum

Competent authority and stakeholders

Area	National authority/ stakeholder	Assistance to competent authority
Detention decision	Competent local court (*sąd rejonowy*) at the request of the Border Guard (Article 88b Act on Granting Protection to Foreigners)	N/a
Administration and management of detention facilities	Border Guard | Straż Graniczna	N/a
Information provision in detention	Return assistants	N/a
Interpretation services in detention	Border Guard | Straż Graniczna	N/a
Access to the procedure and provision of asylum information in detention	Border Guard | Straż Graniczna	N/a
Detention for the Dublin procedure	Competent local court (*sąd rejonowy*) at the request of the Border Guard (Article 88b Act on Granting Protection to Foreigners)	N/a

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Area	National authority/ stakeholder	Assistance to competent authority
Processing of asylum applications of applicants who are in detention	Office for Foreigners | Urząd do Spraw Cudzoziemców	N/a
Legal assistance and representation in detention	Lawyers, civil society organisations or international organisations providing assistance to foreigners	N/a
Review of detention	Competent regional court (Article 88b Act on Granting Protection to Foreigners)	N/a

Grounds for detention during the asylum procedure

Grounds for detention in national law

Detention in the context of identification or verification of identity

Article 8(3)(a) of the recast RCD was transposed through Article 87(1)(1) of the Act on Granting Protection to Foreigners, which provides that, if alternatives to detention cannot be applied, applicants can be detained to determine or verify their identity (e.g. applicants who refuse to reveal their identity).

In a situation where it is possible to establish identity based on a document presented by a third-country national, and the document does not raise any doubts as to its authenticity, the identity is considered to be established.

During the third-country nationals' stay in detention, activities are carried out to establish their identity, including the use of information systems, databases and external experts. The identity determination procedure is carried out in cooperation with the third-country national and with the support of the detention centre administration. A questionnaire is also drawn up to supplement the

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activities aimed at determining the third-country national's identity.

However, when the identity is established after the third-country nationals have been placed in a detention centre (e.g. they received documents while in detention), they are immediately released and referred to a reception centre.

Detention to determine elements on which the application for international protection is based, in particular where there is a risk of absconding

Article 8(3)(b) of the recast RCD was transposed through Article 87(1) of the Act on Granting Protection to Foreigners.

According to Article 87(1)(2) of the Act on Granting Protection to Foreigners, if alternatives to detention cannot be applied, applicants can be detained in order to gather information on the asylum claim from them that cannot be collected without detaining the applicants and there is a significant risk of absconding. Applicants can also be detained when there is a significant risk of absconding, in accordance with Article 28 of the Dublin III Regulation.

In the context of detention, Article 87(2) of the Act on Granting Protection to Foreigners defines the risk of absconding as:

- When applicants do not have identity documents while applying for international protection;
- Applicants who crossed or attempted to cross the border illegally, unless they arrived directly from a territory on which there are circumstances justifying a threat of persecution or serious harm, and they submitted an application for international protection immediately after crossing the border, providing credible reasons for the illegal entry;
- Applicants who entered Poland during a period in which they were listed as undesirable foreigners in Poland or recorded in the Schengen Information System in order to refuse entry.

Detention in the context of a procedure to decide on the applicant's right to enter the territory

Third-country nationals who declare their intention to apply for asylum during the border control are allowed to enter when it was not possible to receive their application for reasons attributable to the Border Guard. In such cases, the Border Guard shall inform the third-country nationals of the place and date when their application will be received.

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Detention takes place in connection with the grounds specified in Article 87(1) in order to establish identity, collect information on which the asylum application is based, issue and enforce a return decision, due to a threat to state security and public order, or transfer under the Dublin procedure.

A foreigner staying at a border crossing point is allowed to contact a representative of non-governmental and international organisations providing legal assistance.

Detention in the context of a return procedure

Article 8(3)(d) of the recast RCD was transposed through Article 87(1)(3) of the Act on Granting Protection to Foreigners according to which, if alternatives to detention cannot be applied, applicants can be detained in order to issue or execute a return decision, when there is a justified assumption that the international protection application was submitted only to delay or frustrate the return process. This ground may be applied in situations where detention was initially ordered to enforce a return decision, and the third-country national, aiming to delay that return, submits another application or a first application for asylum.

Article 330 of the Act on Foreigners of 12 December 2013 specifies the cases in which a return decision is not enforced and also when it is possible to enforce a return decision if the foreigner has submitted another application for asylum.

Detention in the context of national security and public order

Article 8(3)(e) of the recast RCD was transposed through Article 87(1)(4) of the Act on Granting Protection to Foreigners, which provides that, if alternatives to detention cannot be applied, applicants for international protection can be detained for security reasons.

In such cases, the authorities carry out an assessment to determine whether the third-country national poses a current and real threat to national defence or security, public safety and order, or to the interests of Poland.

Detention for the purpose of a Dublin transfer

Article 8(3)(f) of the recast RCD was transposed through Article 87(1)(5) of the Act on Granting Protection to Foreigners which stipulates that, if alternatives to detention cannot be applied, applicants can be detained when there is a significant risk of absconding, in accordance with Article 28 of the Dublin III

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Regulation.

In the context of detention, Article 87(2) of the Act on Granting Protection to Foreigners defines the risk of absconding as likely in particular where:

- Applicants do not have identity documents while applying for international protection;
- Applicants who crossed or attempted to cross the border illegally, unless they arrived directly from a territory where their life or freedom was threatened by persecution or a risk of serious harm and they submitted an application for international protection immediately after crossing the border, providing credible reasons for the illegal entry;
- Applicants entered Poland during a period when they were registered in the list of undesirable foreigners in Poland or in the Schengen Information System for the purpose of refusing entry and stay.

Less coercive measures (alternatives to detention)

According to Article 88(a)(3) of the Act on Granting Protection to Foreigners, placing a third-country national in a guarded centre for foreigners is not possible when:

- It could endanger the person's life or health;
- The psychophysical condition may justify a presumption that they have been subjected to violence;
- They are unaccompanied minors or persons with disabilities.

In these cases, alternative measures to detention may be applied. More specifically, the person may be obliged to:

- Report at specified intervals to a designated authority (Article 88(1)(1) of the Act on Granting Protection to Foreigners);
- Pay a financial security in a specified amount, not lower than twice the minimum wage established under the provisions on the minimum wage for work (Article 88(1)(2) of the Act on Granting Protection to Foreigners);
- Reside in a designated place (Article 88(1)(3) of the Act on Granting Protection to Foreigners);

According to Article 88(2) of the Act on Granting Protection to Foreigners, the decision on the application of alternative measures to detention is issued by the

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Border Guard authority that detained the applicant. The decision may adopt one or more alternative measures to detention (Article 88(3) of the Act on Granting Protection to Foreigners) and may be appealed within 7 days from its date of service to the district court competent for the seat of the Border Guard authority that issued the decision. The court must examine the complaint within 7 days (Article 88(2) of the Act on Granting Protection to Foreigners).

The most frequent alternative is the requirement to reside at a designated place, usually the reception facility, from which feedback is received as soon as the third-country national voluntarily leaves the facility. In a return procedure, the most common alternative is the obligation to report to the Border Guard unit indicated in the decision.

Deposit or surrender of documentation is also used in Poland.

If the person does not comply with the measures, they may be detained (Article 88(4) of the Act on Granting Protection to Foreigners)

Application for international protection and processing while in detention/impact on the asylum procedure

A person subject to detention has the same rights in the asylum procedure as a person who is not detained (access to information, legal counselling, interpretation). The authority conducting the proceedings sets a date for an individual interview.

The head of the guarded centre or the officer responsible for the functioning of the detention facility for foreign nationals must allow the applicant to have contact with civil society organisations that provide legal assistance and with UNHCR in conditions that do not breach the right to privacy (Article 89(a)(1) of the Act on Granting Protection to Foreigners). Such contact may be limited for reasons of security and public order and in such a case the decision of the head of the guarded centre or the officer responsible for the operation of the detention facility is final (Article 89(a)(2) of the Act on Granting Protection to Foreigners).

The decision on the application is delivered by the centre's administration or to the foreigner's representative, if one has been appointed. However, the authority conducting the proceedings must always notify the administration of the centre of the decision. On this basis, the centre's administration informs the third-country national of their legal situation and the decision issued.

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If the basis for detention was the issuance and enforcement of a return decision, the person remains in detention until a final decision on international protection is issued. If the applicant is subject to the first procedure, the period of detention may not exceed six months, unless a negative final decision has been taken in the case. In that case, the person may remain in detention until the return decision is implemented. The basis for the detention will then be the return procedure.

After submitting an application while in detention, the person is not released because the original reason for detention was the return procedure, and the submission of an application by the foreigner was to result in its suspension.

Return decisions are not enforced when the third-country national has applied for asylum, unless it is a subsequent application.

A person released from a guarded centre who is in the asylum procedure receives written information about the obligation to report to the reception centre of the Head of the Office for Foreigners within two days from the date of release from the centre. A person released from a guarded centre shall be issued with a temporary foreigner's identity certificate from the deposit, which, during its period of validity, confirms the foreigner's identity and entitles them to stay in the territory of the Republic of Poland for the duration of the asylum procedure.

Procedural safeguards

Access to information and interpretation

Applicants are informed of the reasons for their detention, the possibility to appeal and their rights (e.g. right to a legal representative). Information about the reasons for detention is given orally in the court and then translated into a language the applicant can reasonably understand.

The rights of persons detained under Polish law are regulated by the provisions of the Criminal Code (Ustawa z dnia 6 czerwca 1997 r. Kodeks karny). The detention of a foreigner is governed by the provisions of the Code of Criminal Procedure (Ustawa z dnia 6 czerwca 1997 r, Kodeks postępowania karnego). Article 245 of the Code of Criminal Procedure sets out the rights of a detained person.

In all centres, information boards are placed in the corridors on each floor, providing details about applicants' rights and contact information for NGOs in at

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least one or two foreign languages, generally Russian and English.

Legal assistance and representation

Each detainee in all detention centres is assigned a return assistant, a Border Guard officer whose task is to keep the detainee informed about the developments with their case.

The law foresees free legal assistance for the purpose of a judicial review of detention orders for those who prove that they do not have any financial means. There is no specific legal assistance provided to detained applicants by the state (from public funds). Foreign nationals may however contact NGOs or international organisations which provide legal assistance. In practice, detainees rely on limited free legal aid provided by NGOs through external funding.

In all centres, information boards are placed in the corridors on each floor, providing details about applicants' rights and contact information for NGOs in at least one or two foreign languages, generally Russian and English.

Length of detention

According to Article 89 of the Act on Granting Protection to Foreigners, local courts can issue detention decisions for a period of up to 60 days.

When applying for international protection in detention, the period of detention is prolonged if the grounds for detention are still met. In that case, the applicant's stay in the detention facility is prolonged up to 90 days from the day of lodging the application (Article 89(2) of the Act on Granting Protection to Foreigners).

If during these 60 or 90 days, no final negative decision is issued and the grounds for detention are no longer met, the applicant must be released.

The total period of detention should not exceed 6 months for asylum applicants. People in return procedures can be detained for up to 18 months.

Apprehension prior to the actual detention: According to Article 394 of the Law on Foreigners, third-country nationals apprehended by the Border Guard or by the police can be stopped for a period not exceeding 48 hours (*zatrzymanie*). Within these 48 hours, the Border Guard requests the local court to place the person in detention. The court must decide to either detain or release the person

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within 24 hours and has an obligation to hear the applicant before making a decision.

Applicants subject to Dublin procedures: People who are subject to a Dublin transfer decision may be initially detained for a period of 60 or 90 days, for a maximum of 6 months.

Rejected applicants/persons pending return: As a general rule, the period of detention of irregular migrants (including rejected applicants subject to removal) should not exceed 6 months. This period may be extended by up to 12 months, if there are reasonable grounds to believe that the enforcement of the return decision is likely to last longer due to:

- Lack of cooperation of the person with the Border Guard in the execution of the return decision.
- Temporary inability to enforce the return decision due to delays in obtaining necessary documentation for this purpose from third countries.

The maximum detention period may therefore reach 18 months for people in return procedures. It is not possible to re-detain a person issued a return order after release from detention if the maximum period of detention has been exhausted. It is however possible to apprehend them for a period not longer than 48 hours to enforce the return decision (*zatrzymanie*), if new circumstances which could lead to the removal of the person arise.

Judicial review of detention

The law provides for a judicial review of the lawfulness of detention. Applicants can appeal against the local court detention decision before a district court. The appeal must be lodged in Polish and within 7 calendar days from the day of the ruling.

Decisions to extend detention can also be challenged within 7 days from the notification of the ruling to the applicant (Articles 88(2) and 88(b) Act on Granting Protection to Foreigners).

Applicants are informed of the reasons for their detention, the possibility to appeal and of their rights (e.g. right to a legal representative). Information on the reasons for detention is given orally in the court and then translated into a language the applicant can reasonably understand.

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The district court has 7 days to examine the appeal. The court issues the decision after hearing the applicant (Articles 88(2) and 88(b) Act on Granting Protection to Foreigners).

Regional (ordinary) courts have jurisdiction for second appeals (Article 88(b) Act Protection of Foreigners and Article 403(8) Law on Foreigners).

For wrongful or unjustified detention, every individual is entitled to compensation and redress from the State Treasury (Article 407 Law on Foreigners).

Specific conditions relating to detention

Conditions of detention

Access to outdoor space: Access to outdoor space is not limited, and all guarded centres are equipped with a sports and recreational space (e.g. basketball hoop, soccer grounds, volleyball or football goals, tennis nets, fitness devices, open gym). Applicants are allowed to move freely during their free time (between 6:00-22:00).

Applicants held in rigorous detention facilities (*areszt dla cudzoziemców*) are not allowed to freely move around the centre and only have access to the outdoor space for 2 hours per day.

Visitors/access to external communications: Visitor's access to detention centres is not strictly limited. Detainees have the right to:

- Contact Polish authorities, diplomatic or consular missions from foreign countries;
- Contact civil society organisations or international organisations providing assistance to foreigners, including legal assistance;
- Contact and see their representatives (counsels or attorneys) in conditions which respect the right to privacy;
- Receive visits by relatives in specially designated rooms, with the consent of the manager of the facility.

Visits take place 7 days a week during visiting hours and in designated rooms, but there is no limitation to the frequency. Visits should not exceed 90 minutes and they can be prolonged in justified cases (e.g. if recommended by a psychologist). Two adults per visit are allowed, whereas the number of children is

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not limited. If a detainee or a visitor behaves inappropriately at the time of the visit, the visit may be interrupted.

As a general rule, non-scheduled visitors, except for UNHCR, do not have the possibility to meet with the applicant.

The visits may be contingent on the approval of the Border Guard in charge of the facility. In general, media, politicians and civil society organisations who want to meet with more than one or unspecified applicants or monitor conditions in a detention centre must obtain consent from the centre's director. In the case of monitoring, representatives from civil society organisations have access to all rooms in the detention facility (except for places which must not be entered due to medical concerns, e.g. medical isolation cells).

Applicants have a right to communicate with UNHCR or NGO representatives. Such contact can be limited by the director of the detention centre if necessary to ensure safety and public order or to observe the rules in the centre.

Use of mobile devices and access to internet: Detainees are authorised to use mobile phones, but they cannot register sound or picture or transmit this data. The Border Guard officials can provide detainees with substitute cell phones without a camera if they only have smartphones. Phone calls are not subject to any supervision. Access to the Internet and computers are available in all centres. For security reasons, restrictions have been applied on computers, e.g. blocking social media sites, instant messaging applications and websites with extremist or terrorist content.

Access to education (school for minors, language courses, etc.): Compulsory education in Poland applies also to children staying in guarded centres, until they reach the age of 18. As a result of agreements between the Border Guard, educational institutions, local authorities and schools near the detention centre in Lesznowola delegate teachers to work in detention facilities. Education can be limited to several hours per day. Due to the limited number of hours, education mainly concentrates on natural and social sciences, Polish and artistic activities.

Educational sections in guarded centres organise additional classes for children, e.g. art classes, sports activities for children and adults, as well as additional activities for adults, e.g. Mother's Day, Father's Day, Refugee Day. Language classes for both adults and children are also scheduled daily.

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Opportunity to leave the detention facility: It is not possible to leave the facilities. If needed (e.g. due to health issues), detainees are transported by the Border Guard. No regular leave provision is in place.

Language support (translation and interpretation services): Translation and interpretation services are provided in detention facilities by Border Guard officers. Information on the centre's rules, detainees' rights, contact details of NGOs and access to the doctor and psychologist are generally provided in at least one or two main foreign languages (Russian and/or English), depending on the centre.

The rules of stay in the detention centres are available in 16 languages: Arabic, English, Ukrainian, Russian, French, Armenian, Chinese, Georgian, Hindi, Spanish, Mongolian, Turkish, Farsi, Urdu, Bengali and Vietnamese.

Medical care: All newly-admitted foreigners must undergo a medical examination and, if necessary, treatment. All detainees have access to regular healthcare under the same terms and conditions as Polish citizens. All detention facilities have medical staff, at least one physician and one nurse. For an emergency or a need for a specialist, detainees are transferred to a hospital or clinic. Minors also undergo preventive and periodic examinations under the same conditions as minor Polish citizens. They are also provided access to periodic vaccinations.

In general, doctors in detention facilities speak foreign languages (e.g. Russian, English). Border Guard employees working in the Education Section of the facility often assist in providing translation when necessary for medical visits.

There is access to psychological care, and some detention centres hire Border Guard officials who are psychologists. In all detention centres, information on the availability of medical and psychological care is displayed on boards in the corridors.

Rooms: The rooms are usually meant to accommodate 2-4 people. However, the maximum number of persons accommodated in one room is calculated based on the principle: minimum of 3 m2 for a man and 4 m2 for a woman or minor. Concerns regarding room arrangements have been voiced by NGOs and the Commissioner for Human Rights (e.g. the use of bars at the windows and lack of blinds).

Rooms are furnished according to their size.

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Leisure/recreational areas and activities: There are separate rooms for work or leisure (e.g. leisure rooms with radio, TV and DVD players, video game consoles, library with books and newspapers, dictionaries, handbooks, maps in different languages, computer room).

Access to laundry facilities is free 24h/7.

All guarded centres have a sports and recreation area and a dedicated section (Teaching and Education Section) to organise leisure activities (sports and cultural events, e.g. tournaments are organised either by the Border Guard or in cooperation with external service providers).

Detention centres also have rooms for religious practices.

Monitoring: Conditions in detention centres are monitored on a regular or ad hoc basis by various stakeholders, including:

- Penitentiary judges (at least once every 2 years);
- Border Guard Headquarters, within the framework of the supervision of the Commander-in-Chief of the Border Guard;
- Commissioner for Human Rights (*Rzecznik Praw Obywatelskich*) within the framework of Poland's National Preventative Mechanism;
- United Nations within the framework of the United Nations Subcommittee on Prevention of Torture (CAT, SPT);
- Council of Europe within the framework the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT);
- Civil society organisations.

Detention of applicants with special needs

Legislative overview

Article 13 of the Reception Conditions Directive 2024/1346 sets out the requirements for the detention of applicants with special reception needs. The new provision adds the following safeguards:

- No detention of applicants with special reception needs whose physical and mental health would be put at serious risk.

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- No detention of minors, unless there are exceptional circumstances and after an assessment of alternatives to detention and the best interests of the child.
- Right to access education for minors while in detention.
- Detained families must be kept together and in a separate accommodation to ensure adequate privacy.

In Poland, Article 88(a)(3) of the Act on Granting Protection to Foreigners provides that detention is not possible if:

1. This could result in danger to the person's life or health;
2. The psychophysical state may justify the presumption that the person has been subjected to violence;
3. The person is an unaccompanied minor or person with disabilities.

Minors: The guarded centre in Lesznowola, which has a maximum capacity of 200 places, may accommodate families with children and unaccompanied minors. For information on their access to leisure activities, see Section 4.2. on Conditions of detention.

Family-oriented detention centres are adapted to accommodate families with children. This involves ensuring all necessary guarantees, including the right to education, leisure time, and games and activities tailored to children's psychomotor development. The staff are trained to work with children. In their decisions, the courts indicate that parents cannot be separated from their children and that detention with the biological family does not affect the child's psychophysical development.

Applicants with health or mental health issues: If a person's mental or physical condition deteriorates during detention, the attending physician may prescribe individualized treatment. In such cases, the social worker and psychologist receive specific recommendations for treating the person. If the person's mental and physical condition do not improve, the physician may prescribe further treatment, including the possibility of hospitalisation. The decision is always made by a medical doctor.

Female applicants: There are no special guarantees for women. Where possible, activities involving female applicants are carried out by a woman.

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