



The Halina Nieć

Legal
Aid
Center

INFORMATION
FOR PERSONS SEEKING
INTERNATIONAL PROTECTION
IN POLAND

INTERNATIONAL PROTECTION IN POLAND

Foreigners who fear that their return to their country could put them in danger of persecution and serious harm, have the right to apply for international protection in Poland. There are two types of such protection – refugee status and subsidiary protection.

REFUGEE STATUS

Refugee status is a form of international protection granted to a person who has a well-founded fear of persecution in their country. This fear must be connected to one of five reasons:

1. race,
2. religion,
3. ethnicity,
4. political views or
5. membership in a particular social group

SUBSIDIARY PROTECTION

Subsidiary protection is granted to a person who does not qualify for refugee status but still could face a risk of serious harm if returned to the country of origin. For example:

1. Death sentence or execution,
2. torture, inhumane or degrading treatment or punishment,
3. severe, individual threat to their life or health, resulting from military conflict (war).

HOW TO APPLY FOR PROTECTION?

The application for international protection must be submitted through the Border Guard. Such an application can be made at the border crossing, after entering Poland, or even after having been placed in a guarded center (detention).

To ask for international protection, you must communicate this clearly to the Border Guard. The Border Guard will accept the application immediately. However, **if for**

various reasons this is not possible (e.g. due to the lack of the necessary translator or exceptionally large number of applications), a Border Guard officer informs the foreigner in writing in a language he understands about the date and place of receiving the application (maximum within 3 working days) and accepts the so-called **declaration of intention to submit an application**. A translator is made available to the applicant, if necessary.

If you cannot personally appear in the Border Guard unit (e.g. you are a child placed in foster care, a disabled person, an elderly person, a pregnant woman, a single parent, or in case of hospitalization, custody, penal institution), you should express **in writing your willingness to submit an application and send it to the nearest Border Guard unit by post or e-mail**. In such a case, the Border Guard also accepts the application within a maximum of 3 working days upon receipt of the foreigner's letter.

Minor children of adult applicants should be included in the application of their legal guardians (usually their parents).

APPLYING FOR PROTECTION

During the application process, all documents need to be presented, including travel and identity documents, along with any proof relevant to the case. **The application should also include an explanation as to why the applicant needs protection and why they fear returning to their country of origin.**

The Border Guard takes a photograph, collects fingerprints, then deposits the travel document. The Border Guard will issue a new document - a **Temporary Foreigner's Identity Certificate (TZTC)**. This document does not allow the applicant to cross the border. During a whole procedure, the applicant should remain on the territory of Poland. Moving to another EU country before the procedure is completed will result in sending this person back to Poland.

DURATION OF THE PROCEDURE

In principle, **the decision on granting protection should be issued within 6 months, unless the case is particularly complicated, in which case the procedure may take longer.** In this case, you can apply to the Head of the Office for Foreigners for a **certificate authorizing to work in Poland.** Such certificate allows you to legally work on the territory of Poland.

INTERVIEW

An important part of the procedure is the so called **status interview.** This interview takes place in the Office for Foreigners in Warsaw. If the applicant is in a guarded center (detention), the interview may be carried out **remotely, in the form of a videoconference.** The foreigner is entitled to an interpreter. The purpose of the interview is to gather **detailed explanation of the reasons, for which the applicant seeks international protection.** On this basis, migration officials can learn, what exactly has happened in the applicant's life and why is it so dangerous for this person to go back to the country of origin. All important evidence should be submitted to the Office for Foreigners at this stage. The applicant should describe his/her personal situation. This is a key step in the procedure of international protection, because the authorities deciding on protection will later compare the short information provided when submitting an application for protection to the Border Guards with the status interview. This means that both interviews should be coherent, logic and reliable. The more detailed the applicant's answers will be, the better. The interview is recorded in a written protocol, in the form of questions and answers. This protocol is also signed by the foreigner with possibility of submitting comments in case of uncertainty or misunderstanding of the question.

THE DECISION AND RELATED APPEALS

Applications for international protection are in the first instance examined by the **Head of the Office for Foreigners.** If the the decision is negative, the foreigner can appeal to the **Refugee**

Council. A written appeal should be submitted within the time limit specified in an instruction attached to the decision (usually within **14 days from receiving the decision**). The Refugee Council has a deadline of one month to make a decision, however, in some instances the deadline may be delayed.

As a rule, **in the case of a second negative decision, a foreigner should leave the territory of Poland within 30 days** from the day of receipt of the final decision.

THE ADMINISTRATIVE COURT

If the decision of the Refugee Council is also negative the foreigner can make another appeal to the Voivodeship Administrative Court in Warsaw, which will verify the fairness of proceedings. The Court may repeal the negative decision in question, after which the case is once again reviewed by the Office for Foreigners or the Refugee Council. The proceedings in the Administrative Court may take several months. **After submitting a complaint to the Administrative Court, a foreigner has right to apply for ex-officio attorney (paid by the state).**

LEGAL ASSISTANCE

During the procedure for international protection, the foreigner is entitled to receive free legal information in proceedings before the Head of the Office for Foreigners and free legal aid provided by attorneys, legal advisors and non-governmental organizations listed by the Office for Foreigners. Additionally, free legal advice is provided by several organizations that are not on the list, their contact information is available in the instruction which the Border Guard hands to the foreigner during admission.

DETENTION

The applicant for international protection can be, in certain cases, detained (e.g. if it is necessary to establish the identity of the applicant or to gather necessary information for the application, or for reasons of security and public order). A

decision to place a foreigner in detention is made by the Court. The Court may also decide to use the so called alternative measures, instead.

Alternative measures are: the duty to report regularly to a Border Guard unit, to stay at a particular address or to pay a specific bail. The Court can however decide to place the foreigner in a guarded center or arrest for foreigners. A complaint can be filed against the District Court's decision within **7 days** (starting from the day of receiving such decision with its translation) to Regional Court. The time of detention in the guarded center may be later extended by the Court. The total detention period during the proceedings for international protection **can amount up to 6 months**, while the total detention period during the return procedure – **up to 18 months**, however, only in certain cases, when the foreigner does not cooperate with the Border Guard authority regarding their return, or when there are delays in obtaining the travel document.

Detention is not applied when there's a confirmed reason to believe that the stay in the guarded center could pose a threat to the foreigner's life or health, or if the foreigner has previously been subjected to violence or is a person with disability.

UNACCOMPANIED MINORS

An unaccompanied minor who has applied for international protection should not be placed in a guarded center. Minors in return procedure who are at least 15 years old may be placed in a guarded center, but only if their physical and mental state allows it.

THE RETURN PROCEDURE

During the first application for international protection, the foreigner cannot be sent back to their country of origin. After the procedure is completed and the final decision is negative, a return procedure may be started.

The return procedure is carried out by the Border Guard. The foreigner may be placed in a guarded center while awaiting for return.

During the procedure, the Border Guard examines, whether safe return to the country of origin can be ensured. If there are serious reasons preventing the return of a foreigner to the country of origin - the provision of one of two special types of residence permits: **humanitarian stay permit or tolerated stay permit**, is possible

HUMANITARIAN STAY PERMIT

A foreigner can be granted a residence permit on humanitarian grounds, if obligation to return:

1. can only be directed to a country in which:
 - a. their right to life, freedom and personal security would be threatened, or
 - b. they could be submitted to torture, inhumane or degrading treatment or punishment, or
 - c. they could be forced into labor, or
 - d. they could be denied the right to a fair trial or be punished without legal justification, or
2. would infringe on their right to family or personal life, or
3. would infringe on their child's rights to an extent significantly hazardous to their psychophysical development.

TOLERATED STAY PERMIT

Permission for tolerated stay is granted to a foreigner if obligation to return:

- 1) may only be made to a country where:
 - a) his right to life, liberty and personal security would be threatened, or
 - (b) he would be subject to torture or inhuman or degrading treatment or punishment, or
 - c) he might be forced to work, or

d) he could be deprived of the right to a fair trial or punished without a legal basis

- if there are circumstances to refuse to grant a humanitarian stay permit;

2) is impossible for reasons beyond the control of the authority competent to enforce the decision obliging the foreigner to return and of the foreigner, or

3) may only be made to a country to which is impossible to hand over the foreigner under a court decision or due to the decision of the Minister of Justice on the refusal to hand over a foreigner.

DUBLIN REGULATION

The Dublin procedure aims to determine which EU country is responsible to examine the application for international protection. To this end, various criteria are used, including criterion of the state of the first application or criterion of family members. Therefore, when submitting an application for international protection, it is very important to provide all information on your family members remaining in other EU countries. **As a general rule the applicant should stay in the first EU country that he/she entered until his protection procedure is completed. If a foreigner leaves Poland during the protection procedure, he or she may be sent back to Poland again.** In this case, the foreigner may be placed in a guarded center.

If the foreigner has a **close family member** in any other EU country (a spouse or a partner, or a minor child), and that family member did receive international protection in that country, or applied for it and is waiting for a decision, the foreigner can be transferred to that EU country upon request of this family member.

If the foreigner has **different relatives** somewhere in the UE, especially family members requiring constant care, they can apply to take responsibility for them and be transferred to that country. The decision depends on the circumstances of the case.

HALINA NIEC LEGAL AID CENTER

Halina Niec Legal Aid Center (Centrum Pomocy Prawnej im. Haliny Nieć) is a non-governmental organization, which provides **free legal advice for foreigners who apply for protection in Poland**. In order to receive assistance, please contact HNLAC's lawyers via e-mail: **porady@pomocprawna.org**, or by calling **+48 693 390 502**.

For more information, please visit our website: **www.pomocprawna.org**

In order to file a complaint concerning the quality of our services or the conduct of lawyers please contact HNLAC's board via email: **biuro@pomocprawna.org** You can also contact **UNHCR Office in Warsaw**.



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