

The Situation of Ukrainian Refugees in Poland



UNHCR Poland September 2016

Introduction

The conflict in south-eastern Ukraine has generated large-scale population displacement within Ukraine and has prompted an outflow of Ukrainian nationals towards neighbouring countries.¹ Poland is one of the major destination countries in the region for Ukrainian nationals affected by the crisis, together with the Russian Federation and Belarus. From the beginning of 2014 to June 2016, some 5,300 Ukrainian nationals have applied for international protection in Poland – a dramatic increase in asylum applications compared to the pre-2014 numbers. In addition, during the same period, more than 119,000 Ukrainians applied for temporary residence and over a million Ukrainians entered Poland on the basis of regular entry visas and a simplified labour migration mechanism. While citizens of Ukraine have for years been the largest group of foreigners in Poland, there is a clear upward trend in the number of Ukrainian nationals seeking legal stay in Poland since the outbreak of the conflict in Ukraine.

In accordance with its mandate to ensure access to international protection, UNHCR works with the relevant authorities and civil society in Poland to monitor the situation of Ukrainians in need of international protection in Poland. This paper aims to present factual information about the situation of Ukrainians who may be in need of international protection in Poland and presents suggestions for further analysis and possible measures to address identified protection gaps.

¹ United Nations, *Humanitarian Response Plan Ukraine 2016*, available at: <https://www.humanitarianresponse.info/en/operations/ukraine>.

Contents

I.	General overview	3
II.	Relevant legislation affecting Ukrainians.....	5
III.	Forms of international protection	5
IV.	Other mechanisms for Ukrainians to regularize their stay in Poland.....	7
V.	Analysis of enjoyment of rights	10
VI.	UNHCR's conclusions and recommendations	16

I. General overview

1. Between 1 January 2014 and 30 June 2016, a total of 5,269 Ukrainian citizens applied for international protection in Poland, of whom 2,253 applied in 2014, 2,305 in 2015, and 711 in the first half of 2016.² However, among them, only 48 persons were granted subsidiary protection status and 18 were determined to be refugees under the Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland.³ The claims of the vast majority of applicants have been rejected by the Polish authorities on the basis that the individuals concerned had an internal flight/relocation alternative (IFA/IRA) within Ukraine.
2. UNHCR is not aware of restrictions for Ukrainian asylum-seekers to access Polish territory. However, many Ukrainians who want to enter Poland but who are not seeking asylum are stopped at the border.⁴ Out of 27,687 foreigners refused entry to Poland in 2014, more than 13,000 were Ukrainians.⁵ In 2015, 22,127 Ukrainians were refused entry out of a total of 41,580 foreigners, and in the first half of 2016 out of 28,086 foreigners refused entry, 11,056 were Ukrainians.⁶
3. Many rejected asylum-seekers decide to return to Ukraine on their own. As far as UNHCR is aware, some are also returned by the Polish Border Guard, mainly over the land border.
4. Citizens of Ukraine have for years been the largest group of foreigners in Poland.⁷ The two countries are perceived to be close in geographical, cultural and linguistic terms, and they benefit from well-developed migration networks. Public attitudes towards Ukrainians are generally positive. Ukrainians tend to be labour migrants engaged mainly in caretaking, cleaning, and construction work. Most of them come from western Ukraine, which has historical connections with Poland.
5. The vast majority of Ukrainians currently in Poland arrived on regular visas (922,240 visas issued in 2015 and 563,601 in the first half of 2016) or regularized their stay after entering Poland (65,866 valid residence cards issued in 2015 and 29,383 in the first six months of 2016),⁸ mainly as labour migrants. A significant number of Ukrainian students are also present in Poland (around 23,400 enrolled

² For analysis of international protection considerations regarding Ukrainians, please refer to UNHCR, *International Protection Considerations Related to the Developments in Ukraine – Update III*, 24 September 2015, available at: <http://www.refworld.org/docid/56017e034.html>.

³ Republic of Poland, Office for Foreigners, *Statistical report for 2015*, available (in Polish) at: <http://udsc.gov.pl/wp-content/uploads/2016/05/Sprawozdanie-z-wykonywania-ustawy-o-ochronie-miedzynarodowej-za-2015-rok.pdf>; Republic of Poland, *Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland (Journal of Laws, Dz. U. 2003, No. 128, item 1176)*, as amended, available at:

<http://isap.sejm.gov.pl/Download.jsessionid=C76EA9F547B0643DE9351BAE3DD394FC?id=WDU20031281176&type=3>.

⁴ Some 19 million foreigners (including Ukrainian nationals) entered Poland from Ukraine in 2015. See:

<https://strazgraniczna.pl/pl/granica/statystyki-sg/2206,Statystyki-SG.html>.

⁵ Republic of Poland, Ministry of Interior, *Report on State Security in 2014*, available (in Polish) at:

<http://bip.mswia.gov.pl/download/4/26163/RAPORT2014OSTATECZNY.pdf>.

⁶ Republic of Poland, Office for Foreigners, *Yearly Report for 2015*, available at: <http://udsc.gov.pl/statystyki/raporty-okresowe/zestawienia-roczne/>.

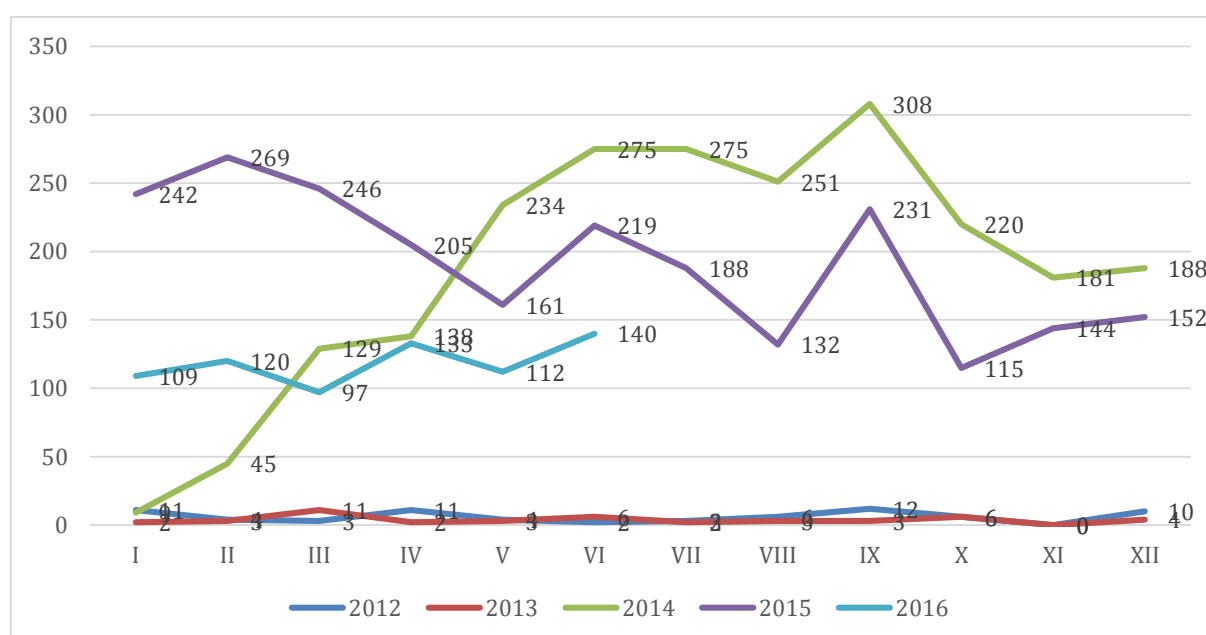
⁷ Magdalena Lesińska, *Immigration of Ukrainians and Russians into Poland: Inflow, integration trends and policy impacts*, INTERACT Research Report 2015/06, available at: <http://cadmus.eui.eu/bitstream/handle/1814/34684/INTERACT-RR-2015%20-%2006.pdf?sequence=1>.

⁸ Republic of Poland, Office for Foreigners, *Ważne dokumenty – zestawienie*, available (in Polish) at: <http://udsc.gov.pl/wp-content/uploads/2016/02/wazne-dokumenty.pdf>.

during the academic year 2014/2015 and 30,589 for the 2015-2016 academic year), many of whom originate from conflict areas in Ukraine.⁹ There is a clear upward trend in the number of Ukrainian nationals seeking legal stay in Poland: more than 26,000 positive decisions on temporary stay were granted in the first half of 2016, compared with 37,000 during all of 2015.

6. After the conflict erupted in south-eastern Ukraine in early 2014, Poland updated its contingency plan for a potential mass influx of Ukrainian asylum-seekers. The plan has not been activated because of the relatively small number of asylum-seekers. While some 5,400 Ukrainians have applied for asylum since early 2014, the recognition rate has remained very low, with 0.9 per cent recognized in 2014, 1.44 per cent in 2015 and 6.26 per cent in the first half of 2016.

Number of applicants for international protection from Ukraine in Poland:¹⁰



Number of persons from Ukraine granted international protection in Poland:¹¹

Year	Applications	Ref. status	Subs. protection	Rejection	Otherwise closed	Recognition rate
2012	72	0	0	48	28	0%
2013	46	2	5	39	26	15%
2014	2253	0	6	652	373	0.9%
2015	2305	2	24	1776	765	1.44%
2016 (Q1 & 2)	711	14	13	404	256	6.26

⁹ Republic of Poland, Central Statistical Office (GUS), *Institutions of higher education and their financing in 2014*, available (in Polish) at: http://stat.gov.pl/download/gfx/portalinformacyjny/pl/defaultaktualnosci/5488/2/11/1/szkoly_wyzsze.pdf.

¹⁰ Republic of Poland, Office for Foreigners, www.udsc.gov.pl.

¹¹ Republic of Poland, Office for Foreigners, www.udsc.gov.pl.

II. Relevant legislation affecting Ukrainians

7. Poland acceded to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (hereinafter the 1951 Convention) in 1991. The principal law setting out the legal framework for international protection in Poland is the Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland¹² (hereinafter referred to as the Law on Granting Protection) and its bylaws, which include regulations on the amount of financial assistance for asylum-seekers.
8. Several amendments to the Law on Granting Protection were adopted in 2015. The amendments, *inter alia*, provide for free legal aid for asylum-seekers during appeals and require the Office for Foreigners to keep an updated list of NGOs and private lawyers specializing in refugee law. The law also provides for free legal aid to appeal against a decision to revoke refugee status. Only NGOs provide free legal services at first instance level using funds from different sources, e.g. EU (ERF/AMIF), private foundations, Norwegian funds etc. The 2015 amendments effectively transposed EU Directive 2013/32/EU¹³ and EU Directive 2013/33/EU¹⁴ into the Polish legal system, in line with the general objective of the Common European Asylum System to improve legislative frameworks so as to ensure fair and effective access to asylum throughout the EU. As a result of these legislative changes, Ukrainian asylum-seekers, like all other asylum-seekers in Poland, benefit from improved access to information on asylum procedures from border guards, as well as specific procedures relating to vulnerable individuals.

III. Forms of international protection

Refugee status and subsidiary protection

9. According to the Law on Granting Protection, refugee status is granted to a foreigner if, as a result of a well-founded fear of persecution in his/her country of origin because of race, religion, nationality, political opinion or membership in particular social group, he/she cannot or does not want to enjoy the protection of that country. According to Article 15 of the Law, a foreigner who does not meet the conditions for refugee status may be granted subsidiary protection if, upon return to the country of origin, he/she would be exposed to a real risk of serious harm by:
 - a death penalty sentence or execution;
 - torture or inhuman or degrading treatment or punishment; or
 - a serious and individualized threat to life or health arising from the widespread use of violence against civilians in situations of international or internal military conflict;

¹² Republic of Poland, *Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland* (*Journal of Laws, Dz. U.* 2003, No. 128, item 1176), as amended, available at:

<http://isap.sejm.gov.pl/Download.jsessionid=C76EA9F547B0643DE9351BAE3DD394FC?id=WDU20031281176&type=3>.

¹³ European Union: Council of the European Union, *Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)*, 29 June 2013, OJ L. 180/60 -180/95; 29.6.2013, 2013/32/EU, available at: <http://www.refworld.org/docid/51d29b224.html>.

¹⁴ European Union: Council of the European Union, *Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)*, 29 June 2013, OJ L. 180/96 -105/32; 29.6.2013, 2013/33/EU, available at: <http://www.refworld.org/docid/51d29db54.html>.

and due to this risk he/she cannot or does not wish to return to the country of origin.¹⁵

As mentioned in paragraph 1, only 66 Ukrainians have been granted subsidiary protection or refugee status in Poland since the beginning of the conflict in south-eastern Ukraine. All other applications for international protection by Ukrainian nationals which were decided on the merits have been denied, with the main reason for rejection being that the applicants were considered to have had an internal flight/relocation alternative in Ukraine.

Asylum status

10. Asylum status is a form of international protection separate from regular refugee status and it is enshrined in Article 56 of the Constitution of the Republic of Poland,¹⁶ which states that “Foreigners shall have a right of asylum in the Republic of Poland in accordance with principles specified by statute.” This is further elaborated in Article 90 of the Law on Granting Protection, which says that upon request, a foreigner may be granted ‘asylum’ in the Republic of Poland if it is necessary to provide him or her with protection and at the same time it is in the interest of the Republic of Poland.¹⁷
11. A foreigner who is granted asylum status is permitted to settle permanently in Poland. The Head of the Office for Foreigners is responsible for granting this status. In the first half of 2016, 53 citizens of Ukraine were granted asylum status in Poland, nearly the same figure as for the whole of 2015, when 55 citizens of Ukraine were granted asylum status, while in 2014 only one Ukrainian citizen received the same status.

Humanitarian/tolerated stay

12. According to the Law on Granting Protection, persons who cannot be returned to their country of origin or of habitual residence due to specific reasons (humanitarian, medical, lack of documents/unconfirmed identity, etc.) may be granted ‘humanitarian/tolerated stay.’ This form of international protection does not provide access to integration programmes or any other form of individual support. However, the holder can access the labour market without any additional permits required. Between 1 January 2014 and 30 June 2016, 18 Ukrainians have been granted humanitarian/tolerated stay.

¹⁵ Republic of Poland, *Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland* (*Journal of Laws, Dz.U. 2003, No. 128, item 1176*), as amended, <http://isap.sejm.gov.pl/Download.jsessionid=C76EA9F547B0643DE9351BAE3DD394FC?id=WDU20031281176&type=3>

¹⁶ Republic of Poland, *Constitution of the Republic of Poland of 2 April 1997* (*Journal of Laws, Dz.U. 1997, No. 78, item 483*), official translation available at: <http://www.refworld.org/docid/3ae6b5574.html>.

¹⁷ Republic of Poland, *Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland* (*Journal of Laws, 2003, No. 128, item 1176*), as amended, available at: <http://isap.sejm.gov.pl/Download.jsessionid=C76EA9F547B0643DE9351BAE3DD394FC?id=WDU20031281176&type=3>.

Ad hoc humanitarian admission

13. The Polish authorities may grant humanitarian admissions in certain circumstances and the concerned individuals receive permanent residence status upon arrival.
14. In January 2015, the Polish Ministry of Foreign Affairs arranged for the evacuation of 178 Donbas inhabitants of Polish descent and granted them humanitarian admission to Poland. Most of them were already holders of the Pole's Card described below¹⁸ and another 64 people in this group were granted such status upon arrival in Poland.¹⁹ In November 2015, the Polish authorities evacuated another 188 persons of Polish descent from eastern Ukraine, including Mariupol, under a similar humanitarian admission arrangement.²⁰

IV. Other mechanisms for Ukrainians to regularize their stay in Poland

Residence permits²¹

15. Residence permits for periods varying from three months to three years are issued by regional authorities (Voivodship Office), providing the holder with the right to reside in Poland and to enter the labour market without any additional permits required.
16. According to the Office for Foreigners,²² more than 65,000 residence permits were issued to Ukrainian nationals between 2012 and the end of 2015, a number which constitutes 31 per cent of all foreigners residing legally in Poland. This includes more than 20,000 permanent residence permits, some 42,500 temporary residence permits, and almost 2,800 EU long-term residence permits. Almost 60 per cent of all residence cards for Ukrainians were issued for employment reasons, while 21 per cent were linked to studies.
17. During 2015, 68,411 Ukrainians applied for various types of residence permits and 45,170 received positive decisions (out of a total of 48,737 decisions).²³ These positive decisions include 37,833 temporary residence permits, of which more than 23,000 were work visas, 629 were EU long-term residence permits, and 6,729 were permanent residence permits. During the first half of 2016, the authorities issued 26,150 temporary residence permits to Ukrainians and 3,233 Ukrainian nationals were granted permanent residence permits.

¹⁸ Republic of Poland, Ministry of Foreign Affairs, *Cards of the Pole for evacuees from eastern Ukraine*, available at: http://www.ms.gov.pl/en/news/cards_of_the_pole_for_evacuees_from_eastern_ukraine.

¹⁹ Republic of Poland, Ministry of Foreign Affairs, *Karty Polakadlaewakuowanych z Ukrainywschodniej*, available (in Polish) at: https://www.ms.gov.pl/pl/polityka_zagraniczna/polityka_wschodnia/karty_polaka_dla_ewakuowanych_z_ukrainy_wschodniej?sessionid=E99B21832DFACEFBD8D0DACC7FC7C1D.cmsap4p.

²⁰ Ministry of Interior, *Four planes with Poles evacuated from Eastern Ukraine have landed*, 23 November 2015, available at: https://www.ms.gov.pl/pl/aktualnosci/msz_w_mediach/wyladowaly_cztery_samoloty_z_polakami_ewakuowanymi_ze_wschodniej_ukrainy_depesza_pap_z_23_listopada_2015_r.

²¹ Republic of Poland, *Act of 12 December 2013 on Foreigners* (Journal of Laws, Dz. U. 2013 item 1650 with further amendments), available at: <http://isap.sejm.gov.pl/Download?id=WDU20130001650&type=3>.

²² Republic of Poland, Office for Foreigners, *Raportnatematobywateli Ukrainy*, available at: <http://udsc.gov.pl/wp-content/uploads/2014/12/UKRAINA-24.01.2016.pdf>.

²³ *Ibid.*

Visas

18. In 2014, the Polish authorities issued 827,771 entry visas to Ukrainian nationals, of which 350,793 were Schengen visas and 656,916 were national visas. In 2015, the number increased by 11.4 per cent to 922,240, of which 456,085 were Schengen visas and 466,155 national visas. This is twice the number of visas issued in 2010. In the first half of 2016, they have issued 250,500 Schengen visas and 315,500 national visas to Ukrainian nationals.²⁴

Work permits and simplified access to the labour market (no work permit required)

19. Work permits in Poland are issued by the regional authorities (Voivodship office) at the request of the employer.²⁵ While prior to the outbreak of conflict in Ukraine, the regional authorities were issuing around 20,000 work permits to Ukrainians every year (e.g. 19,375 in 2012 and 20,416 in 2013), they issued 26,315 work permits in 2014 and 50,465 in 2015. In the first half of 2016, the regional authorities already issued 42,650 work permits to Ukrainian citizens.²⁶

20. In some situations,²⁷ Ukrainians and several other nationalities, such as Armenians, Belarusians and Georgians, are exempted from the requirement for the employer to confirm that no Polish citizen has applied for the same job. This labour mobility scheme is utilized by a large number of people, as it provides individuals with the right to stay and work for six months within a one-year period, after which there is a need to obtain a work permit for temporary stay based on employment. In 2015, the authorities registered 665,956 employer declarations under this labour mobility scheme, of which 97.7 per cent concerned Ukrainian citizens.²⁸ This is more than double the number of registered declarations in 2014 (331,278). The increase is even more significant when compared to in 2013, before the conflict broke out in south-eastern Ukraine, when out of around 217,000 employer declarations, 92 per cent were issued for Ukrainians.²⁹

Studies

21. Foreigners registered as students have the right to reside, study, and - since 1 May 2015 - also work in Poland.

²⁴ Data not published. Media report quoting the Polish Ministry of Foreign Affairs: <http://www.ukrinform.net/rubric-politics/1940489-poland-issued-almost-930000-visas-to-ukrainians-in-2015.html>.

²⁵ Republic of Poland, *Act of 20 April 2004 on promotion of employment and labour market institutions* (Journal of Laws 2004 No 99 item. 1001 with further amendments), available at: <http://isap.sejm.gov.pl/Download?id=WDU20040991001&type=3>.

²⁶ Republic of Poland, Ministry of Family, Labour and Social Policy, *Information on employment of foreigners in Poland as of 14 December 2015*, available at:

https://www.mpips.gov.pl/gfx/mpips/userfiles/public/1_NOWA%20STRONA/Analizy%20i%20raporty/cudzoziemcy%20pracujacy%20w%20polsce/Zatrudnienie%20cudzoziemcow%20grudzien%202015%20r..pdf.

²⁷ Republic of Poland, (Journal of Laws of 2015, item 97), § 3 item 3, available at:

<http://isap.sejm.gov.pl/DetailsServlet?id=WDU20090160085>.

²⁸ Republic of Poland, Ministry of Family, Labour and Social Policy, *Information on employment of foreigners in Poland as of 14 December 2015*, available at:

https://www.mpips.gov.pl/gfx/mpips/userfiles/public/1_NOWA%20STRONA/Analizy%20i%20raporty/cudzoziemcy%20pracujacy%20w%20polsce/Zatrudnienie%20cudzoziemcow%20grudzien%202015%20r..pdf.

²⁹ Magdalena Lesińska, *Immigration of Ukrainians and Russians into Poland: Inflow, integration trends and policy impacts*, INTERACT Research Report 2015/06, available at: <http://cadmus.eui.eu/bitstream/handle/1814/34684/INTERACT-RR-2015%20-%2006.pdf?sequence=1>.

22. During the academic year 2015/2016, more than 57,000 foreigners were registered as students with Polish universities and other higher education institutions. Over 50 per cent of them were Ukrainian nationals. During the previous academic year the number of foreign students was 46,000 and about half of them were Ukrainians. During the 2013/2014 academic year there were nearly 36,000 registered foreign students of which some 15,000 were Ukrainians and during the previous academic year, 2012/2013 there were 33,000 registered foreign students including some 10,000 Ukrainians.³⁰

Pole's Card

23. A holder of the *Karta Polaka* [Pole's Card] – a document stating adherence to the Polish nation - who intends to settle permanently on the territory, can be granted a permanent stay permit.³¹ According to the Pole's Card Act,³² a Pole's Card can be issued to a person who at the time of application is a national of a post-Soviet state or someone who is a stateless inhabitant of one of those countries and satisfies a number of conditions.³³
24. Between the beginning of 2008 and June 2016, close to 75,000 Ukrainians received a Pole's Card.³⁴ The holder of a Pole's Card may obtain a long-term visa allowing multiple entry into Poland; take up legal employment without having to obtain a work permit; run a business in Poland under the same conditions as Polish citizens; and benefit from the Polish education system free of charge. They may also use Polish emergency medical services under the same conditions as Polish citizens; visit state-operated museums in Poland free of charge; and apply for financial support from the central or local budget devoted to supporting Polish citizens and their descendants abroad.
25. There is currently a proposal to amend the Pole's Card Act and, if approved, Pole's Card holders would be able to obtain a permit to settle in Poland and, after a year of residence, would be eligible for citizenship. During the first year, he/she would receive financial assistance to support accommodation, language learning, and so-called "adaptation." It is estimated that some 75,000 citizens of Ukraine already holding a Pole's card could benefit from these legislative changes and obtain Polish citizenship.

³⁰ Republic of Poland, General Statistical Office, Statistical Yearbook 2014 & 2015

³¹ Republic of Poland, *Act of 12 December 2013 on Foreigners* (Journal of Laws, Dz. U. 2013 item 1650 with further amendments), Article 195 para 1 item 9, available at:
<http://isap.sejm.gov.pl/Download?id=WDU20130001650&type=3>.

³² Republic of Poland, *Act on Pole's Card of 7 September 2007* (Dz.U. 2007 no. 180 item. 1280), available at:
<http://isap.sejm.gov.pl/Download?id=WDU20071801280&type=3>.

³³ The Pole's Card can be granted only to a national of Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, or Uzbekistan. According to the *Act of 7 September 2007 on Pole's Card* (Dz.U. 2007 No. 180 item. 1280), conditions to obtain the card are:

- "demonstration of connection with the Polish nation and Poland by the basic knowledge of Polish language and culture;
- a written declaration of belonging to the Polish nation, which must be made in the presence of the Consul;
- at least one parent or grandparent or two great grandparents are/were of Polish nationality or Polish citizens"

³⁴ *Slowo Polskie, Evolution of the Law on Pole's Card, second phase*, 17 December 2015, available at:
http://www.wizyt.net/index.php?option=com_content&view=article&id=5343:ewolucja-ustawy-o-karcie-polaka-etap-drugi&catid=115:warto-wiedzie&Itemid=226.

Mixed marriages

26. The spouse of a Polish citizen cannot be deported from the country.³⁵ He/she can apply for temporary stay and, after two years, also for permanent settlement. After two years of permanent settlement, a foreign spouse is eligible for Polish citizenship. In 2014, 614 Poles were married to citizens of Ukraine;³⁶ data for 2015 and 2016 is not yet available.

V. Analysis of enjoyment of rights

Access to asylum

27. The Office for Foreigners,³⁷ under the Ministry of Interior and Administration, is the first instance asylum authority responsible for conducting the asylum procedure, providing social assistance to asylum-seekers, and facilitating medical and psychological assistance. The appeals procedure is the responsibility of the Refugee Board. On points of law, it is also possible to present a case for review by the Regional Administrative Court. During the asylum procedure, basic reception assistance (shelter, food, information, and Polish language training) is provided through designated reception facilities, as well as in the form of financial assistance for those opting to live in private accommodation.
28. During the first half of 2016, a total of 6,998 applications for international protection were made in Poland, the majority filed by citizens of the Russian Federation (5,087), followed by Ukraine (711) and Tajikistan (656). In comparison with the first half of 2015, this represents a 66.7 per cent increase in the total number of asylum applications, but a 52 per cent decrease in the number of applicants from Ukraine.³⁸
29. As mentioned above, as far as UNHCR is aware, asylum-seekers from Ukraine do not have problems accessing the territory or the asylum procedure in Poland. However, UNHCR has concerns about limited access to legal assistance and information for asylum-seekers in general. These concerns also affect Ukrainian asylum-seekers. The State provides free legal aid at the appeals level, following an amendment introduced in 2015 to the Law on Granting Protection (Chapter 4a).³⁹ Only NGOs provide free legal services at first instance level using funds from different sources, e.g. EU (ERF/AMIF), private foundations, Norwegian funds etc.⁴⁰

³⁵Republic of Poland, *Act of 12 December 2013 on Foreigners* (Journal of Laws, Dz. U. 2013 item 1650 with further amendments), Art. 303 para 1 item 4, available at: <http://isap.sejm.gov.pl/Download?id=WDU20130001650&type=3>.

³⁶Republic of Poland, General Statistical Office, *2015 Demographic Yearbook*, p. 235, available at: http://stat.gov.pl/files/gfx/portalinformacyjny.pl/defaultaktualnosci/5515/3/9/1/rocznik_demograficzny_2015.pdf.

³⁷The Office for Foreigners was created in 2001 based on Art. 68(a)(1) of the then *Law on Foreigners of the Republic of Poland*, 11 April 2001, (Journal of Laws of 2001, No. 42, item 475), available at: <http://isap.sejm.gov.pl/Download?id=WDU20010420475&type=3>. [This law is no longer in force].

³⁸ Republic of Poland, the Office for Foreigners, *Monthly Statistical Reports*, available at <http://udsc.gov.pl/statystyki/raporty-okresowe/meldunek-miesieczny/2015-2/2016-2/>.

³⁹ Republic of Poland, *Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland* (Journal of Laws, Dz. U. 2003, No. 128, item 1176), as amended, Chapter 4a, available at: <http://isap.sejm.gov.pl/Download;jsessionid=C76EA9F547B0643DE9351BAE3DD394FC?id=WDU20031281176&type=3>.

⁴⁰ Republic of Poland, *Act on Granting Protection to Foreigners within the Territory of the Republic of Poland* (Journal of Laws, 2003, No. 128, item 1176), as amended, available at: <http://isap.sejm.gov.pl/Download;jsessionid=C76EA9F547B0643DE9351BAE3DD394FC?id=WDU20031281176&type=3>.

These NGOs often lack regular and predictable funding and not all asylum-seekers receive legal aid.⁴¹

30. UNHCR welcomes recent initiatives undertaken by the Polish authorities in cooperation with civil society to address the situation of vulnerable applicants in the asylum and reception procedures.⁴² However, concerns remain about the lack of a comprehensive mechanism to identify and support people with special needs. According to Article 68 of the Law on Granting Protection,⁴³ where medical or psychosocial examinations indicate *inter alia* that a person is a victim of violence or has a disability, he/she should be provided with support and appropriate treatment during the asylum procedure in line with his/her specific needs.⁴⁴ There are initiatives by relevant authorities, UNHCR, and NGOs aimed at improving the situation of vulnerable asylum-seekers and refugees in the country. However, so far in practice there is limited systematic support available including proper identification of persons with specific needs, support and treatment throughout the asylum procedure and beyond.

Decision-making on applications for international protection by Ukrainian nationals

31. As noted above, the vast majority of asylum applications from Ukrainians are rejected or ‘otherwise closed.’ Out of 5,269 applications filed between 1 January 2014 and 31 March 2016, only 16 persons were granted refugee status and 43 people were granted subsidiary protection. During the same period, there were 2,842 negative decisions and 1,392 cases were “otherwise closed.”
32. When rejecting claims for international protection submitted by Ukrainian citizens, the Polish authorities regularly refer to the availability of an internal flight alternative. UNHCR has shared with the authorities its *International Protection Considerations related to developments in Ukraine*.⁴⁵ As stated in this document, UNHCR considers that the determination of an internal flight or relocation alternative (IFA/IRA) in Ukraine “requires an assessment of the “relevance” as well as the “reasonableness” of the proposed IFA/IRA. In the current circumstances in Ukraine, an IFA/IRA may be relevant for individuals in areas of the country not affected by recent events. If an IFA/IRA is deemed relevant, it must be determined, on a case-by-case basis, whether an IFA/IRA is “reasonable”, taking into account

Article 69(c)(1) provides that an applicant and foreigner involved in the proceedings concerning revocation of refugee status or subsidiary protection is entitled to receive free legal information in the first instance proceedings.

⁴¹ NGOs provide legal, social and psychological assistance for asylum-seekers and beneficiaries of international protection. These include the Helsinki Foundation for Human Rights, Association for Legal Information, the Halina Niec Legal Aid Centre, and the Ocalenie Foundation.

⁴² Projects: “Streamlining of identification of people with special needs in the procedure for granting the refugee status” (2014 – 2015), “I notice, I help – integration and development of activities and procedures of the Office for Foreigners and Border Guard with regard to complex identification of vulnerable groups among persons looking for protection in the territory of the Republic of Poland” and “Procedure for handling foreigners requiring special treatment with regard to social aid.” Source: the Office for Foreigners.

⁴³ Republic of Poland, *Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland* (Journal of Laws, Dz. U. 2003, No. 128, item 1176), as amended., Art. 68, available at: <http://isap.sejm.gov.pl/Download.jsessionid=C76EA9F547B0643DE9351BAE3DD394FC?id=WDU20031281176&type=3>. See article 68 for the full list.

⁴⁴ Republic of Poland, *Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland* (Journal of Laws, Dz. U. 2003, No. 128, item 1176), as amended., Art. 68, available at: <http://isap.sejm.gov.pl/Download.jsessionid=C76EA9F547B0643DE9351BAE3DD394FC?id=WDU20031281176&type=3>.

⁴⁵ UNHCR, *International Protection Considerations Related to the Developments in Ukraine – Update III*, 24 September 2015, available at: <http://www.refworld.org/docid/56017e034.html>.

the personal circumstances of the applicant.” The document provides detailed information that would need to be taken into account in an assessment of the reasonableness of a proposed IFA/IRA in each individual case.⁴⁶

33. The Polish authorities consider that internally displaced persons (IDPs) in Ukraine can access humanitarian assistance from local and international organizations. On this basis, the Polish authorities consider that Ukrainian nationals who are returned to Ukraine and who would end up as IDPs in their home country would be able to avail themselves of a reasonable IFA/IRA. Consequently, the Polish authorities reject the vast majority of claims for international protection by Ukrainian citizens. UNHCR is concerned that relevant information as referred to in its *International Protection Considerations* is not, or not sufficiently, taken into account, particularly information about access to livelihoods, accommodation, healthcare, and other essential services, as well as information about the possibilities for integration in the proposed areas of IFA/IRA. UNHCR has been approached by rejected Ukrainian asylum-seekers claiming that they had fled the conflict zone and unsuccessfully sought State protection and assistance in several locations in Ukraine before coming to Poland. Yet the Polish authorities refused their asylum claim arguing that they had access to an IFA/IRA.
34. Some rejected asylum-seekers have challenged the IFA/IRA assessments through the appeals process, but so far with limited effect. In 2015, the Refugee Board only overturned the first instance decisions in 20 out of 900 appeals brought by rejected Ukrainian asylum-seekers. Two resulted in refugee status and 18 in subsidiary protection, mainly based on an assessment of individual vulnerability. The Refugee Board has stated three reasons for finding that an IFA/IRA is not reasonable: 1) very poor health condition; 2) pensioners who lost the entitlement to their pension; and 3) trauma survivors who are not able to sustain themselves.⁴⁷ Several appeal claims were filed with the Regional Administrative Court, although UNHCR is concerned that the assessment of the relevance and reasonableness of an IFA/IRA is not addressed in a consistent way by the court in these cases. In the first half of 2016, Ukrainian asylum-seekers brought 597 appeals to the Refugee Board, which resulted in 14 being granted refugee status and 4 subsidiary protection.

Access to services, social benefits and livelihoods

i. Health care

35. All asylum-seekers have access to medical assistance facilitated by the Office for Foreigners.⁴⁸ Persons granted international protection receive the same medical care as Polish citizens, including referrals to specialists and hospitals as required.⁴⁹
36. Foreigners holding a work visa, a temporary residence permit and/or a permanent

⁴⁶ *Ibid.* paras 43-50.

⁴⁷ Republic of Poland, Refugee Board, *Report of activities in 2015*, p. 24, available at: <http://rada-ds-uchodzcow.gov.pl/sites/default/files/pliki/sprawozdanie2015.pdf>.

⁴⁸ Republic of Poland, *Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland* (Journal of Laws, Dz. U. 2003, No. 128, item 1176), as amended., Art. 68, Art. 70(1), available at: <http://isap.sejm.gov.pl/Download.jsessionid=C76EA9F547B0643DE9351BAE3DD394FC?id=WDU20031281176&type=3>.

⁴⁹ Republic of Poland, *Act of 27 August 2004 on Healthcare Services Financed from Public Funds* (Journal of Laws of 2015, item 581, as amended), Art. 2(1)(2).

residence permit may access state health care.⁵⁰ If they are employed, they are covered by the obligatory public health insurance which is paid by the employer. If they are not employed or if they are self-employed, they may pay for the state health care themselves. This means that all Ukrainians enjoying legal stay in Poland have access to health care.

ii. Social benefits, including pensions and social allowances

37. During the asylum procedure, only certain financial allowances are provided by the Office for Foreigners. These allowances are based on specific amounts established through legislation⁵¹ under the following conditions:

If the foreigner is living in an accommodation centre where food and accommodation is provided, he/she receives:

- Reimbursement of costs of transport in specific cases, e.g. cases connected with refugee status proceedings, medical examination, or other justified cases;
- Financial aid for personal hygiene products and ‘pocket money;’
- One-time financial aid for the purchase of clothes; and
- Provision of cash equivalent to food for children.

If the foreigner is living outside the accommodation centre, he/she receives:

- Benefits in cash covering the cost of stay.

According to a report issued by the Office of Foreigners, as of June 2016, 1,653 asylum-seekers of Ukrainian origin were receiving social assistance from the Polish Government.⁵² This represents approximately 40 per cent of all asylum-seekers who benefit from social assistance in Poland.

38. According to the Law of 12 March 2004 on Social Assistance, holders of permanent residence permits, EU long-term residence permits, and temporary residence permits granted for reunited family members of beneficiaries of international protection have full access to social assistance, if “international agreements do not provide otherwise.”⁵³ Such social assistance consists of various categories of cash benefits as well as different forms of non-financial support, e.g. social support services, care services, specialist counselling (mainly legal and psychological), and guidance in relation to managing official matters or livelihood issues.

39. Persons granted international protection are under the care of the Ministry of Family, Labour, and Social Policy. All persons granted refugee status or subsidiary protection, including Ukrainians, benefit from a one-year individual integration programme under the Law on Social Assistance, which includes financial assistance

⁵⁰ Republic of Poland, *Act of 27 August 2004 on Medical Assistance Financed from the State Budget* (Journal of Laws, Dz.U. 2004 No 210 item 2135), available at: <http://isap.sejm.gov.pl/Download?id=WDU20042102135&type=3>.

⁵¹ Republic of Poland, Ministry of Interior, *Regulation of the Ministry on the Amount of the Assistance granted to Asylum-Seekers*, (Journal of Laws 2011, no 261, item 1564), available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20112611564>.

⁵² Republic of Poland, Office for Foreigners, *Report on Social Assistance for Asylum-Seekers*, available at: <http://udsc.gov.pl/wp-content/uploads/2016/03/aktualizacja-strony-marzec.pdf>.

⁵³ Republic of Poland, *Act of 12 March 2004 on Social Assistance* (Journal of Laws of 2004, no 64, item 593), available at: <http://isap.sejm.gov.pl/Download?id=WDU20040640593&type=3>.

for language learning, health insurance, and social counselling.⁵⁴ UNHCR considers that some persons granted international protection would benefit from continued integration support beyond the twelve-month period, including individuals with specific needs. Furthermore, in UNHCR's view it would be beneficial if the integration programme were to include vocational training and transitional housing assistance.

40. A recently introduced social programme for families with two or more children also covers foreigners legally staying and working in Poland, including persons granted international protection.⁵⁵ Eligible families receive 500 PLN (about 125 EUR) every month for the second child, as well as for each subsequent child.⁵⁶
41. Persons granted international protection have access to old-age pensions if they have been contributing to the national pension fund or if there is a bilateral agreement between Poland and the relevant country of origin. In the latter case, the terms of the pensions will depend on the nature of the agreement (regulating eligibility, full or partial coverage, etc.). In the case of citizens of Ukraine, a bilateral agreement on social security between Poland and Ukraine was signed in 2012.⁵⁷

iii. Livelihoods

42. Asylum-seekers have access to the labour market if there is no first instance decision within six months of filing the application for international protection. When this happens, the applicant is given a certificate by the asylum authority with which he/she may engage in legal employment.⁵⁸ Persons granted international protection (refugee status or subsidiary protection) have access to the labour market on the same basis as Polish nationals.⁵⁹
43. Foreigners who hold a work permit also have full access to the labour market. Work permits are issued by the relevant provincial authority based on an application from the prospective employer. The work permit indicates the name of employer, position and type of work, expiration date, as well as the lowest possible remuneration that the employee may receive.
44. As mentioned above, there is a simplified mechanism for citizens from Armenia, Belarus, Georgia, Moldova, Russian Federation and Ukraine to access employment in Poland on the basis of the employer's declaration of intent to employ a foreigner.⁶⁰

⁵⁴ *Ibid*, Chapter 5, in particular Art. 91.

⁵⁵ It does not include asylum-seekers, who rather receive benefits under the Law on Granting Protection.

⁵⁶ Republic of Poland, *Law on State Assistance in Raising Children of 16.02.2016* (Journal of Laws of 2016, item 195), available at:

http://www.mpips.gov.pl/gfx/mpips/userfiles/public/1_NOWA%20STRONA/Polityka%20rodzinna/500plus/D2016000019501.pdf.

⁵⁷ Republic of Poland, *Umowa między Rzeczpospolitą Polską a Ukrainą o zabezpieczeniu społecznym, sporządzona w Kijowie dnia 18 maja 2012 r.*, available at: http://www.zus.pl/files/Umowa_RP_Ukraina.pdf.

⁵⁸ Republic of Poland, *Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland* (Journal of Laws, Dz.U. 2003 nr No 128 item 1176), available at:

<http://isap.sejm.gov.pl/Download.jsessionid=C76EA9F547B0643DE9351BAE3DD394FC?id=WDU20031281176&type=3>.

⁵⁹ Republic of Poland, *Law on promotion of employment and the institutions of the labour market of 20.04.2004* (Journal of Laws of 2015, item 149, with later changes), available at <http://isap.sejm.gov.pl/Download?id=WDU20150001814&type=2>.

⁶⁰ Republic of Poland, *Regulation of the Minister of Labour and Social Policy of 21 April 2015 on cases whereby work performance by foreigners on the territory of the Republic of Poland is allowed without the need to obtain a work permit* (Dz.U. 2015 item. 588).

Citizens from these countries may take up employment without obtaining a work permit for a period not exceeding six months within twelve consecutive months.

iv. Housing/accommodation and reception conditions

45. Asylum-seekers are provided with accommodation at one of the regular reception facilities, although they may choose to instead receive financial support to live outside the centres. Around 40 per cent of asylum-seekers stay in reception facilities, while 60 per cent opt to receive a financial allowance to live in private accommodation. The monthly allowance to cover living expenses outside the centres amounts to 180 EUR for the first person in a family, with the rate decreasing for each additional family member. Ukrainian asylum-seekers normally prefer to receive financial allowances and live on their own.
46. In Warsaw (and a few other locations) there is a very limited housing scheme providing a few apartments designated for refugees. In addition, persons granted international protection (refugee status and subsidiary protection) have access to the national housing support system on the same basis as nationals. This means that Ukrainians granted international protection can apply for social housing support. However, the overall demand for such support, including from nationals, is very high and so waiting periods can be up to several years.
47. Various categories of migrants may also have the right to apply for housing support from the municipal resources, depending on the local laws and the formal decision of local authorities. According to Ordinance No. LVIII/1751/2009 of the Board of the City of Warsaw of 9 July 2009 (with further amendments on rules and conditions of rental of flats from the municipal resources),⁶¹ foreigners living permanently in Warsaw may apply for housing support in all districts.⁶²

v. Access to education and early childhood schooling

48. All child asylum-seekers have access to the national education system from the day of their arrival. Additional language coaching is available at the reception centres, but this is reported to be of varying quality. According to legal provisions,⁶³ there are opportunities for schools to provide targeted language courses and to hire teaching assistants to assist foreign children, but the implementation of such support measures is not consistent.⁶⁴

⁶¹ Republic of Poland, *Rules on renting the social apartments by the city of Warsaw: Uchwała nr LVIII/1751/2009 Rady m. st. Warszawy z dnia 9 lipca 2009 roku w sprawie zasad wynajmowania lokali wchodzących w skład mieszkaniowego zasobu m.st. Warszawy* (Mazovian Voivodship Journal of Laws of 2009 r. no 132, item 3937 with amendments.), available (in Polish) at: <http://www.zgn.waw.pl/upload/Lokale%20mieszkalne/tekstujednoliconyuchwalyNrLVIII17512009douchwalyNrXLVIII13042012.pdf>.

⁶² Other criteria required by the Ordinance relate to the level of income of the applicant and the current flat size compared with the minimum number of square meters set out in the legal living standards.

⁶³ Republic of Poland, *Act of 7 September 1991 on the Education System* (Dz. U. [Polish Journal of Laws] of 2004 No. 256, item 2572, as amended), available at: <http://isap.sejm.gov.pl/Download?id=WDU19910950425&type=3>; *Regulation of the Minister of National Education of 30 July 2015 on Enrolment of Non-Polish Citizens to Public Nursery Schools, Schools, Teacher Training Centres and Facilities, as well as Organization of Additional Polish Language and Remedial Classes, and Classes Focused on the Language and Culture of the Country of Origin* (Dz. U. [Polish Journal of Laws] of 2015, item 1202), available at: <http://isap.sejm.gov.pl/Download?id=WDU20150001202&type=2>.

⁶⁴ Based on information available to UNHCR via partners, refugees and teachers.

49. In general, foreign children can benefit from education and care in all types of public schools until they turn 18 or until they have completed upper secondary education, on the same basis as Polish citizens. This means that all Ukrainian children residing in Poland, regardless of the parent's protection status, have access to education.

VI. UNHCR's conclusions and recommendations

50. There has been in recent years a gradual but significant increase in the number of Ukrainian citizens in Poland, including those seeking international protection. This increase has been particularly significant since the beginning of 2014, which coincides with the outbreak of conflict in south-eastern Ukraine.

51. The Polish authorities have rejected the vast majority of applications for international protection by Ukrainian nationals, as they claim that the applicants can avail themselves of an internal flight/relocation alternative (IFA/IRA) in Ukraine. UNHCR considers that all asylum cases presented by Ukrainians require an individual assessment of the "relevance" as well as the "reasonableness" of the proposed IFA/IRA, taking into account all relevant individual circumstances of the case.

Recommendations: UNHCR calls on the Polish asylum authorities to take into account all relevant information for the assessment of the reasonableness and relevance of a proposed IFA/IRA in each individual case, including information provided in *UNHCR's International Protection Considerations Related to the Developments in Ukraine – Update III*.⁶⁵ In order to promote decision-making in line with this guidance, the EU asylum *acquis*, and other relevant international standards, UNHCR recommends that the Polish asylum authorities consider improving the existing quality assurance mechanism in cooperation with UNHCR, by including the application of IFA/IRA, especially in decisions on Ukrainian claims.

52. UNHCR notes the existence of a number of legal mechanisms for Ukrainian nationals to reside legally in Poland, many of which afford a wide range of rights. Nevertheless, UNHCR wishes to highlight several important conditions that should be met in order to ensure that the use of these legal mechanisms is appropriate for persons in need of international protection. UNHCR considers that obligations towards persons in need of international protection are met so long as the individuals are able to access either a form of international protection status or an alternative form of legal stay that provides protection for persons who would otherwise be owed it, including a comparable or more favourable set of rights and safeguards to prevent *refoulement* in case of expiry or termination of status. Ideally, these other forms of legal stay should provide the opportunity to achieve permanent solutions (e.g. permanent residence status with the option to eventually naturalize would be the preferred alternative form of legal stay).

In the case of Poland, UNHCR notes that the Pole's Card provides a permanent status, including eventual access to permanent solutions in the form of

⁶⁵ UNHCR, *International Protection Considerations Related to the Developments in Ukraine – Update III*, September 2015, available at: <http://www.refworld.org/docid/56017e034.html>.

naturalization. At the same time, it should be highlighted that there are strict eligibility criteria for obtaining a Pole's Card (see page 9).

Similarly, residence permits in Poland provide access to comparable rights and may lead to citizenship. However, they do not protect from *refoulement* if the permits are cancelled. The other legal instruments used by Ukrainians in Poland do not provide adequate protection because of their temporary nature, as they do not protect against *refoulement* and they do not provide comparable rights or lead to permanent solutions.

Recommendation: UNHCR urges the Government of Poland to ensure that all Ukrainians who may have international protection needs are provided with an opportunity to seek asylum in a high-quality procedure. Furthermore, UNHCR recommends that, in parallel, options for more permanent forms of legal stay with eventual opportunities to naturalize (similar to the Pole's card) be expanded for Ukrainians.

53. UNHCR notes that little information is available about whether Ukrainians in Poland intend to remain in the country or to return to Ukraine (and if return is envisioned, to which region of Ukraine). This information would be very useful for planning purposes both in Poland and in Ukraine, and UNHCR will be promoting similar information-gathering in other countries hosting large numbers of Ukrainians.

Recommendation: UNHCR recommends that Poland consider carrying out an intentions survey among Ukrainians in Poland and stands ready to offer its support in this regard.

54. *Recommendation:* Based on the needs highlighted during this research and for the benefit of all asylum-seekers, regardless of their nationality, UNHCR encourages the Government to continue to improve access to information and free legal assistance, including in particular at first instance. Similarly, UNHCR considers that there is a need to improve the identification of and response to the specific needs of vulnerable persons seeking international protection in Poland.

55. Finally, while it is expected that Ukrainian asylum-seekers will continue to rank high in the national asylum statistics during 2016, there are no indications that the number of people arriving is likely to overwhelm the capacity of the reception and asylum system.

Recommendation: On this basis, UNHCR encourages the Polish authorities to play its full role in solidarity measures, in particular relocation and resettlement, for refugees in Europe and beyond.