



In March 2023, the EUAA organised a Thematic Workshop on Legal Assistance and Representation in the Asylum Procedure. Key stakeholders, including lawyers and civil society organisations, participated to share knowledge, good practices and challenges in the functioning of the Common European Asylum System.

The following article is based on a presentation given at the event.

Legal Assistance for Asylum Seekers Detained in Poland

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The [Association for Legal Intervention \(*Stowarzyszenie Interwencji Prawnej* – SIP\)](#) is a Polish professionalised NGO established in 2005 with the aim of combating social exclusion, as well as protecting and advancing the rights of third-country nationals. SIP provides legal assistance in immigration detention centres and within the state legal aid system for asylum seekers. SIP also regularly represents foreigners in domestic detention proceedings and in immigration detention cases brought before the ECtHR.

1. Detention of asylum seekers

Asylum seekers are regularly detained in Poland.¹ Domestic law on immigration detention is broadly interpreted and applied in practice. Asylum seekers are frequently deprived of liberty automatically, without a rigorous scrutiny of their individual situation and a proper assessment of the available alternatives to detention. In addition, the best interests of the child are often not taken into account.²

Worryingly, children are deprived of liberty in Poland.³ The detention of families with children is allowed pending both asylum and return proceedings. The European Court of Human Rights

¹ In 2022, 1,946 third-country nationals, including asylum seekers, were placed in Polish immigration detention centres. The number of detained asylum seekers is not publicly known. See SIP, [SIP w działaniu. Raport z działalności Stowarzyszenia Interwencji Prawnej w 2022 r.](#), September 2023, p. 29.

² See K. Rusiłowicz, E. Ostaszewska-Żuk, M. Łysienia, [AIDA: Poland 2022 Update](#), ECRE 2023, pp. 87-88, 96.

³ In 2022, 210 minors, including 45 unaccompanied minors, see SIP, [SIP w działaniu](#), op. cit., p. 29.

(ECtHR) has already criticised this in several judgments.⁴ Moreover, according to the law, asylum-seeking unaccompanied minors should not be detained, but in practice they are placed in the detention centres, for example when their age is contested by the Polish authorities or when no places are available in foster care.⁵

There are no detention facilities intended only for asylum seekers. All third-country nationals are deprived of liberty in six immigration detention centres managed by the Border Guard.⁶ Additionally, the arrest in Przemyśl has a stricter regime, where third-country nationals are placed if there is a risk of them not observing the rules in a regular detention centre.

Asylum seekers are placed in detention centres that are very much of a prison-like character. These conditions are surely not suitable for children, as already has been confirmed by the Polish Commissioner for Human Rights and the ECtHR.⁷ Moreover, providing only 2 m² per detainee – against international human rights standards – has been allowed since 2021 and is applied in practice.⁸

Taking into account these facts, it is clear that having access to legal assistance in detention is indispensable. Moreover, all asylum seekers, including detained ones, need to be advised about asylum proceedings.

2. Legal aid for asylum seekers

Asylum seekers, including asylum-seeking detainees, can receive state legal aid, but only during an appeal of the decision on international protection.

Before the Refugee Board (thus, at the administrative appeal stage), they can obtain assistance from attorneys-at-law or lawyers working in NGOs (there are only three organisations, including SIP), who are contracted by the Office for Foreigners. Access to this assistance is not dependent on the financial situation of asylum seekers and they can choose a lawyer from the list provided by the Polish authorities. Despite that, not many asylum seekers benefit from this assistance in practice. In 2022, only 11% of appeals had legal assistance.⁹

Before courts (during the onward appeal on the asylum proceedings), asylum seekers can request to access the general legal aid system for indigent persons (the same as for Poles). In 2022, the Provincial Administrative Court in Warsaw, which adjudicates on cases concerning international protection at the first instance, granted access to legal aid in 30 asylum cases

⁴ See for example ECtHR, *R.M. and Others v Poland*, No 11247/18, 9 February 2023; SIP, [ETPCz: detencja matki z dziećmi narusza prawo do obrony i prawa człowieka](#), 25 April 2023.

⁵ See SIP, SIP w działaniu, op.cit., p. 33; ECRE, [Seeking Refuge in Poland: A Fact-Finding Report on Access to Asylum and Reception Conditions for Asylum Seekers](#), April 2023, p. 28.

⁶ With a capacity of almost 1,200 places at the end of 2022, see K. Rusiłowicz, E. Ostaszewska-Żuk, M. Łysienia, op. cit., p. 102.

⁷ Commissioner for Human Rights, [Do strzeżonych ośrodków nie powinny trafiać m.in. rodziny migrantów z dziećmi. Marcin Wiącek pisze do polskich sądów](#), 2 February 2022; ECtHR, *Bistieva and Others v. Poland*, no. 75157/14, 10 April 2018, par. 84.

⁸ SIP, SIP w działaniu, op.cit., p. 29; K. Rusiłowicz, E. Ostaszewska-Żuk, M. Łysienia, op. cit., pp. 84-85.

⁹ K. Rusiłowicz, E. Ostaszewska-Żuk, M. Łysienia, op. cit., p. 32.



and denied it in 33 cases.¹⁰ Legal representation in court proceedings concerning detention is also rarely provided by the state.¹¹

To some extent, gaps in the provision of legal assistance for asylum seekers are filled in by NGOs, including SIP. In fact, Polish NGOs are effectively cooperating to make sure that some legal assistance is available in all detention centres. However, providing legal assistance therein is challenging in practice.

3. Access to legal assistance in detention centres

3.1. Providing legal assistance in person

Lawyers working in NGOs can personally access detention centres but only upon an earlier agreement with the Border Guard. A room where detainees can discuss their legal issues with an NGO representative is made available on a set date. Lawyers cannot access the centre beyond that room, for example to actively seek detainees who are in need of legal assistance. Moreover, some detention centres require a list of detainees interested in legal advice in advance of the consultation, which limits the access of the lawyer to only pre-registered third-country nationals.

Often, there are more third-country nationals interested in being advised than a single lawyer can manage on a particular day. However, visiting a detention centre by more than one lawyer is not possible in practice for two reasons. First, NGOs have a limited capacity and funds. Second, the Border Guard insists that only one room can be made available to lawyers working in NGOs. Meanwhile, providing legal assistance in the same room at the same time to unrelated asylum seekers would violate their rights. Understandably, third-country nationals may be unwilling to share their stories and reasons to seek asylum in the presence of other detainees.

The Border Guard regularly interferes with the privacy of legal consultations provided in the detention centres. Lawyers visiting the centres report that they are being watched by the Border Guard officers through cameras installed in the rooms used to provide legal advice. It is unknown whether these cameras register only image or also sound. Moreover, the Border Guard officers regularly enter these rooms during legal consultations. Furthermore, in at least one centre, the walls of the room intended for providing legal aid are so thin that in all likelihood the Border Guard can hear the lawyer and detainee's discussion while standing outside.

¹⁰ Ibid.

¹¹ Ibid., 120-121; ECRE, *Seeking Refuge in Poland*, op. cit., p. 27.



If needed, interpretation must be organised by the NGO providing legal assistance. The interpreters are predominantly contacted by the lawyers through the Internet or by phone, but a poor reception in some of the detention centres frequently hinders an effective communication. Moreover, costs of the interpretation most often are incurred by the NGOs. Only if the lawyer provides assistance within the legal aid system for asylum seekers (so in a limited number of cases), these costs can be covered by the Office for Foreigners. However, the Office for Foreigners has refused incurring interpretation costs in the past. SIP successfully challenged this approach before the Polish courts.¹²

Lastly, gathering evidence is hampered in the case of detained asylum seekers. They have their belongings, in particular smartphones (with photos that may serve as important proof in the asylum proceedings), deposited, with limited access during their stay in the detention centre. Thus, asylum seekers cannot freely and at any time show all evidence to their lawyer. Moreover, lawyers are not allowed to take any photos while in the detention centre. Meanwhile, asylum seekers often have marks on their body proving that they were subjected to violence or ill treatment in the past. Photos of such markings may be of importance not only in the asylum procedure but also in the proceedings concerning the detention itself. Under Polish law, victims of violence cannot be detained. Furthermore, in recent years, the Border Guard have been denying access to detention centres to psychologists working for NGOs.¹³ Before, these independent psychologists not only supported detainees but also assessed their psychological condition and prepared expert opinions for asylum authorities and courts deciding on immigration detention.

3.2. Providing legal assistance remotely

Due to the distant location of immigration detention centres, NGOs provide legal assistance most often remotely: via phone or the Internet (Skype, email).

As mentioned above, smartphones of detainees are deposited; their use is prohibited in the detention centres. Only old phones are permitted, which cannot record sound and images and have no access to the Internet. They are provided by the Border Guard (without a SIM card), but sometimes third-country nationals must share a phone. Others have difficulty with obtaining a SIM card. In some detention centres, the reception is also very poor.¹⁴ All these conditions affect the communication with a lawyer.

Moreover, detainees struggle to access the Internet. In all detention centres, computers with Internet access are provided, however their number is not sufficient, they are accessible daily for a limited time, and third-country nationals often must queue to use them. Printers and scanners are also not easily accessible. While important legal documents, including appeals that must be signed by a detainee, are predominantly sent by NGOs by email, access to the Internet and a printer is key for providing effective legal assistance and making sure that

¹² SIP, [Wygrana w NSA w sprawach dotyczących odmowy zwrotu kosztów tłumaczenia](#), 21 December 2021.

¹³ SIP, [SIP files a complaint against the refusal to admit psychologists to guarded centres](#), 1 July 2022; SIP, SIP w działaniu, op. cit., pp. 30-32; ECRE, *Seeking Refuge in Poland*, op. cit., pp. 27-28.

¹⁴ K. Rusiłowicz, E. Ostaszewska-Żuk, M. Łysienia, op. cit., pp. 110, 117-118.



asylum seekers benefit from the available remedies in practice. Such access is not sufficiently provided in Polish detention centres.¹⁵

Not only receiving legal documents is hampered in detention centres. Sending them to the administrative authorities and courts is also hindered. Asylum seekers cannot post them by themselves; they must ask the Border Guard managing the detention centre to send it for them. It has been reported that the Border Guard submitted these documents with a delay, in some cases violating a time limit for making an appeal in asylum proceedings or for challenging the court's decision on the prolongation of the detention period.

4. Conclusions and ways forward

Asylum seekers struggle with accessing legal assistance in Polish detention centres.¹⁶ The gaps in the legal aid systems which are available to asylum seekers (i.e. the lack of legal aid in first instance administrative asylum proceedings, and legal aid being rarely used in the appeal procedures and detention proceedings) are filled in by the NGOs, including SIP, to some extent. However, in practice, lawyers working in NGOs and detainees themselves must overcome numerous obstacles to effectively provide and receive legal assistance in detention centres. The identified difficulties include: the insufficient number of lawyers providing advice in detention centres, a lack of privacy, interpretation costs and quality, hindered evidence-gathering, hampered remote communication, and delayed submission of documents by the Border Guard.

While improving access to legal assistance in immigration detention centres is much dependent on the Polish authorities' willingness to alter the respective law and practice, NGOs also try to make some changes in this area. In 2023, in addition to its ongoing strategic litigation, SIP organised two training sessions for lawyers who want to support detained third-country nationals, including asylum seekers.

The first training aimed at increasing the number of qualified lawyers advising third-country nationals during their stay in a detention centre and after their release.¹⁷ The training focused on seeking redress for unlawful detention before the domestic courts and the ECtHR. It has been shown that the ECtHR's judgments change (at least) the practice of the court whose rulings were found to violate the European Convention on Human Rights (ECHR).¹⁸ Bringing more cases before the ECtHR, with regard to various domestic courts' decisions, may eventually lead to a more systemic change.

¹⁵ Ibid., pp. 85, 110, 118.

¹⁶ Hampered access to legal information and counselling in Polish detention centres was also noticed by the UN Special Rapporteur on the human rights of migrants upon his visit to Poland in 2022, see [Visit to Poland Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales](#), April 2023, p. 15.

¹⁷ SIP, [Rusza nabór do Szkoły Doskonalenia Praktyków Prawa](#), 13 December 2022.

¹⁸ SIP, SIP w działaniu, op. cit., p. 33.





The second training aimed at engaging more legal professionals in being guardians of unaccompanied minors.¹⁹ For now, the number of guardians is gravely insufficient. Asylum-seeking unaccompanied minors should not be detained, however, to apply for asylum a minor needs to have an appointed guardian.²⁰ Thus, a protracted search for an available guardian often leads to a prolonged detention of an unaccompanied minor. Hopefully, our project will result in better legal representation of unaccompanied minors in Poland and, consequently, to their reduced detention.

¹⁹ SIP, [Ruszamy z projektem „System wsparcia przyjmowania małoletnich migrantów bez opieki w Polsce”](#), 14 September 2023.

²⁰ SIP, SIP w działaniu, op. cit., p. 23.

