



Save the Children

SO I TOLD MYSELF I COULDN'T STAY HERE...



**UNACCOMPANIED CHILDREN AT THE BELARUSIAN BORDER
AND IN POLISH ALTERNATIVE CARE SYSTEM IN 2024**

in cooperation with:



FUNDACJA
Polskie
Forum
Migracyjne



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We would like to thank all participants for their time, honesty, trust and patience in sharing their experiences and thoughts. Special thanks go to those who came to Poland seeking protection and left the alternative care system.



Save the Children

Save the Children Poland is a branch of the world's largest independent humanitarian organisation, dedicated to supporting children for more than a century. Since commencing operations in Poland in 2022, it has been assisting young people in areas such as education, mental health, violence prevention and poverty alleviation. To date, it has reached over 180,000 beneficiaries, primarily in smaller towns across the country.

www.savethechildren.pl



The Polish Migration Forum Foundation has been supporting people with migrant backgrounds since 2007 and works to develop long-term solutions in the areas of cultural diversity, migration, and integration. It strives to create a safe and welcoming space in Poland for all individuals and communities, regardless of their origins. PFM offers support in mental health, information, legal advice, and education, helping people of all ages, nationalities, genders, and religions.

www.interwencjaprawna.pl



The Association for Legal Intervention takes action wherever human rights are under threat – standing with those who need support most and are at risk of exclusion. It provides free legal aid and integration support to refugees and migrants in Poland, regardless of their country of origin, gender, religion, sexual orientation or any other differences. The organisation fights for justice in national courts, before the European Court of Human Rights, and in dealings with public authorities.

www.forummigracyjne.org



The We Are Monitoring Association is a member of the Border Group coalition. Since 2021, it has been gathering, analysing and sharing data on the situation at the Polish-Belarusian border, including the scale of migration, instances of power abuse, and various forms of violence experienced by migrants.

www.wearemonitoring.org.pl

FOREWORD



At Save the Children, a global organisation that has been defending children's rights for over a century, we believe that children have an inalienable right to survival, protection, development and active participation in society. We work around the world, including in countries affected by humanitarian crises, focusing on supporting children from the most vulnerable groups. In Poland, we began our work in 2022 in response to the arrival of refugees fleeing the war from Ukraine.

Since the beginning of our presence in Poland, we have focused on supporting refugee children from Ukraine who came to our country after being evacuated from orphanages and other institutional care facilities. Over time, we have expanded our activities to include children from other parts of the world, including those seeking international protection in Poland. Among them are children who cross the Polish-Belarusian border without parents or caregivers and are particularly vulnerable to various forms of violence.

When we began working with unaccompanied children in this region, we faced a serious challenge: a lack of reliable data and knowledge about the scale of the problem and the fate of these children. Without access to reliable information, it was difficult to plan adequate and effective forms of assistance. This is why this report was created – to present, based on current data, existing regulations and a realistic picture of the situation, the reality faced by unaccompanied children arriving in Poland via Belarus.

The situation of these children is extremely difficult and poses a real threat to their health and lives. They are deprived not only of access to basic rights, but also of a fundamental sense of security and care, which are essential for their development and protection. Every child on the territory of Poland should be provided with adequate care and their rights should be protected.

I am deeply convinced that within the legal and institutional framework existing in Poland, we are able to create conditions in which every child who arrives in our country will be provided with proper care. Their fundamental rights will not be violated, and they will be able to feel safe. This work will not be easy, but I believe that the facts and recommendations presented in the report will serve as an impulse to act.

Every child deserves to feel safe, and we, as adults responsible for shaping this world, have a duty to keep them safe.

We would like to thank all partners and co-authors of this report. Without their hard work, knowledge and determination, it would not have been possible to gather this difficult to measure and scattered knowledge.

Celina Kretkowska-Adamowicz

*Acting Response Director
Save the Children Poland*

And then I saw a fence on the Polish side. I was so terrified - my only chance was to climb it. I saw many people from different countries there, small children with their mothers. They had nothing to drink or eat. Some of them were really sick, their situation was very difficult.

I spent many days there, asking to be let in and to be protected. I remember sitting in the forest and looking at that high fence. I thought if I would make it, or if I would break all my bones after falling off it.

I was afraid - you know, I'm a girl, so anything could have happened to me in that forest.

Excerpt from a speech delivered by Sainab, a 17-year-old Somali woman, on October 8, 2024, at the Warsaw Human Dimension conference organised by the Organization for Security and Co-operation in Europe (OSCE). Sainab crossed the Polish-Belarusian border when she was 16 years old. She fled Somalia because she was threatened with kidnapping and forced marriage.



TABLE OF CONTENTS

01

AT THE BORDER

| | |
|---|-----------|
| Foreword | 4 |
| Introduction | 10 |
| Key findings and recommendations | 17 |

| | | |
|--------------|--|-----------|
| 1. | Children travelling alone | 28 |
| 1. 1. | Unaccompanied children at the border | 29 |
| A. | Pushbacks and human rights standards | 29 |
| B. | A difficult journey across the border | 32 |
| 2. | When even the appearance is misleading – age assessment of children: practices, standards, challenges | 42 |
| 2. 1. | Age assessment of unaccompanied children in light of the law | 43 |
| A. | National regulations | 43 |
| B. | International and European standards | 45 |
| C. | The Migration and Asylum Pact | 47 |
| 3. | Age assessment and humanitarian assistance in the border forest | 49 |
| 4. | Age assessment – difficult decisions outside of procedures | 52 |
| 5. | Children identified as adults | 54 |
| 6. | Adults identified as children | 58 |

02

WHAT IS THE 'CARE SYSTEM'?

| | | |
|--------------|--|-----------|
| 1. | Can we talk about a 'care system'? | 60 |
| 1. 1. | Stages of procedures for unaccompanied foreign children in Poland | 61 |
| A. | Stages of procedures for unaccompanied foreign children in Poland | 61 |
| B. | Initial procedural steps | 61 |
| C. | Application for international protection | 62 |
| D. | Procedure for granting international protection | 63 |
| E. | Cooperation between authorities and financing | 66 |
| 2. | The first period of staying in Poland – searching and waiting | 68 |
| 2. 1. | Between the declaration and the application | 69 |
| A. | Where do legal guardians come from? | 69 |
| B. | Do you have a free spot? | 70 |
| C. | When will the application be submitted? | 72 |
| 3. | Legal guardians – between strict legalism and realistic tasks | 76 |
| 3. 1. | Legal representation of unaccompanied children in the light of regulations | 76 |
| 3. 2. | The role of a legal guardian – what is it and what should it be? | 84 |
| A. | Legal guardian from a list, legal guardians with a mission | 84 |
| B. | Legal guardian, legal representative or case worker? | 87 |
| 4. | 'We pave the way' | 89 |
| 5. | Retirement homes for priests and the collapse of the care system | 92 |
| 6. | A system that pushes people out: diffusion of responsibility | 94 |

03

IN ALTERNATIVE CARE

| | | |
|-------|--|-----|
| 1. | Children in alternative care facilities in the eyes of the law | 99 |
| 2. | When a child plans their future | 103 |
| 2. 1. | Should I stay or should I go? | 103 |
| 2. 2. | 'It's just a stopover' – the harmful aspect of rationality | 107 |
| 2. 3. | A self-fulfilling prophecy | 108 |
| 3. | How do children disappear from the alternative care system and what are the risks they face? | 110 |
| 4. | Children who stayed – life in alternative care | 112 |
| 4. 1. | Who are they? | 112 |
| 4. 2. | Conditions in institutional care facilities and willingness to accept foreign children | 112 |
| 4. 3. | Adaptation in the facility | 115 |
| 4. 4. | The importance of peer relationships | 117 |
| 4. 5. | 18 years old, and then what? | 119 |
| 5. | Respect their decisions or protect them from potential dangers? | 120 |

| | |
|---|------------|
| List of definitions | 124 |
| Aneks 1: Aim of the study and research questions | 127 |
| Aneks 2: Research methodology | 128 |
| Aneks 3: Research ethics – with particular emphasis on in-depth interviews | 130 |
| Aneks 4: Research limitations | 131 |
| Aneks 5: List of legal acts of the Pact on Migration and Asylum | 132 |

INTRODUCTION

WHY DID WE WRITE THIS REPORT?

Up until now, discussions about unaccompanied children migrating to Poland have been limited to small groups of specialists, mostly professionals working with institutions and non-governmental organisations. Although these circles were aware of the enormous challenges associated with this issue, due to the relatively small number of young people in a difficult situation, these issues remained on the political sidelines.

This report, based on research, **complements the existing knowledge about children who come to Poland without their parents or caregivers, focusing on those who have crossed the Polish-Belarusian border in recent years.**

This is a distinctive group, primarily due to the scale of the hardships they have experienced along the way – whether due to the constant threat of violence from Belarusian authorities or pushbacks by Polish authorities at the Polish-Belarusian border. Focusing on children from the border has allowed for a more in-depth study of the topic: to describe a young person's journey in a comprehensive way and to reconstruct each of the steps leading to the Polish care system and stay regulation.

WHAT DO WE WRITE ABOUT?

By the term 'unaccompanied children' or 'unaccompanied foreign children', we mean all individuals under the age of 18 who arrive in Poland without their parents or other legal guardians, and who are seeking a safe stay in Poland or elsewhere in Europe. A safe stay means, above all, international protection. For this reason, the legal analysis presented in this report mainly concerns regulations applicable to unaccompanied minors applying for this form of protection. In the sections dedicated to the legal provisions, we also use the term 'unaccompanied (foreign) minor', which is a term used exclusively for this group under Polish law¹.

We have divided the report into three parts. They are preceded by a summary of the most important findings from the study and recommendations. We have intentionally placed them at the beginning of the report to draw attention to the urgent need for change. The first part focuses on a summary of legal aspects in the context of unaccompanied children at the border and during their stay in Poland, including the problem of age identification, but mainly the issue of the risk of violence from the

1 Art. 2(9a) of the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland (Act on Granting Protection to Foreigners)

authorities of both countries. The subject of the second part revolves around the question of whether the Polish context entitles us to talk about any kind of 'care system'. We look at the institutions, procedures and people who could be a part of it, assuming that there is any chance of such a system coming into existence. The third part is dedicated to the issue of alternative care, in particular to foreign children who disappear from alternative care without leaving any trace. We reflect on what may influence their decision and what the dilemma of 'to stay or not to stay' actually means. We also try to describe the conditions in care institutions where unaccompanied children are placed. We compare the perspectives of employees and former alternative children. We conclude with a question that is purposefully left open: what does it actually mean to support an unaccompanied child and how can we identify their best interests in a highly complex context of irregular migration and the search for protection? The report concludes with a list of abbreviations and appendices containing detailed information about the study, as well as a list of legal acts.

The conclusions of the report concerning the appointment of a legal guardian, placement and stay in alternative care, as well as further steps, can also be applied to unaccompanied children arriving in Poland other than via the Polish-Belarusian border, e.g. by plane, via the southern route or via the Polish-Slovak border.

RESEARCH METHODOLOGY - SUMMARY

The study was conducted between 1 December 2024 and 3 March 2025. It consisted of several stages, based primarily on qualitative methods: semi-structured interviews, legal analysis and analysis of existing data collected by the We Are Monitoring Association. The latter was also used in the quantitative part of the study. Statistical and demographic data on children crossing the Polish-Belarusian border in 2024 were also collected through requests for access to public information. A total of 23 interviews were conducted with the following groups of respondents:

- former foreign wards of institutional care (care leavers)
- employees of alternative care institutions and district family support centres
- individuals representing unaccompanied minors in legal proceedings, primarily guardians in proceedings for international protection
- employees and volunteers of non-governmental organisations

More information on the research methodology can be found in Annex 2.

WHAT DON'T WE WRITE ABOUT?

Report z pewnością nie oddaje pełni sytuacji panującej we The report certainly does not reflect the full situation in all alternative care facilities in Poland. The interviews that were the source of information for this report were conducted with caregivers and educators working in facilities in the Podlasie region. Only two of our interviewees came from other regions of Poland.

The report also does not address the issue of Ukrainian children placed in Polish alternative care. They are subject to completely different regulations than children from other countries, which requires a separate study.

UNACCOMPANIED CHILDREN AT THE BORDER – WHO ARE THEY?

The study was quite a challenge. Among other things, we quickly discovered that the systemic dimension of care for unaccompanied migrant children in Poland is in a state of collapse – if one can even describe it as existing at all. The data obtained from institutions (see Annex 2) do not even allow for an unambiguous estimate of the number of unaccompanied foreign children who applied for international protection in 2024.

The information, which should be consistent, does not match and is even contradictory. Last year, the Office for Foreigners recorded 297 unaccompanied foreign minors (in total, not only those who crossed the Polish-Belarusian border), while the Polish Border Guard Headquarters reported that there were only 22 such individuals. These data also do not correspond to the statistics provided by different Border Guard (BG) units. The data obtained from the BG posts located near the Polish-Belarusian border, belonging to the Podlasie (13 posts) and Nadbużański (8 posts) Border Guard units, indicate that at least 58 unaccompanied minors have submitted applications in these locations.

So what do we know about 'unaccompanied children' crossing the Polish-Belarusian border in light of demographic data from the above-mentioned institutions? If we take the statistics from Border Guard posts as a starting point, there are more boys (88%, i.e. 51 people) than girls (12%, i.e. 7 people), i.e. a total of 58 unaccompanied children. Most of them are between the ages of 15 and 17 (81%, i.e. 47 people), although there are also younger teenagers and even children under the age of 10 (2 people). They come from Somalia (15 people), Iran (12 people), Syria (8 people), Egypt (7 people) or Afghanistan (6 people), and occasionally from other countries such as Yemen or the Democratic Republic of Congo.

According to information gathered by The We Are Monitoring Association (hereinafter also referred to as 'WAM'), **265 unaccompanied children** crossed the green border with Belarus in 2024². The majority came from Somalia, Syria and Afghanistan. However, data collected by non-governmental organisations does not provide a complete picture of the situation. Firstly, because NGOs are unable to monitor the scale of border crossings, the demographics of migrants and the number of pushbacks, and only refer to people who have called the emergency number for help. This allows us to look at trends (decrease/increase in the scale of migration, dominant countries of origin), but makes it difficult to accurately determine the total number of travelling migrants. Secondly, as far as minors are concerned, the problem is the assessment of age and the very fact of being a minor. Organisations are only able to collect information about people who claim to be minors.

Given the common belief that 'they all claim to be minors' (a statement by a Border Guard officer quoted in the interview below), it would seem that the actual number of unaccompanied children should fall between the number of people claiming to be under the age of 18 and the number of people whose documents and bone tests confirm their age. However, as we point out later in the report, there are also people who deliberately overstate their age (more on this in part two). We know nothing about many of them, as they crossed the Polish-Belarusian border (often after being pushed back to Belarus by the Border Guard) and reached Western European countries unnoticed by the authorities (we address this issue in part three)³.

The brief description above is still a bit of an oversimplification. But it gives you an idea of how diverse the group of people we're talking about is when we use the term 'unaccompanied child.' Even though we need to make generalisations, we tried to highlight this diversity in our report and study.

THE BEST INTEREST OF A MIGRANT CHILD

In describing and assessing the system in which unaccompanied minors function in Poland, our main point

² Operational data of WAM.

³ We do not have precise data on what percentage of migrants crossing the border sought assistance from the Border Group or other organisations in 2024. In 2023, it was around 26%, but in the following year, migration practices changed slightly – more people wanted to apply for international protection, so it can be assumed that more people were noticed by NGOs. See: WAM, Border in numbers, according to the border guard, 2024.

of reference was the principle of the best interests of the child, as defined in Article 3(1) of the Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989 (**the Convention on the Rights of the Child**). According to this provision, States Parties shall ensure that in all actions concerning children, whether undertaken by public or private social welfare institutions, or any other national authority, **the best interests of the child shall be a primary consideration**. Any discrimination in the fulfilment of this obligation, including against foreign children, is not permissible⁴.

The Committee on the Rights of the Child (CRC) has pointed out that the enjoyment of rights stipulated in the Convention is not limited to children who are nationals of a State Party and must be available to all children, including asylum seekers, refugees and migrants, regardless of their nationality, immigration status or statelessness, unless the Convention expressly provides otherwise⁵.

The best interests of unaccompanied minors should therefore be taken into account at every stage, in all procedures and decisions affecting them, by all authorities and those involved in their legal and living situation.

The implementation of this principle always requires, as a first step, determining what is truly in the best interests of the child, taking into account their particular vulnerability and needs, nationality, upbringing, ethnic, cultural and linguistic background, and other factors⁶.

The assessment of the best interests of the child should be formally established and carried out individually in each case within the framework of administrative or judicial proceedings concerning the migration situation of the child⁷. It should be carried out by entities independent of the authorities dealing with the case, in a multidisciplinary manner and with the participation of institutions

⁴ Art. 2 of the Convention on the Rights of the Child; CRC, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (Art. 3, paragraph 1), CRC/C/GC/14, 2013, point 1.

⁵ CRC, General Comment No. 6 (2005). Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 2005, point 12.

⁶ Ibid., point 20.

⁷ CPC and CMV, Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, CMW/C/GC/3-CRC/C/GC/22, 2017, point 30.

responsible for the protection and welfare of children and other relevant entities, such as parents, guardians and legal representatives, as well as the child itself⁸.

The need to take into account the child's best interests in all actions concerning them has also been recognised in European Union (EU) asylum law⁹. Within the Council of Europe, the European Court of Human Rights (ECtHR) has accepted it in its case law, even though it is not directly included in the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (ECHR)¹⁰. In its judgments in *Neulinger and Shuruk v. Switzerland*¹¹ and *Rahimi v. Greece*¹², the ECtHR

8 Ibid., point 32(c).

9 In particular: Art. 24(2) of the Charter of Fundamental Rights of the European Union, signed in Nice on 7 December 2000 (the 'EU Charter'); recital 33 of 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) ('Procedures Directive'); recital 13 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) ('Dublin III Regulation'); Art. 23 of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 on standards for the reception of applicants for international protection (recast) ('Reception Directive'); recital 18 of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) ('Qualification Directive').

10 European Council on Refugees and Exile, Age assessment in Europe, December 2022, p. 6.

11 ECHR (Grand Chamber), judgment of 6 July 2010 in the case of *Neulinger and Shuruk v. Switzerland*, no. 41615/07, p. 135.

12 ETPC, judgment of 5 April 2011 in the case of *Rahimi v. Greece*, no. 8687/08, p. 87.

emphasised that there is a broad consensus that the best interests of the child must be a primary consideration in all decisions concerning children.

In addition, under the Convention on the Rights of the Child, migrant children should be subject to special protection. **Article 22 requires States Parties to take appropriate measures to ensure that a child who is seeking refugee status or is considered a refugee receives appropriate protection and humanitarian assistance. States should also take steps to find the child's relatives and reunite them with their family as soon as possible, and if this is not possible, they should provide them with appropriate care.**

On this basis, the CRC requires states to develop a well-functioning asylum system that takes into account the obligation to treat unaccompanied children and children separated from their siblings in a special manner and to ensure that such treatment is carried out in accordance with international human rights law¹³. The ECtHR also notes the particular vulnerability of migrant children, emphasising that their extreme vulnerability and needs take precedence over any considerations relating to their irregular status in the host country, and that states therefore have an obligation to apply enhanced measures of protection¹⁴, regardless of whether the child is accompanied by their parents or not¹⁵.

The report attempts to answer the question of whether the best interests of unaccompanied foreign children in Poland are being served.

13 CPC, General Comment No. 6 (2005)..., op. cit., p. 64.

14 ECHR (Grand Chamber), 21 January 2011, *M.S.S. v. Belgium and Greece*, no. 30696/09, para. 232; ECtHR, judgment of 12 October 2012 in the case of *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, 12 October 2006, p. 55.

15 ECHR, judgment of 19 January 2012 in the case of *Popov v. France*, nos. 39472/07, 39474/07, p.

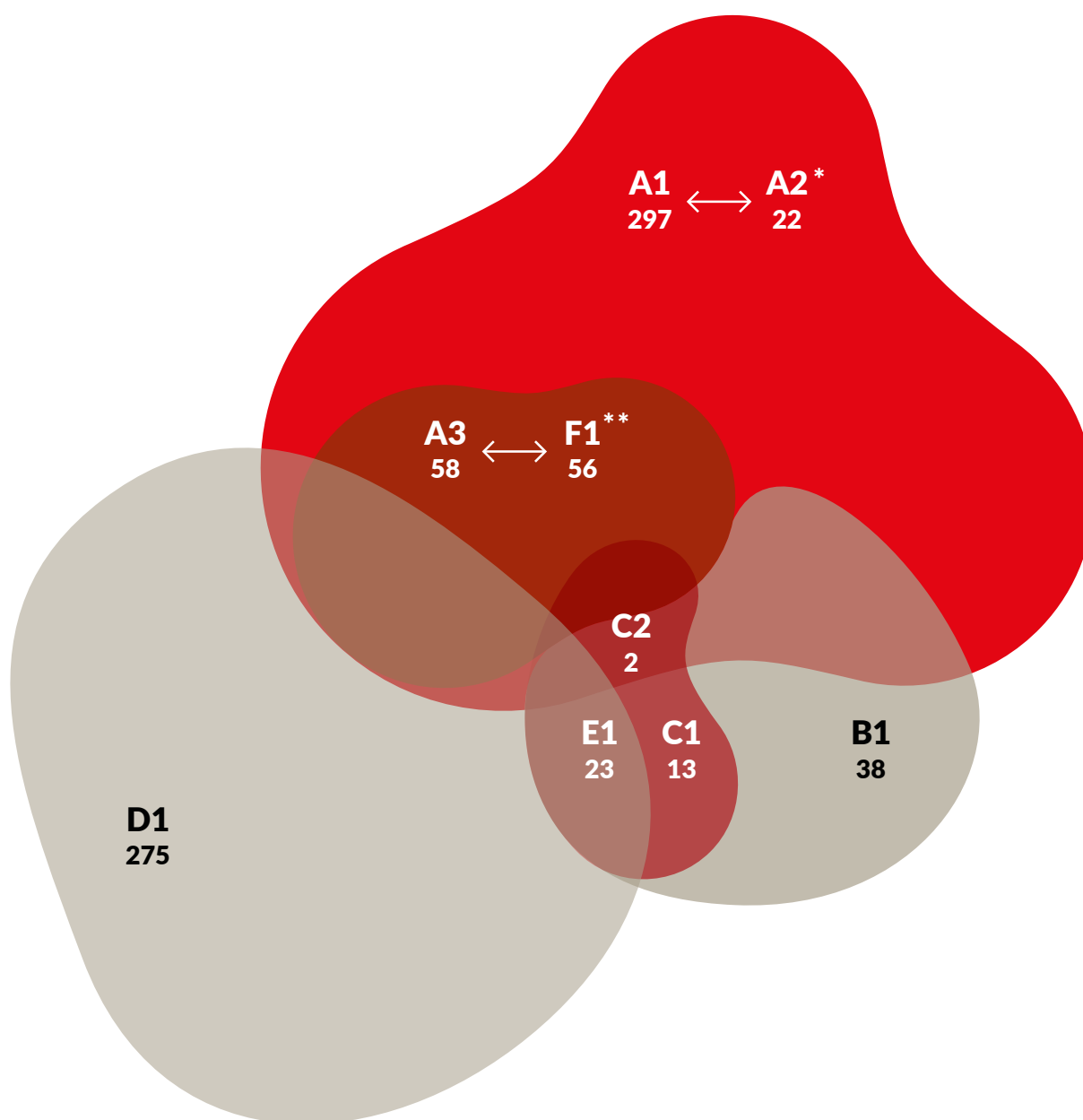
SELECTED ADMINISTRATIVE STATISTICS RELATED TO THE NUMBER OF UNACCOMPANIED FOREIGN MINORS IN POLAND IN 2024:

| CATEGORY NAME | LETTER | INSTITUTION COLLECTING DATA | NUMBER | DESCRIPTION |
|---|-----------|---|------------|--|
| unaccompanied minors who have applied for international protection | A1 | Office for Foreigners | 297 | Individuals who, after making a declaration, managed to submit an application for international protection to the Border Guard, which was then forwarded to the Office for Foreigners. This does not include individuals who left the territory of Poland between the date of making the declaration and the date of submitting the application. |
| | A2 | Border Guard Headquarters | 22 | As above – the number should correspond to the number indicated by the Office for Foreigners. |
| unaccompanied minors who have applied for international protection at a Border Guard post near the Polish-Belarusian border (see Methodology) | A3 | Podlasie Border Guard Unit, Nadbużański Border Guard Unit | 58 | Individuals who, after making a declaration, also applied for international protection at one of the Border Guard posts located near the Polish-Belarusian border. The number should be included in the number indicated by the Office for Foreigners (A1) and the Border Guard Headquarters (A2). |
| unaccompanied minors in alternative care whose stay is financed by the Office for Foreigners | B1 | Office for Foreigners | 38 | The Office for Foreigners finances the stay of unaccompanied minors in alternative care between the moment of submitting an application for international protection and the possible change from emergency to socialisation alternative care. The number should be included in the number of unaccompanied minors who have applied for international protection indicated by the Office for Foreigners, but should be lower than that number, as it does not include unaccompanied minors who have been placed in foster families with close relatives. It also does not include unaccompanied minors who were in alternative care and for whom no application for international protection was lodged. |
| unaccompanied minors against whom return proceedings have been initiated | C1 | Border Guard Headquarters | 13 | Individuals against whom return proceedings have been initiated. The number may partially overlap with the number of unaccompanied minors who have applied for international protection indicated by the Office for Foreigners (A1) and the Border Guard (A2) – because it is possible that return proceedings were initiated before the declaration of intent to apply for international protection was made. |

| | | | | |
|---|-----------|--|------------|--|
| unaccompanied minors against whom return proceedings have been initiated at Border Guards units in the area near the Polish-Belarusian border | C2 | Podlasie Border Guard Unit, Nadbużański Border Guard Unit | 2 | As above, but only for selected Border Guard posts. The number should be included in that indicated by the Border Guard Headquarters (C1). |
| individuals who have been referred for age assessment by Border Guard posts in the border area between Poland and Belarus | D1 | Podlasie Border Guard Unit, Nadbużański Border Guard Unit | 275 | People who, despite declaring that they are minors, have been referred for age assessment by the Border Guard. The number includes people whose age was determined to be less than 18 as a result of the examination, as well as those who were considered adults – and those who, as a result of the age assessment, were considered adults but were later confirmed to be minors. |
| unaccompanied minors placed in the detention centre in Lesznowola | E1 | Border Guard Headquarters | 23 | Individuals who were placed in the detention centre in Lesznowola as unaccompanied minors. The number includes both unaccompanied minors over the age of 15 who did not apply for international protection before being placed in the Lesznowola detention centre, as well as those initially considered adults who were later identified as unaccompanied minors during their stay in another detention centre. |
| unaccompanied minors who have been assigned a legal guardian for international protection proceedings | F1 | district courts in areas neighbouring the Polish-Belarusian border (see Methodology) | 56 | Individuals who have declared their intention to apply for international protection and for whom the court has initiated a procedure to appoint a legal guardian for the proceedings, including for the purpose of formally submitting the application. This figure should correspond to the number of people who have submitted an application at a local Border Guard post (A3). |

Source: data provided in response to a request for access to public information by the Office for Foreigners, the Border Guard Headquarters, the Podlasie Border Guard Unit, the Nadbużański Border Guard Unit, the Nadwiślański Border Guard Unit and district courts.

OVERVIEW OF SELECTED ADMINISTRATIVE STATISTICS RELATED TO THE NUMBER OF UNACCOMPANIED MINORS IN POLAND IN 2024



XX category of unaccompanied children

XX number of unaccompanied children

* A1 and A2 refer to the same category of unaccompanied children - their values should be equal

** A3 and F1 refer to the same category of unaccompanied children - their values should be equal



KEY FINDINGS AND RECOMMENDATIONS

KEY FINDINGS AND RECOMMENDATIONS

The report is an attempt to capture the complex and difficult situation faced by unaccompanied minors seeking international protection after crossing the Polish-Belarusian border. While writing it, we wanted to follow the entire journey of children towards safety: from the moment they cross the border, through the process of age assessment, assignment of a legal guardian, application for international protection, to their placement in Polish alternative care.

The report describes the legal and factual situation in 2024. While practices related to the representation and reception of unaccompanied minors have not changed in 2025, issues related to access to Polish territory have changed significantly. **On March 27, 2025, legal changes came into force that allow for the suspension of the right to apply for international protection.** This suspension is temporary (at the time of writing this report, it is 60 days) and territorial (the border with Belarus). The law provides

for several exceptions, i.e. unaccompanied minors may still apply for international protection. **However, the legislator did not provide any specific tools or procedures for the reliable identification of minors¹⁶. In practice, this leaves children dependent on the discretionary decisions of Border Guard officers and exposes them to the risk of being pushed back to Belarus.**

¹⁶ A more detailed discussion of the regulatory changes can be found later in the report. This report was completed 3 weeks after the suspension was implemented. The short time that has passed since the change was introduced does not yet allow conclusions to be drawn about the new strategies undertaken by migrants along the route. According to preliminary observations by NGOs, the change did not stop crossings of the so-called „green border”, but almost completely blocked the possibility of applying for international protection at the Terespol border crossing (information based on discussions at the Researchers on the Border seminar on 12.04.2025).

THE RECOMMENDATIONS PROPOSED BELOW, WHICH ADDRESS THE MOST PRESSING ISSUES RAISED IN THE REPORT, HAVE BEEN DIVIDED INTO THREE CATEGORIES:



ACTIONS THAT CAN BE IMPLEMENTED IMMEDIATELY, BY BETTER COORDINATING AND PUTTING THE BEST INTERESTS OF THE CHILD AT THE CENTER OF SOLUTIONS AND PROCEDURES AFFECTING THEM



CHANGES THAT REQUIRE DEEPER SYSTEMIC AND LEGISLATIVE REFORMS



DEMANDS FOR CROSS-BORDER COOPERATION, ADDRESSED TO THE INSTITUTIONS OF THE EUROPEAN UNION

Ensuring the protection of unaccompanied minors requires comprehensive systemic solutions. At the same time, we emphasise the importance of measures that can be implemented without the need for fundamental reforms and which will bring real change for this particularly vulnerable group. We highlight the important role played by civil society organisations, while stressing that their involvement cannot replace an effective child protection system.

FIRST PROBLEM: DATA, OR RATHER THE LACK OF IT

The lack of consistent data on the number of unaccompanied children crossing the Polish-Belarusian border is a serious obstacle to the development of public policies and support planning. The report points out that the data from Border Guard Headquarters is inconsistent with the data obtained from local Border Guard units and the Office for Foreigners. For example, the Border Guard Headquarters recorded only 22 unaccompanied children nationwide in 2024, while the BG posts located in the border area indicated that they registered at least 58 children. In contrast, the Office for Foreigners recorded 297 unaccompanied foreign minors.

In addition, in 2024, the We Are Monitoring Association (WAM), the only NGO independently collecting and monitoring data on pushbacks and irregular migration along this route, registered requests for humanitarian aid from 5,700 people in Poland and Belarus. **Of these people, 482 (8.5%) were underage, and as many as 76% (367) of this group were traveling on their own. In Poland, WAM redirected 235 minors to organizations providing legal, medical and humanitarian aid - 68% of whom were unaccompanied minors.**

SECOND PROBLEM: VIOLENCE AT THE BORDER

Since 2021, Polish authorities have been implementing a policy of illegal pushbacks at the Polish-Belarusian border. Although over time these actions are gradually being “legalized” under domestic law - through regulations and statutory amendments - they remain illegal under the European Union law, international conventions and the Polish Constitution.

The Polish-Belarusian border is the site of abusive practices, including against children. The practices adopted directly violate the provisions of the Convention on the Rights of the Child. Children, like adults, are subjected to brutal treatment on both sides of the border. On the Belarusian side, they suffer physical and psychological violence: they are threatened with dogs, beaten, deprived of clothes and shoes, their documents are being confiscated. On the Polish side - they are sometimes subjected to physical and psychological violence and pushed back to Belarus¹⁷. Unlike in previous years, in 2024, attempts by unaccompanied children with confirmed age on their documents to apply for international protection in Poland were often successful. The situation was quite different for those who declared that they were minors, but were unable to prove it with an original passport, which put them at risk of being pushed back.

The report clearly indicates that the treatment of children at the Polish-Belarusian border largely depends on the discretionary decisions of individual officers. There are no unified response procedures, and children are often treated as adults, which leads to violations of the principle of their special protection and prevents them from exercising their rights.



For more information on this topic, go to part one, chapter B. A difficult journey across the border (page 32)



RECOMMENDATIONS THAT CAN BE IMPLEMENTED IN THE CURRENT SYSTEM

Uniform, clear mechanisms for collecting consistent data on unaccompanied minors in international protection procedures should be developed and implemented, including information on how they cross the border and their subsequent placement in alternative care.

17 See, for example, the WAM Association, link: https://wearemonitoring.org.pl/wp-content/uploads/2024/07/RaportGranica_online.pdf, 2024, accessed on 30 April 2025; the Salvation Foundation, link: https://ocalenie.org.pl/wp-content/uploads/2024/07/pl_no-safe-passage-migrants-deaths-at-the-european-union-belarusian-border.pdf, 2024, accessed on 30 April 2025.



RECOMMENDATIONS THAT CAN BE IMPLEMENTED IN THE CURRENT SYSTEM

The extension of the so-called suspension act, which, under the current regulation, prevents applications for international protection from being submitted at the border with Belarus, should be urgently discontinued. These provisions prevent the effective individual case assessment, including reliable age assessment of individuals claiming to be minors. The lack of clearly defined procedures in this regard increases the risk of arbitrary decisions by Border Guard officers and exposes children to pushbacks.



RECOMMENDATIONS REQUIRING SYSTEMIC CHANGES

It is necessary to restore the Act on Foreigners to its pre-March 27, 2025 legal status and prevent the „suspension” of the right to apply for international protection in the future by amending it again.

An independent mechanism should be urgently established to monitor actions taken against children at the border, including the identification of minors, access to asylum procedures and the documentation of violations of their rights, with guaranteed, permanent access to the border area and places where children are staying.

THIRD PROBLEM: AGE ASSESSMENT

In 2024, **286 people were referred for age assessment** at Border Guard posts close to the Polish-Belarusian border. **Only 48 (17%) of them were recognized as minors.** **The largest group of examinees was from Somalia - 190 people, of whom only 15 (8%) were recognized as minors.**

Age assessments are carried out using **wrist X-rays and bone age estimation - methods widely questioned** by the medical community and international human rights institutions. The lack of standards and adequate procedures means that children - wrongly considered to be of legal age - can end up in adult detention centers, thereby depriving them of their right to education and protection appropriate to their age.

Another problem is that age assessments are carried out outside the legalisation of stay or international protection procedures, most often before they begin, and without the appointment of legal representation. There is also no appeal mechanism to question the results.

International recommendations in this regard suggest **that age assessment should be a procedure used as a last resort and carried out in a multidisciplinary way, taking into account the child's psychological development.**

Documents other than just the original passport (e.g., scans or photos of the birth certificate) should also be taken into consideration. The subject should have the right to a designated representative, the right to obtain the results of the examination and to an effective appeal, as well as to be treated in a way that a child should be treated.



For more information on this topic, go to part one, chapter B. International and European standards (page 45) and chapter C. Pact on Migration and Asylum (page 47)

The problem of children mistakenly identified as adults was repeatedly raised in interviews. Due to the lack of an official appeal procedure, it is difficult to estimate the actual scale of this problem. There are known cases in which incorrect findings were corrected thanks to re-examinations ordered by other Border Guard units. Although most stories concern children wrongly recognised as adults, some interviewees also mentioned the opposite – adults recognised as children.



RECOMMENDATIONS THAT CAN BE IMPLEMENTED IN THE CURRENT SYSTEM

Specialized training should be given immediately to physicians who perform X-ray age examinations, expanding their knowledge of differences in the development of children from different regions of the world and the impact of environmental factors (i.e. malnutrition) on chronological age assessment.



RECOMMENDATIONS REQUIRING SYSTEMIC CHANGE

It is necessary to fundamentally change the approach to assessing the age of those declaring themselves to be minors. In light of the implementation of the Pact on Migration and Asylum and the planned changes to the EU return system¹⁸, it is necessary to introduce a multidisciplinary, transparent procedure with the principle of the best interests of the child as its centre. Independent experts, social organizations, the scientific community and the Ombudsman for Children should be involved in the design of this procedure.

A formal appeal procedure against the result of the age assessment or a procedure allowing for its re-examination at the request of the person concerned or their representative should be introduced.



RECOMMENDATIONS FOR ACTION AT EUROPEAN LEVEL

European Union institutions and programmes should provide support for the exchange of good practices and knowledge between Member States on the implementation of multidisciplinary age assessment procedures, including through financing relevant initiatives.

FOURTH PROBLEM: A SYSTEM THAT PUSHES YOU OUT

Even when an unaccompanied child is allowed to enter Poland and is officially recognized as a minor, the initial reception stage brings numerous challenges.

Their accumulation, which often occurs immediately after experiences of violence in their country of origin and at the border, creates a hostile system, a system that “pushes” children out of Poland, forcing them to make decisions about continuing their journey, which is often risky.

Several key factors contribute to the functioning of this system:

1. No space in alternative care

Problems related to the admission of foreign children overlap with the overall crisis in the alternative care system. According to data from the Ombudsman's Office, in 2024 as many as 1,370 children couldn't find a safe place in a foster family or institutional facility¹⁹.

The Border Guard is responsible for finding a facility ready to accept a foreign child. However, in the absence of available spots and a lack of a coordination system, the Border Guard is often helpless. In cases where officers do not have reliable channels of communication with facilities or when these are overcrowded, they are forced

18 The European Union has a joint policy on voluntary return and readmission to countries of origin, which applies to people who are in the EU irregularly or have not been granted international protection. Currently, there is a lot of discussion about so-called return hubs, which are to be set up in countries outside the EU under bilateral agreements.

19 Lack of places in alternative care. Response from the Ministry of Family, Labour and Social Policy, link: <https://bip.brpo.gov.pl/pl/content/rpo-dzieci-pieczna-zastepcza-brak-miejsc-mrpips-odpowiedz>, accessed on 28 April 2025.

to improvise, often disregarding the best interests of the child. There have been cases of “dropping children off” at institutions, without prior arrangement or preparation.

The case of a retirement home for priests in Podlaskie Voivodeship became an example of the system’s collapse. Journalists found²⁰ that under an agreement between the Podlasie Border Guard Unit and the diocesan Caritas branch, unaccompanied children who crossed the Polish-Belarusian border were sent there for at least six months. However, this cooperation was not supported by either a change in the law or the conversion of this facility to a care facility, which raises serious doubts about its legality and compliance with the principles of protecting children’s rights.



For more information on this topic, go to part two, chapter 2. The first period of stay in Poland – searching and waiting (page 68), chapter 5. Retirement homes for priests and the collapse of the care system (page 92) and chapter 6. A system that pushes people out: diffusion of responsibility. (page 94)

2. “State of limbo” - before the procedure starts

Although filing an application for international protection by an unaccompanied child should take place within three days of the appointment of a legal guardian, sometimes they have to wait a few weeks for the legal guardian to be appointed. The period between the declaration and applying for international protection can be described as a “state of limbo.” **At this stage, children don’t even have an identity document.**

There are also serious doubts as to which institution should cover the costs of the child’s stay in alternative care during this period - the Border Guard or the Office for Foreigners. In practice, this leads to a situation in which alternative care facilities do not have the resources to fund the necessary health care for children waiting to apply. Meanwhile, according to the European Union law, medical care should be provided from the moment the intention to apply for international protection is declared.

3. Lack of legal representation that puts the child at the center

One of the fundamental systemic gaps is the lack of provisions to ensure that an unaccompanied child has a designated person representing his or her interests in all matters. From a legal perspective, the following persons act on behalf of the child:

- **Legal guardian** - appointed by the family court to represent the child **in international protection proceedings**²¹

- **Actual caregiver** - most often this is the director of the institution to which the child has been referred. Although he supervises him on a daily basis, the scope of his formal competences is unclear.

- **Legal representative** - the parent or other legal caregiver established in the child’s country of origin, which in practice often means no real influence over the child’s situation.

This diffusion of responsibility leads to serious practical problems. It is not clearly defined who has the right to make decisions regarding the child’s medical treatment, who should initiate family reunification procedures, or who is responsible for protecting the child’s basic rights. As a result, the child’s key needs often lie outside anyone’s area of responsibility.

The report clearly indicates an urgent need to introduce the role of a representative for foreign children into Polish law – a person responsible for the comprehensive representation of a minor in matters concerning them.

There is a lack of a single person or institution that would take care of the best interests of the child in a comprehensive and systematic way, with adequate competence, resources and funding.

Currently, the prevailing approach focuses exclusively on a narrow division of tasks and responsibilities towards the child, which has nothing to do with ensuring full access to the exercise of their rights. Systemic gaps remain unfilled – the overall well-being of the child is not taken into account.



For more information on this topic, go to part two, chapter 3. Legal guardians – between strict legalism and realistic tasks (page 76)

20 T. Słomczyński, Dlaczego dzieci z granicy trafiają do domu księży emerytów, TVN24, link: <https://tvn24.pl/polska/dlaczego-dzieci-z-granicy-trafiaja-do-domu-ksiezy-emerytow-st8292022>, accessed on 30 April 2025.

21 There are cases where the court extends the powers of the legal guardian (e.g. to represent the child in social matters or return proceedings), but this is not standard practice.



RECOMMENDATIONS THAT CAN BE IMPLEMENTED IN THE CURRENT SYSTEM

It is necessary to establish a formal coordination mechanism between the Border Guard and alternative care facilities to ensure that unaccompanied children have immediate access to appropriate care institutions, taking into account the best interests of the child.

It is necessary to create a system to prepare candidates for legal guardians and make improvements that affect the quality of their work, through:

- Providing training for attorneys, legal advisors and representatives of NGOs appointed by the courts as legal guardians;
- Creating and updating a database that collects information on trained, qualified individuals ready to serve as legal guardians;
- Effectively sharing the database among family courts, along with an information campaign to promote its use.

It is necessary to guarantee children access to health care - including psychological help - from the moment they declare their intention to apply for international protection, in accordance with European Union law.

It is necessary to introduce a system of mandatory, regular training for Border Guard officers on:

- child protection standards, taking into account the needs and situation of migrant children as a particularly vulnerable group
 - principles for implementing the best interests of the child
- Intercultural communication and working with migrant children.



RECOMMENDATIONS REQUIRING SYSTEMIC CHANGE

The role of a representative of a foreign child, responsible for comprehensive representation of the child in all aspects of his life - legal, administrative, social and health - **should be urgently introduced into the Polish legal system.** The representative should act in the best interests of the child, have the necessary competence, be adequately remunerated and receive systemic institutional support.

It is necessary to create a specialized institution or designate an existing body responsible for the coordination and monitoring of all measures taken for unaccompanied foreign minors, including ensuring consistency in procedures, implementing child protection standards and monitoring the situation of children in alternative care.



RECOMMENDATIONS FOR ACTION AT THE EUROPEAN LEVEL

It is essential that the institutions of the European Union - within the framework of financial programs such as the Asylum, Migration and Integration Fund (FAMI) and other EU funds - actively support member states in the creation, development of and financing of foster care systems for unaccompanied foreign children, with a particular focus on family care. The lack of appropriate forms of care makes it very difficult to ensure protection in accordance with the Convention on the Rights of the Child. These systems must take into account the specific situation of migrant children - including language barriers and psychosocial needs - and support their integration. EU support should include both the development of infrastructure and the training of foster families and staff, as well as building sustainable care mechanisms.

FIFTH PROBLEM: ON THE MOVE

Foreign children frequently run away from alternative care. The vast majority of minors leave the institutions, after a shorter or longer stay. **However, there is a lack of accurate national statistics to assess the scale of this problem.** According to the account of one employee of a non-governmental organization supporting children in alternative care, **only four of her 30 wards have not left Poland. The fate of the others remains unknown²².**

Many children find themselves in situations of prolonged and non-transparent administrative proceedings, with limited access to information about their legal situation and options for taking further action. **There is a lack of effective information and education programs that would explain to children their legal situation, discuss possible choices and the risks involved.** The information gap and systemic neglect increase the risk of their decision to run away and make them extremely vulnerable to exploitation, including the threat of human trafficking. Foreign children remain at particularly high risk, and their disappearances are difficult to track and rarely analyzed.

According to the study participants, children who arrived in Poland without a specific plan for the future, but had positive experiences while in alternative care, face a dilemma whether to continue their journey or stay in Poland. **The support and sense of security built by “safe adults” seem to be a factor in the decision to stay - but not many children have the opportunity to experience this quality of care.**

With children frequently moving away from alternative care, some facilities are adopting a “wait-and-see” strategy - limiting investment of time and effort in forming relationships and building a sense of stability. **This mechanism resembles a self-fulfilling prophecy: since children often disappear from alternative care, attempts to establish deep relationships with them are minimised. The lack of a relationship of trust – further exacerbated by language barriers, limited access to interpreters, staff overload and the lack of preparation of institutions to work with foreign children – may be key factors influencing the decision to run away.**

Disappearances of foreign children are a significant challenge for institutions and public services. Care facilities, as open units, allow children to leave their premises “on furlough”. In practice, this solution is sometimes convenient for the system, which lacks effective tools to respond to risky situations. In some cases, there is a lack of decisive measures to effectively prevent children from leaving alternative care, which may be perceived as silent acceptance or helplessness in the face of this phenomenon.



For more information on this topic, go to part three, chapter 2. When a child plans their future (page 103)

²² This information was obtained during interviews conducted by a team of researchers for the purposes of this report. The interviews have been anonymised. For more information on the research methodology, see Annex 1.



RECOMMENDATIONS THAT CAN BE IMPLEMENTED IN THE CURRENT SYSTEM

Education and outreach programs targeting unaccompanied children should be introduced to help them understand their legal status, possible pathways and potential risks. Such programs should be tailored to the age and language of the child, and provide information on available resources.

It is necessary to introduce and fund training for personnel working with foreign children, including trust-building, cross-cultural competence and identification of trafficking victims, as the current deficit of competence and resources in this area undermines the effectiveness of child protection.



RECOMMENDATIONS FOR ACTION AT THE EUROPEAN LEVEL

Efforts should be made to improve family reunification mechanisms at the stage of international protection proceedings by simplifying procedures, ensuring access to legal information, and strengthening cross-border cooperation among member states, taking into account the best interests of the child.

SIXTH PROBLEM: ALTERNATIVE CARE

According to data from the Office for Foreigners, unaccompanied children end up in alternative care in different provinces. In 2024, most of them were placed in institutions near the Polish-Belarusian border - near Białystok, Augustów and Hajnówka in the Podlaskie Voivodeship, and Biała Podlaska in Lublin Voivodeship. Several children were placed in institutions close to Rzeszów and Przemyśl – in this case, they were most likely individuals released from detention centres after age verification. Finally, the map of alternative care facilities is completed by the areas around Warsaw, Piaseczno and Łódź.

The report clearly shows that care institutions have different approaches to the process of adapting children to a new place. The common ground is ensuring the safety of the ward, completing formal procedures and taking care of basic needs: shelter, clothing and food. Not all institutions believe that foreign children require additional steps to be taken by the institution.

Caregivers often indicate that **lack of access to translation services is one of the fundamental challenges they face.** Unlike the Border Guard or the Office for Foreigners, which work with translators on a daily basis, institutional care facilities do not have access to these resources.

The vast majority of children were placed in institutional alternative care. Access to family-based alternative care is basically unavailable to foreign children. Institutional custody does not have the capacity to address the deeper developmental and emotional needs of the child, especially when there are fourteen children of different ages per caregiver. It is only able to provide basic subsistence and security.

The functioning of institutional care can be described from a systemic perspective. Here, we understand the system as something more than the mere sum of its parts – its functioning is determined by internal connections, relationships and hierarchies between its parts. Institutional care, as part of a broader system, acts like the system itself: it puts its own interests first. From this perspective, a desirable ward is one who does not cause problems. A foreign child with all the legal procedures, language barriers and unfamiliar customs could potentially be a problem.



For more information on this topic, go to part three, chapter 4. Children who stayed – life in alternative care (page 99)



RECOMMENDATIONS THAT CAN BE IMPLEMENTED IN THE CURRENT SYSTEM

Efforts should be made to facilitate **access to specialized forms of support** for foreign children placed in alternative care, such as psychological and legal assistance.

It is necessary to create an easily accessible path for caregivers in alternative care to use **professional translation services**, remotely. We emphasise the need for contracted interpreters to be properly trained in working with children from refugee backgrounds.

It is necessary to create local **pathways of cooperation between care facilities and NGOs**, aiming to introduce a model of individual and coordinated support for children.



RECOMMENDATIONS REQUIRING SYSTEMIC CHANGES

It is necessary to work towards launching a program to prepare foster families to care for foreign children, following the principle that all children have the right to grow up in a family environment or as close to it as possible. Using the experience of other countries, diaspora and multicultural families can be involved in the development of intercultural family care.

It is necessary to increase the availability and quality of programmes for children reaching the age of 18 in alternative care, including children from refugee backgrounds.

Study programmes preparing students for work in alternative care (in accordance with the Act on Family Support) should include classes developing intercultural competences and knowledge about the rights of children from refugee backgrounds.



RECOMMENDATIONS FOR ACTION AT THE EUROPEAN LEVEL

European Union programmes should give priority to the transfer of knowledge and skills in creating places for foreign children in family-based alternative care. Measures such as study visits, exchanges and international internships for organisers and staff of alternative care are needed.



01

AT THE BORDER

AT THE BORDER

CHILDREN ALONE ON THE MOVE

- 01** *Pushbacks – returning migrants without giving them the possibility to apply for refugee status (also practiced in case of children) – go against human rights and children's rights. Despite the attempts to legalize them in the Polish law, they remain in conflict with the EU regulations, international conventions, and the Constitution of the Republic of Poland.*
- 02** *Children are especially prone to being harmed at the border where numerous abuses and violence take place.*
- 03** *Lack of uniform procedures and Border Guard's discretion leads to treating children as adults and results in violating their right to special protection. The provisions of March 2025 limited the possibility of applying for protection, unaccompanied children were excluded from it. However, in practice, unless they have documents that could confirm their age on them, the risk of pushbacks due to difficulties in assessing their age at the field remains high.*



1.1. UNACCOMPANIED AT THE BORDER

A. PUSHBACKS AND HUMAN RIGHTS STANDARDS

Pushbacks (that is sending migrants back to the country they were in before crossing the border without giving them the opportunity to apply for refugee status and without initiating any other administrative procedures) violate the basic human rights, including the right to seek asylum²³ and the related non-refoulement principle contained in Article 33 of the Convention relating to the Status of Refugees, drawn up in Geneva on 28 July 1951 ("the Geneva Convention"). According to it, it is inadmissible to expel or return a foreigner to the territory of a country where their life or freedom might be in danger for reasons of race, religion, nationality, membership of a particular social group or political opinion.

The prohibition of migrant pushbacks cannot depend on the place where they apply for protection – regardless of whether it happens at an official border crossing or at another place on the border or deep within the territory of the country²⁴. The prohibition of *refoulement* applies when the country exercises its jurisdiction over the person in question and exercises effective control over them – that is, also when it decides to let them into its territory or refuses to let them in²⁵.

23 Art. 14 of the Universal Declaration of Human Rights, adopted and proclaimed by UN General Assembly resolution 217 (III) A on 10 December 1948, Art. 18 of the Charter of Fundamental Rights of the European Union, Art. 78 of the TFEU (consolidated text: Journal of Laws of 2004, No. 90, item 864/2, as amended), Art. 56 of the Constitution of the Republic of Poland of 2 April 1997 ("The Constitution of the Republic of Poland").

24 O. Łachacz, Non- refoulement in international refugee law – international custom or peremptory norm of international law , PWPM, vol. XV, AD MMXVII,

25 Human Rights Committee, General Comment No. 31 [80] The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add. 13, 2004, pt. 10.

It also does not matter in what form the desire to apply for international protection is expressed. The Court of Justice of the European Union ("CJEU") has indicated that although Article 6(3) of the Procedures Directive allows Member States to establish a requirement that applications for international protection be formally lodged in a specific place, such a requirement cannot be applied to the mere declaration that someone intends to apply for international protection²⁶. One thing is to declare the willingness to apply for international protection, which may take any form (written, oral or otherwise) before any state authority²⁷, and another thing is to formally submit an application on the appropriate paper form to the migration authorities²⁸.

A foreigner's declaration of their willingness to apply for international protection to the authorities of a given country entails the necessity of allowing entry to its territory and accepting the application²⁹. Each application should be considered individually - this is an obligation imposed by Art. 4 of Additional Protocol No. 4 to the ECHR prohibiting the collective expulsion of foreigners,

26 CJEU, Case C-808/18, European Commission v. Hungary, judgment of 17 December 2020, p. 96.

27 CJEU, Case C-36/20 PPU Ministerio Fiscal (Authority likely to receive an application for international protection), judgment of 25 June 2020, p. 93 and 94.

28 Art. 28 section 1 of the Act of 13 June 2003 on Granting Protection to Foreigners within the territory of the Republic of Poland ("u.u.c.o."); cf. the English version of Art. 6 of the Procedures Directive, where the process of submitting an application for international protection is divided into three stages: make an application, register and lodge.

29 Art. 6(1) in conjunction with Art. 3(1) in conjunction with Art. 9(1) of the Procedures Directive; see also CJEU, judgment of 17 December 2020, European Commission v Hungary, C 808/18, p. 97; G. Baranowska, Can the state limit the possibility of considering asylum applications (assessment of the provisions of the Deportation Act) [in:] W. Klaus (ed.), Beyond the law. Legal assessment of the actions of the Polish state in response to the humanitarian crisis on the Polish-Belarusian border, IPN PAN, Warsaw 2022, p. 8.

as well as Art. 10 para. 3 (a) of the Procedure Directive.

The *non-refoulement* principle entails not only the need to examine whether the country to which the foreigner is to be returned will be safe for them, but also whether there is no risk that the authorities will expel him to a third country where they could be subjected to torture, inhuman or inhumanitarian treatment or other forms of persecution (so-called *chain refoulement*)³⁰. This is especially important in the context of returning foreigners to the territory of Belarus, which may result in expelling foreigners to their country of origin, exposing them to the previously mentioned forms of violence and persecution. Moreover, the prohibition of returning or expelling foreigners applies to all persons, not only those seeking international protection³¹. The fundamental right of every person to freedom from torture, inhuman and degrading treatment or punishment is therefore unconditional.

Indisputably, all minor migrants should have access to asylum or other protection procedures, regardless of their age or the documents they hold³². Due to the particular vulnerability of this group, children should not be refused to enter the country³³. As indicated by the Office of the United Nations High Commissioner for Human Rights, “[...] all children should have access to an

effective procedure aimed at determining, in a child-friendly manner, the risks they would face in case they return to their country of origin or the risk of *chain refoulement* (i.e., expulsion to third countries where the person would at a risk of expulsion)”³⁴. However, unaccompanied children whose situation does not indicate seeking international protection should have access to other protection mechanisms³⁵.

Asylum procedures for unaccompanied minors should be conducted with all procedural guarantees and as a priority³⁶. The obligations of states arising from the Convention on the Rights of the Child are both negative (prohibition of violating children’s rights) and positive (i.e. taking all possible steps to prevent such violation, including identifying unaccompanied minors at the state border as quickly as possible)³⁷.

Nevertheless, the ECtHR has already issued several judgments against Poland for the use of pushbacks – by refusing persons seeking international protection, including children to enter Poland at the border crossing in Terespol³⁸. Children were involved in four of the five cases, nineteen in total. The ECtHR found a violation of Art. 3, Art. 13, and Art. 34 of the ECHR, as well as Art. 4 of Protocol No. 4 to the ECHR.

During the humanitarian crisis that started in August 2021 at the Polish-Belarusian border, the Polish government tried to legalise pushbacks. Apart from the decision to leave the territory of the Republic of Poland (“RP”) under Art. 303b of the Act on Foreigners of 12 December 2013 (“Act on Foreigners”), the government made it possible to return people to the state border line based on the Regulation of the Minister of Internal Affairs and Administration of 20 August 2021 amending the regulation on the temporary suspension or restriction of border traffic at certain border crossings. However, the Polish law does not provide for effective means of appeal in any of these cases.

30 CRC, General Comment No. 6 (2005). Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 2005, p. 27; United Nations Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration, A/HRC/15/29, 2010, p. 41.

31 Art. 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly on 10 December 1984 (i.e. Journal of Laws of 1989, No. 63, item 378); Art. 7 of the International Covenant on Civil and Political Rights, opened for signing in New York on 19 December 1966 (i.e. Journal of Laws of 1977, No. 38, item 167); Art. 3 and Art. 15 para. 2 of the ECHR; Art. 4 para. 4(b) and Art. 5 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegal third-country nationals.

32 CRC, General Comment No. 6 (2005) ..., op. cit., p.66; CRC and CMV, Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, CMW/C/GC/4-CRC/C/GC/23, 2017, p. 17 (a).

33 UNHCR, Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, February 1997, p. 4.1.

34 UN Human Rights Council, op. cit.

35 CRC, General Comment No. 6 (2005) ..., op. cit., p.66.

36 Ibidem, p. 70.

37 Ibidem, p. 13.

38 Judgment in the case of M.K. and others v. Poland; No. 40503/17, 42902/17 and 43643/17; judgment in the case of D.A. and others v. Poland, 8 July 2021, No. 51246/17; A.I. and others v. Poland, 30 June 2022., No 39028/17; judgement in the case of A.B. and others v. Poland, 30 June 2022, No. 42907/17; T.Z. and others v. Poland, 13 October 2022, No. 41764/17.

These solutions have been criticised by civil society organizations and human rights institutions³⁹; they have also been questioned by Polish courts⁴⁰. When it comes to returning people to the state border line, the courts have ruled that the aforementioned Regulation violated the statutory authorization and contradicts the Constitution of the Republic of Poland, the Geneva Convention and ECHR⁴¹. The decisions issued based on Art. 303b of the Act on Foreigners were reversed due to a lack of individual assessment of a foreigner's situation, violating the non-refoulement principle and lack of any accessible means of appeal⁴².

In one case, the ombudsman appealed against a decision based on Article 303b of the Act on Foreigners issued against an unaccompanied minor foreigner suffering from a neurological disease. The border guard did not investigate the situation of the minor, including his health condition appropriately and mistakenly assumed that he was accompanied by a Syrian citizen. Neither did they investigate what the results of sending him back to Belarus would be. As an unaccompanied minor, he should be given some form of legal representation, rather than being deemed a ward of another unrelated person and expelled with them. The case documents also did not indicate that he had been informed about the right to apply for international protection in Poland⁴³.

Although this report covers the period until the end of 2024, **it should be noted that on 27 March 2025, the Act of 21 February 2025 amending the Act on Granting Protection to Foreigners Within the Territory of the Republic of Poland entered into force. It introduces the**

possibility to temporary restrict accepting applications for international protection for a period of 60 days, with the possibility of extension⁴⁴. Based on this amendment, a temporary restriction of the right to apply for international protection was actually introduced under the Regulation of the Council of Ministers of 27 March 2025 on the temporary restriction of the right to submit an application for international protection (consolidated text in Journal of Laws of 2025, item 390). As a result, the right to apply for international protection at the state border with the Republic of Belarus was temporarily limited for a period of 60 days. Such a laconic statement, however, leaves doubts as to the territorial scope of the Regulation and leaves room for discretion on the part of the Border Guard authorities.

The mentioned amendment to the Act on Granting Protection to Foreigners has been strongly criticized by social organizations, human rights protection bodies (Ombudsman and Ombudsman for Children), UNHCR and the Legislative Office of the Senate Chancellery⁴⁵. It is emphasized that it is repugnant to the national, international, and European law, in particular with Art. 31 para. 3 and Art. 56 para. 2 of the Constitution of the Republic of Poland, Art. 3 of the ECHR and Art. 4 of Protocol No. 4 to

39 The association for legal intervention in action. Report on the activities of the Association for Legal Intervention in 2022, p. 8-10. K. Czarnota and M. Górczyńska, The lawless zone. The report of the Helsinki Foundation for Human Rights on Polish-Belarusian Border Monitoring, Helsinki Foundation for Human Rights ("HFHR"), June 2022, p. 26-28. Amnesty International, Poland, Cruelty not Compassion, at Europe's Other Borders, April 2022, p. 5.

40 Case-law review, see HFHR, Information of the Helsinki Foundation for Human Rights on judgements on cases concerning pushing back migrants to Belarus, December 2022.

41 The Association for Legal Intervention, Pushbacks are inhumane, repugnant to the law and based on an illegal regulation, March 2022.

42 The Association for Legal Intervention, The duty to investigate whether migrants in Belarus are not at a risk of torture and other inhumane treatment, May 2022.

43 Office of the Ombudsman Case of pushing back foreigners to Belarus. Cassation appeal of the Ombudsman to the Supreme Administrative Court dismissed. Justification of the sentence, January 2023, January and February 2024

44 Art. 33a of the Act on Granting Protection to Foreigners; This restriction may be introduced when, in a situation where instrumentalization takes place, the actions taken as part of the instrumentalization constitute a serious and real threat to the security of the state or society and it is necessary to introduce this restriction to eliminate this threat, since other measures are not sufficient to eliminate it.

45 The Association for Legal Intervention, The Statement of the Association for Legal Intervention on introducing regulations suspending the right for asylum, December 2024; The Rule of Law Institute, The Rule of Law Institute intervenes in the case of suspending the right to asylum procedures, March 2025; Ocalenie Foundation, Act on suspending the right to asylum adopted by the Sejm – commentary by the Ocalenie Foundation, February 2025; Helsinki Foundation for Human Rights, HFHR's opinion on the regulation of the Council of Ministers on limiting the right to international protection, March 2025; Migration Consortium, Appeal of NGOs to veto the act on "suspending" the right to asylum, March 2025; Ombudsman, Ombudsman on the draft amendment to the Act on Granting Protection to Foreigners on the Territory of the Republic of Poland. The opinion was handed over to the President of the Republic of Poland, March 2025; Ombudsman for children, In Senate - on children's right to asylum, March 2025 UNHCR, UNHCR Comments and Observations on the draft law amending the Act on Granting Protection to Foreigners in the territory of the Republic of Poland, December 2024; Legislative Chancellery of the Senate, Opinion on the Act amending the Act on granting protection to foreigners in the territory of the Republic of Poland, March 2025.

the ECHR, Art. 18 of the Charter of Fundamental Rights of the EU, and Art. 1F, Art. 9 and Art. 33 para. 2 of the Geneva Convention.

The absolute requirement to protect people from torture, inhuman and degrading treatment, which is still binding on Poland, has already been confirmed by the ECtHR in an interim measure issued on 3 April 2025, prohibiting pushing back foreigners from the territory of Poland to Belarus⁴⁶. Introducing a restriction on the right to submit applications for international protection indicates that push backs will still be continued, yet they have not become legal at the same time.

According to Art. 33b para. 2 of the Act on Granting Protection to Foreigners, the right to apply for international protection cannot be limited in the case of:

- unaccompanied minors,
- pregnant women,
- people who may require special treatment, in particular due to their age or health condition
- persons in circumstances which, according to the Border Guard assessment, clearly indicate that there is a real risk of suffering serious harm in the country from which they entered the territory of the Republic of Poland,
- citizens of a country using instrumentalization, where foreigners entering the territory of the Republic of Poland come from

Therefore, unaccompanied minors' applications for international protection at the Polish-Belarusian border should always be accepted. However, given the large

amount of confirmed and documented pushbacks practiced so far on the Polish-Belarusian border, including those involving unaccompanied minors, it seems that in practice the exceptions introduced may not guarantee sufficient access to the territory of Poland and the right to asylum for vulnerable groups. It should be noted that since the aforementioned Regulation was introduced, there have already been recorded instances of pushing back unaccompanied minor foreigners, previously hospitalized (one person was expelled just before the ECtHR issued an interim measure prohibiting their expulsion to Belarus)⁴⁷.

The structure of the provisions in question also indicates it is up to a Border Guard officer's discretion to classify foreigners as part of the aforementioned vulnerable groups and to accept or refuse an application for international protection from a given foreigner. These Border Guard officers may not have specialist knowledge in this area (for example, how to recognize early pregnancy, a minor or a person with serious mental or physical health conditions). However, this procedure is not formalized; it does not take the form of an administrative decision and there are no effective means of appeal.

B. A DIFFICULT JOURNEY ACROSS THE BORDER

As it results from what we wrote above, it is difficult to precisely indicate the general number of unaccompanied children on the Polish-Belarusian border. The We Are Monitoring Association collects data in the following categories: days, weeks and months, countries of origin and gender (see Table 1).

⁴⁶ The Association for Legal Intervention, The European Court of Human Rights prohibited Poland from pushing back a refugee to Belarus, April 2025.

⁴⁷ Grupa Granica, A refugee deported to Belarus right after hospitalization – despite the protection provided by the Court in Strasbourg! April 2025; Grupa Granica, The first day of suspending the right to asylum in practice: unaccompanied minor deported from hospital to Belarus, March 2025.

TABLE 1. NUMBER OF UNACCOMPANIED CHILDREN APPLYING FOR HELP ON THE POLISH SIDE OF THE BORDER BARRIER IN 2024.

| COUNTRY | NUMBER OF PEOPLE APPLYING FROM THE TERRITORY OF POLAND | |
|-----------------|--|-------|
| | BOYS OR UNCONFIRMED GENDER ⁴⁸ | GIRLS |
| <i>January</i> | | |
| | 0 | 0 |
| <i>February</i> | | |
| Syria | 1 | 0 |
| <i>March</i> | | |
| Syria | 7 | 0 |
| Somalia | 7 | 0 |
| Morocco | 1 | 0 |
| Afghanistan | 1 | 0 |
| Eritrea | 1 | 0 |
| Iran | 1 | 0 |
| <i>April</i> | | |
| Somalia | 36 | 1 |
| Syria | 10 | 0 |
| Egypt | 6 | 0 |
| Ethiopia | 4 | 3 |
| Yemen | 4 | 0 |
| Afghanistan | 3 | 0 |
| Chad | 1 | 0 |

48 The term “unconfirmed gender” results from limitations in field data collection. Each report is recorded along with information on gender, country of origin, etc. This information is later verified during interventions. Sometimes the information in the report is imprecise and no intervention takes place (e.g. because the group was pushed back before help arrived). Field activists are sensitive to pay attention to the presence of girls among migrants (as they belong to a group of “double vulnerability”). Hence the number in the right column („girls”) is certain and confirmed (at least

| <i>May</i> | | |
|---------------|----|---|
| Somalia | 32 | 5 |
| Syria | 12 | 2 |
| Egypt | 2 | 0 |
| Ethiopia | 5 | 1 |
| Yemen | 1 | 0 |
| Morocco | 2 | 0 |
| Chad | 1 | 0 |
| Eritrea | 1 | 0 |
| Mali | 1 | 0 |
| <i>June</i> | | |
| Somalia | 14 | 3 |
| Syria | 7 | 2 |
| Eritrea | 2 | 1 |
| Gambia | 1 | 0 |
| Burundi | 1 | 0 |
| <i>July</i> | | |
| Somalia | 4 | 0 |
| Syria | 2 | 0 |
| Ethiopia | 2 | 0 |
| Eritrea | 1 | 0 |
| Guinea | 1 | 0 |
| Cameroon | 1 | 0 |
| <i>August</i> | | |
| Iran | 3 | 0 |
| Somalia | 1 | 0 |
| Cameroon | 1 | 1 |

| <i>September</i> | | |
|------------------|------------|-----------|
| Somalia | 14 | 2 |
| Yemen | 4 | 0 |
| Iran | 3 | 0 |
| Syria | 2 | 0 |
| Eritrea | 2 | 0 |
| Algeria | 2 | 0 |
| Guinea | 2 | 0 |
| Mali | 1 | 1 |
| Ethiopia | 1 | 0 |
| Cameroon | 1 | 1 |
| Unknown | 1 | 1 |
| <i>October</i> | | |
| Somalia | 6 | 2 |
| Iran | 1 | 0 |
| Unknown | 1 | 0 |
| <i>November</i> | | |
| Somalia | 15 | 0 |
| Syria | 1 | 0 |
| <i>December</i> | | |
| Somalia | 1 | 0 |
| Total | 239 | 26 |

Source: Data provided by We Are Monitoring

The way people travel through the green border from Belarus to Poland forms a certain - approximate - pattern⁴⁹. First, they arrive in Minsk or Moscow by plane, stay there (from couple of days to a couple of months) and then they travel to the border to try to cross it for the first time (or to be more specific - to overcome a system of natural and artificial barriers at the Belarussian and Polish territory). Before the possibility to apply for international protection was suspended in March 2025⁵⁰, some people also tried to cross the border in Terespol which was sometimes possible after a couple of attempts thanks to the engagement of Polish NGOs - not everyone was successful though.

Over the past years, the methods of crossing the green border varied and depended on many elements: the border infrastructure at a given point of crisis, season of the year, strategy of the Belarussian services and migrant smuggling networks, as well as the presence and activities of the Polish services⁵¹. To put it simply, we can say that that in 2024 it was possible to cross the green border in several ways - through one of the border rivers or through the fence built along the border line (by climbing and crossing the barrier from the top, bending, or cutting. Before the regulation suspending the right to apply for international protection was introduced, the migrant could choose from two possibilities at the western side of the fence: submitting a declaration of intent to apply for international protection before Border Guard officers (which entailed the risk of being forcibly pushed back to the border line) or trying to reach other European Union countries. In the first case, migrants would be taken to a Border Guard Post and then pushed back or pushed back to the border straight from the forest.

If they appeared at the post before March 2025, then, as a rule, they were made to sign a statement that they did not intend to apply for protection in Poland, and their destination was another EU state. Pushbacks often go hand in hand with various forms of violations and practices that should be considered as means of direct coercion⁵².

At the Eastern side of the fence (the zone between Polish and Belarussian fences) migrants would face violence from Belarussians services and migrant smugglers. In 2024, the migrants who were accompanied by NGOs representatives when trying to declare their wish to apply for international protection before the Border Guard, were often successful.

It is usually hard to gather information from the refugees about what their journey looked like before they ended up in Belarus. It is caused by many factors - first, this conversation is often held in a forest, while granting aid. The journey through the green border is a "here and now" situation. This means that the humanitarian goals related to granting aid most often take priority before gathering accounts of migrant experiences from their countries of origins⁵³. For safety reasons it is not always appropriate to ask questions. One of the interviewees working in an NGO tells us about the account of a minor Somali during an intervention in the forest:

I also met young people who had no clue as to where they were travelling to, e.g., a Somali boy who turned 16 and came from a region where all boys are automatically drawn by local military groups to their terrorist groups as soon as they turn 16. He really didn't want it, neither did his mom. So, there was an attempt to kidnap him, and he managed to escape somehow and [...] his mom told him that he had to go with this man and run away and [...] on the following day he left with this man, he was some acquaintance of his mom and he just said that he didn't even know what country he is going to and what countries he is crossing. He simply knew that he was escaping somewhere to Europe to avoid being kidnapped by this terrorist group. (INT_NGO_FOREST_2)

49 The We Are Monitoring Association, "Mamy tu tylko jedną wojnę: imigrację, Ciebie". The policy of push backs and violence of the services at the Polish-Belarusian border, 2024.

50 Regulation of the Council of Ministers of 27 March 2025 on the temporary restriction of the right to apply for international protection (Journal of Laws 2025, item 390).

51 WAM, WAM monthly reports.

52 WAM, "Mamy tu tylko jedną wojnę: imigrację, Ciebie". The policy of push backs and violence of the services at the Polish-Belarusian border, 2024.

53 More on the subject: A. Gulińska, N. Ciastoń, Działania monitoringowe Grupy Granica, Badacze i Badaczki na Granicy, 2024.

On the other hand - if there is a possibility and migrants are willing to speak about their journey, activists can ask about their experiences:

We try to learn the history of this person, then we also ask questions such as [...]. How long have you been at the border, why [...] where do you come from, why are you fleeing? We ask these questions whenever there's space for that [...], whenever we see that our interviewee can answer them [...].
(INT_NGO_FOREST_2)

We have much more information regarding migrant experiences in Belarus (including very young persons). They come up very often both during interventions as well as interviews recorded by WAM. They are about, among the others, reaching one of the cities in Belarus (most often Minsk or Grodno) or Moscow, spending time there (most often in flats temporarily rented by a group of people intending to reach the EU), getting to the borderline and staying in the zone between the Polish barrier and Belarusian fortifications. This area is called muharramma in Arabic⁵⁴.

They got on the plane somewhere there, then they had a transfer somewhere there, then they landed in Minsk or Moscow. They [...] usually use these two airports. And then, they spent some time in Minsk. And here [...] they would tell stories, because sometimes I would ask for example, whether they stayed in Minsk for a short while or for some longer time. And it would turn out that they spend several days in Minsk. And then they would talk about crossing the border. And here there was a whole variety of options. Some people spent one day at the fence, crossed it and that was it. They wouldn't even realise how lucky they were and what could have actually happened to them. There were also record breakers, I don't know about this year, but in the previous years some of the guys said that they tried to cross the border 8 or 9 times. (INT_NGO_FOREST_5)

⁵⁴ It is short for muntaqa muharrama, which means "no man's land" in Arabic. WAM, „Mamy tylko jedną wojnę... p.15.

The groups that I encountered would most often meet by the fence, in the forest. It was much less common for people to have met earlier, in Minsk for example. And once or twice I met boys who lived close to one another, perhaps not in the very same village, but somewhere close in their country of origin. And their origin somehow united them.
(INT_NGO_FOREST_1)

The analysis of data collected by WAM shows that, as a rule, the pattern of journey from Belarus to Poland looks the same both for minors and adults. A 15-year-old boy from one of Arab speaking countries told (on a chat) about his journey and third pushback from Poland within the first days of 2024:

I dug under the Belarusian fence and then I crossed the border [...]. There were children and women with us, but they didn't manage to cross the Polish fence [...]. [Polish services caught us] at 5 AM. They were wearing masks and they were from border troops [migrants very often are unable to give precise information on the formation they dealt with]. [...] They pepper-sprayed us and beat us with batons. They put us on the ground and tied us up [probably they used plastic handcuffs resembling tie wraps] [...]. We asked them in English not to beat us and not to take our fingerprints in Poland. They did not agree to this [...]. They refused to do this and forced me to sign documents stating that I did not want asylum in Poland [...]. They gave us sparkling water and a little bit food [...]. They returned us to Belarus. We told them that we did not want to return to the forest so that the Belarusians would not beat us, but to no avail [...]. I tried to cross three times. The first time [DD] 10.2023, the second time [DD] 10.2023 and the last time [DD] 01.2024. And when it comes to the post, I don't remember what it was called, but it was close to the fence. (ED_WAM_2402_05)

Young people face the same difficulties related to the natural conditions on the way as the elderly. Notes prepared after interventions by social organisations contain repeating information about injuries from razor wires, problems caused by cold, hunger and general exhaustion of the organism, as well as traces of beatings:



It turned out that [the previously reported] heart problems were caused by hypothermia. Three people from Somalia. I. [...] 17 years old, E. [...] 17 years old, O. [...] 16 years. Soaked after crossing rivers four times (three times in Belarus and the last was the border river). One person received [pre]medical assistance. They said he lost consciousness for about an hour last night. The boys spent 3 days in the forest on the Belarusian side, and a few hours in Poland (the first time). (ED_WAM_11_24)



They were a bit soaked and got new clothes, food [...]. One of the persons is a minor (around 15 years old), the rest is of age. But there are also young people (two people below 20 and a woman almost 25). They said that they had spent more than 2 weeks in Belarus. The underage person had pain in the chest area because they were beaten up in bel [Belarus]. And they told a bit about the violence on this side [on the Polish side]. In Poland, they've been there for a while now, too [...]. I think it was a few days. (ED_WAM_11_24)



A woman from Cameroon, 30 years old. [...] Yemen: a 16-year-old boy and a 17 years old boy, Somalia: a 22 years old boy and a 17 years old boy. The girl was definitely after a pushback, her group went further on, and the Polish services took her phone away and threw her into BY [Belarus]. There she was crying; the boys found her and took her with them. They take care of her, she feels safe, they are waiting for her, making sure she ate [...]. The boys also experienced pushbacks, from what we understood. They've been in the forest for about a month. Tired of Belarus, but cheerful. They received clothes, shoes, food [...]. The premedical first aid was provided by non-medical persons. (ED_WAM_09_24)

One of the minor girls from Somalia travelled with her own sister (of similar age). According to her, they were in a group of seven people as they approached the wall. Five people managed to cross it from the top, the sisters did not make it and were left on the Eastern side. The man they met between the Polish and Belarusian barriers took them across the border through a different place, by the river, where there was no wall. The group of people

who they crossed the border with was big - according to the Somali there could be even thirty people in it. After getting to the western side of the barriers, the group dispersed, and the sisters were left with a random man. After being spotted by a drone, they were detained. The description of the situation and uniforms implies that they were Border Guard officers and soldiers.

According to the interviewee, after being detained by the services, the girls asked for protection - even though not directly, because they did not know the word.



So, they⁵⁵ asked them, do you want to go to Poland or Germany? Then the girl said she had no plan, she wanted to go wherever she could find peace and safety. So, they said "you come back and take a visa, and then you come back." (ED_WAM_2402_05)

The Somali reports that they didn't use the word asylum, they don't know it.



We thoroughly explained to them that we wanted to be received. (ED_WAM_2402_05)

According to the girl, the officers threatened them with long guns, but apart from that they did "nothing" wrong. They took them to barrier pole 368 and forced them to cross the fence. In the process, they sprayed them with gas, because all three of them did not want to return to Belarus. They did not receive water or food from the services. The interviewee recalls that after the pushback, when they were on the other side already, one officer in a Polish uniform noticed them - he removed the Polish label from a bottle of water and threw it over the fence. On the other side, the interviewee's sister was bitten by a Belarusian service dog. Exhausted after a two-week stay in the forest, she felt worse and worse. Eventually, she was taken to a Belarusian hospital, where (at the moment when the interview was recorded) she was still in coma [she is still in and coma - ED_WAM_2402_05].

Field notes written after interventions in the forest - including information on the pushbacks experienced by migrants and activists' observations - clearly indicate that until March 2025, without the assistance of aid organisations, it was practically impossible to effectively apply for protection - regardless of the applicants' age.

55 The third person verb form is a result of using a translator from Somali to English.



I have the impression that at the first stage, at the forest stage, where these people come across the Border Guard without us, it doesn't matter whatsoever whether you are a child or not, [they throw] you out on the very same basis, no matter how old you are, where you come from, etc. (INT_NGO_FOREST_3)

WAM created a typology of practices towards migrants that take place at the border. It involves beating, beating with objects (batons, spades, etc.), painful cuffing, denying access to water, medicine, doctors, destroying and seizing belongings (telephones, clothes, backpacks etc.), verbal aggression, intimidation, and others⁵⁶. At the same time, last year, activists also recorded less frequent forms of abuse:

⁵⁶ WAM, „Mamy tylko jedną wojnę...”, p. 47-145.



Somehow everyone without exceptions mentions violence like beating, setting dogs. [...] for example, a sixteen-year-old said that at the Belarusian side they were ordered, as if they were there in some group, I don't know whether the group gathered naturally, or these people had been gathered there by the Belarusian border guards, but anyway, they were sitting in some group. And then a border guard came and ordered them all to lie in a row face down. And he started walking on them. And the person, who protested, screamed that something hurt them, was taken from that row and these border guards simply made a punching bag out of this person in front of the others, as the boy phrased it. It was a form of such physical and psychological violence at the same time. Yes, there were also people who mentioned beatings, beating with batons and some equipment that border guards have, but also [...] beatings with a spade. [...] And also dogs. As if this dog biting [...] setting the dogs was a rule at this border at all. (INT_NGO_FOREST_2)



Both during the pushback and on the Belarusian side, minors experience numerous abuses, which are often normalized by them and treated as an element of the travel element, an inherent cost of the situation. Activists discover that many practices are so common that they become almost "transparent" to them as well.

I haven't dealt [...] with any women who would tell horrible things related to soldiers or some services here [in Poland] and there [in Belarus]. The standard stuff about beatings, of course, but nothing more. And of course, about hunger, about taking belongings away, throwing away stuff from bags or backpacks and destroying food. I guess we got used to it a bit. (INT_NGO_FOREST_1)

There are] micro chances that we will find out something disturbing, even if something like that would happen, because people in such situations simply strive to achieve their goal, they have to get somewhere. And unfortunately, it often comes at the cost of being subjected to violence and they treat it as something that is in some way normal, no matter how it sounds. That this is something that may or must happen, so that they can reach some place safely [...]and effectively, this often comes up [...] Sometimes, when they speak about violence, when you hear about what they perceive as violence and what not, it makes you think [...] what they had to go through, if they think that such regular violence is a piece of cake [...] "They just beat me up, no, nothing terrible happened." "I was only sprayed in the eyes, nothing serious, it happens." "They sprayed me in the eyes, but they didn't point a gun at me, they didn't hit me, they didn't kick me, so it's okay." (INT_NGO_FOREST_3)

As we have already written, when in 2024 they were assisted by NGOs representatives while trying to express the wish to apply for protection, the chance of accepting the application was bigger. It often looked similar. Activists would call the Border Guard post informing that there are people in the forest who want to apply for protection. They would often inform them that there were minors in the group in the same phone conversation. The organisation's practice shows that Border Guard officers would react differently to such information – and it's hard to give here any rule. Part of

them behaved professionally, asked whether there were people in need of special help in the group and simply stated that the Border Guard would come within a few hours (sometimes they would say that they don't have time and that the foreigners should be brought independently to the facility). Sometimes they would undermine the age of people declaring as minors without documents⁵⁷.

This is the other direction, some of them behave professionally, they have a kind approach, this also happens. (INT_NGO_FOREST_4)

I would say it depends on the officers. [...] sometimes when patrols arrive, the first thing they ask about is whether anyone needs medical help, or whether there are any minors in the group. They ask about it themselves. I don't know, at the forest level I don't see any different behaviour towards minors [and adults]. Then they seem to generally treat them normally [...] them all [...]. Tying the hands with handcuffs or, more often, tie wraps is deemed a norm unfortunately. But more and more often there are patrols that ask about these vulnerabilities, they also behave as professionally as possible, [...] not brutally. When handcuffing with tie wraps, they ask if it is not too tight, they tie the hands in the front, not in the back. [...] But it's not that if someone says he is a minor, they will not handcuff him just because he said he is a minor. Sometimes they don't handcuff the whole group. The fact that it's totally inconsistent is a whole different story. In different institutions, even inside the same facilities, sometimes they handcuff you, sometimes they don't. However, when this worse shift arrives or the army comes at some point, if they are agitated or more aggressive, then even if you try to say that someone is a minor or that someone is in a bad condition, then you are most likely to hear comments like "what kind of minor is he?" or "how bad could his condition be if he came here?". So, then they attempt to undermine the fact that someone belongs to a particularly vulnerable group. (INT_NGO_FOREST_3)

⁵⁷ The issues with age assessment are discussed in more detail further in the report

An example of an exceptionally reluctant and dismissive attitude of the services was the arrival of a young boy in the Białowieża Forest. Regardless of his declaration and appearance indicating a very young age, he was treated as an adult, due to the date of birth entered in the passport⁵⁸(and consequently pushed back). It was witnessed by female NGO workers, the ones who called the Border Guard before:

When we called the Border Guard, they came to get the boy. Their very bad attitude was visible from the start [...] I told the guard to note that it is a child, you can see it from the face. "No, according to the documents he is 22 years old and for him he is an adult". I say that we all know how it is with documents, that they are not entirely reliable. He insisted that for him it is a 22-year-old man and [...] started to handcuff him. The boy started crying there. I approached him, hugged him and the border guard said "Well, now I have to search him again because I don't believe either of you." I asked him if he thought I'd put some dangerous item in his pocket, that this didn't make sense. He said yes, that "everything is possible", and he also takes such a possibility into account. He threw the boy on the bonnet again, started searching him again, he was not gentle. While the boy was crying, these two guards were laughing there [...]. And then the realization that this boy spent another two months in sistemi [here: the zone between the Polish and Belarusian border barrier] until the following intervention... It was hard for me, especially given that it was really obvious that it was still a child. (INT_NGO_FOREST_4)

Conditions and circumstances of meeting migrants in the forest make it difficult or actually impossible to identify not only the age, but often also the situation and relationship in a group. **It is also difficult to recognize potential risks related to human trafficking or violence in the group. Multiple meetings and consultations with organisations specializing in this subject are⁵⁹ have clearly indicated that identifying victims of human trafficking in forest conditions is actually impossible.**

⁵⁸ Further in the report you can read more about age assessment based on passports.

⁵⁹ Over the last three and a half years, organisations associated with Grupa Granica have had the opportunity to participate in several meetings and trainings on human and child trafficking, i.a. with representatives of the La Strada Foundation and Kids in Need of Defence as well as with the organisation Art. 61.

The activists who support people in the forest use various strategies aimed at recognizing possible signals indicating irregularities (taking the conditions into account). One of the basic strategies is looking for an opportunity to talk to someone "on the side" without witnesses (often under the pretext of helping to change clothes) and trying to ask if the person feels safe and what relationships there are in the group. Of course, it is often difficult due to the language barrier and, sometimes, lack of trust in the aid organisation representatives. People subjectively identified as more "exposed" to the risk of violence or human trafficking are furtively given contact details of organisations providing aid of this kind in a couple of European countries "just in case".

Yes, I make sure that if I can't talk to a child, I can find someone [from the support group] who will discreetly ask whether they feel safe or secure, although, in the back of my head I always have the thought that such a person will always give an affirmative answer. I really think that sometimes it is hard to verify. (INT_NGO_FOREST_4)

Certainly, observing the dynamics and taking minors aside, if there are any [...] under the pretext of helping them change their clothes and [...] asking what this uncle or aunt or sister means to you [...]. That it is, I don't know - "a brother, because we have the same mother or a brother, because we simply grew up together" or a brother, because "I met him while traveling and he is the closest person to me now". Asking how long they have known each other, where they know each other from. Whether they feel safe with this person [...]. For example, if I see that the parent's wallpaper on their phone features a picture of the kids who are next to them in the forest, and the photo was taken somewhere in the country of origin, then I don't have to think much. This might seem quite funny, but I always pay attention to the wallpaper on the phone. If someone has a photo with this guy or this girl on the wallpaper, then you can really breathe a sigh of relief that probably everything is OK. Questions of this sort should be asked individually if possible, so that the rest of the group cannot hear them. And as a matter of fact, in these forest conditions we don't have many other possibilities to do something more. (INT_NGO_FOREST_1)



2. WHEN EVEN THE APPEARANCE IS MISLEADING – AGE ASSESSMENT OF CHILDREN: PRACTICES, STANDARDS, CHALLENGES

01 *Age examination is arbitrary, this is why precise verification mechanisms are so important. If they fail and the minor age of a person goes unnoticed, it is hard to pursue their rights.*

02 *According to the European and international recommendations, age examination should be used as the last resort. The age assessment should take into account physical, psychological, developmental, environmental and socio-cultural factors. The best interest of the child should be prioritized.*

03 *Subjective beliefs and prejudices of the officers who assess the age based on the appearance influence the results of this assessment.*

04 *The most common age examination method – wrist X-ray – is commonly criticised. The bone age which is measured with this method may not correspond to the chronological age due to factors such as different ethnic groups or malnutrition.*

2.1. AGE ASSESSMENT OF UNACCOMPANIED CHILDREN IN LIGHT OF THE LAW

Age identification is necessary to observe the law and the best interests of unaccompanied minors, as well as to secure protection and care for them. Many children who cross the Polish-Belarusian border in extreme conditions don't have any documents confirming their age. Sometimes the child's data was introduced incorrectly to the passport - as issuing a document with adult personal data was a must to leave the country of origin.

Determining the age of a child involves an arbitrary assessment. This is why it is so important to have a precise mechanism of age verification or assessment in case of persons who declare they are unaccompanied minors. If they fail and the juvenile age of the person goes unnoticed, it is hard to pursue their rights.

A. NATIONAL REGULATIONS

Authorities deciding age assessment of a child

Within the scope of national law, the procedure for examining the age of minor foreigners is specified in the provisions of the the Act on Granting Protection to Foreigners (for minors applying for international protection) and the Act on Foreigners (for minors with unregulated stay in Poland). This procedure applies to people who do not have valid travel documents confirming their identity. The regulations describe basic guidelines, but leave a lot of room for discretion in the actions taken by national authorities and raise doubts about the actual procedural guarantees for unaccompanied minors⁶⁰.

In the case of a child applying for international protection, the Border Guard authority which, based on the declarations made by the applicant claiming to be an unaccompanied minor or other circumstances, has doubts as to the child's age, shall ensure that medical examinations are carried out in order to determine the child's actual age⁶¹. In practice, it is the Border Guard officers dealing with the minor who decide whether such doubts exist and whether a medical examination should be ordered to determine

the age. However, the Act on Granting Protection to Foreigners does not indicate how these doubts should be interpreted, especially whether and which documents presented by a person declaring to be a minor should be accepted as a confirmation of their age.

There is also no specific time frame within which the Border Guard should conduct medical examinations to determine the child's age. Although the content of Art. 32 of the Act on Granting Protection to Foreigners refers to an "applicant claiming to be an unaccompanied minor", it is not clear whether an age examination may be ordered only after the application for international protection has been accepted (when the person was already appointed a guardian and is in foster care) or immediately after the declaration of the minor's intent to submit such an application has been accepted. In the latter case, which exists in practice, the unaccompanied minor still doesn't have a representative who could possibly take care of their procedural rights. The regulations also do not indicate the legal status of a person declaring to be a minor before obtaining medical examination results - whether their minor status should be presumed based on their declaration and they should be immediately placed in foster care and a legal guardian should be requested, or not. When the international protection procedure is already initiated, the Head of the Office for Foreigners also has the right to examine the child's age in case of any doubts⁶².

In addition, the Act on Foreigners provides that the of an unaccompanied minor with an unregulated who does not apply for international protection may be examined – if there are doubts as to the age – already upon admission to a guarded centre or detention centre for foreigners⁶³. However, it does not clearly indicate which authority is responsible for this. In practice, it may be the Border Guard authority that detained the child and intends to refer him to a guarded centre, or the one that manages the guarded centre where the minor is staying⁶⁴.

Therefore, there is no single procedure. In practice, each of the authorities may examine the child's age for the purposes of initiated proceedings, using their own methods and means of evidence. For example, age assessment may be independently requested by a court ruling on the

⁶⁰ The Act on Granting Protection to Foreigners is a special act (lex specialis) in relation to the Act on Foreigners – the provisions of the Act on Foreigners should therefore apply where the Act on Granting Protection to Foreigners does not introduce different regulations.

⁶¹ Art. 32 para. 1 of the Act on Granting Protection to Foreigners. The procedure for examining the age of unaccompanied foreign minors is based on the basic guidelines set out in Art. 25 para. 5 of the Procedural Directive.

⁶² Art. 68 para. 1 p. 1 and art. 3 of the Act on Granting Protection to Foreigners

⁶³ Art. 397, para. 4 of the Act on Foreigners.

⁶⁴ Unaccompanied minors who don't apply for international protection may stay in a guarded detention centre if they are 15 years old or above (Art. 397, para. 3 of the Act on Foreigners). It is inadmissible for minors who apply for international protection to stay in a guarded detention centre (Art. 88a, para. 3, p. 3 of the Act on Foreigners).

detention of an unaccompanied minor. Courts and other administrative authorities are not bound by the findings of medical examinations requested by the Border Guard, since their results do not have the force of a court ruling or administrative decision. There are also no special rules for resolving contradicting results of medical examinations. Pleading the rule of acting in the best interests of the child, state authorities should, however, accept the result that is more favorable to the child.

Procedural guarantees and instructions for minors

Carrying out medical examinations requires the consent of the person claiming to be an unaccompanied minor or the consent of their legal representative. In case of refusal, they are considered adults⁶⁵.

Art. 32 para. 3 and 4 of the Act on Granting Protection to Foreigners requires the Border Guard authority that accepted the application for international protection to inform the applicant (prior to the medical examination) in a language they understand about:

- the possibility of determining their age through a medical examination;
- the manner of conducting the medical examination;
- the significance of the result of the medical examination in the procedure for granting international protection;
- consequences of refusing to undergo the medical examination.

The Act on Granting Protection to Foreigners also requires that medical examinations be conducted with respect for the dignity of the applicant, using the least invasive examination technique possible.

Age assessment methods

The regulations do not specify exactly how the examination should be conducted. Neither do they specify the composition of the medical team or the method that should be used. Therefore, the law does not require psychological or other examinations apart from the medical examinations. The most common method used in practice is a radiological examination of the wrist or teeth⁶⁶.

⁶⁵ Art. 32, para. 2 the Act on Granting Protection to Foreigners, Art. 397, para. 4 and 5 of the Act on Foreigners.

⁶⁶ M. Poszytek, M. Sługocki, Metody oceny wieku chronologicznego w postępowaniach z udziałem cudzoziemców, HFHR, 2023, p. 8; A. Tymińska [in:] O. Łachacz, J. Markiewicz- Stanny, A. Tymińska, Małoletni cudzoziemcy poszukujący ochrony międzynarodowej w Polsce oraz ich prawa w standardach międzynarodowych, prawie krajowym i praktyce polskich władz (2018-2023), Warsaw 2024, p. 31-32.

It is not necessary for any representative of the child to be present during the age assessment. If it is conducted before a guardian is appointed, then there isn't practically anyone who could participate in this procedure. The regulations also do not indicate the need to provide the child with an interpreter.

Appeal procedure against medical examination results

The result of the medical examination should provide information about the margin of error⁶⁷, while also indicating whether the person applying for international protection is an adult. If it is not possible to obtain a clear result, the person should be considered a minor.⁶⁸

In practice, the final decision on the child's age is made by the doctors issuing the medical opinion, who - contrary to the provisions of the Act - do not always take into account the margin of error⁶⁹. This is not an administrative decision, and the law does not provide for a special appeal procedure against the opinion of a doctor or Border Guard authorities accepting the result. It can only be questioned within the framework of other procedures, e.g. concerning the stay in a guarded detention center or international protection. There have been cases when courts ruling on a child's detention, based on uncertain or divergent results of age examinations, but also on other documents indicating their non-age, resolved doubts in favor of the child and released them from the guarded center⁷⁰.

Age examination vs. restriction of the right to apply for international protection

It has become particularly important to correctly determine the age of unaccompanied minor foreigners after new regulations introducing the possibility of limiting the right to apply for international protection entered into

⁶⁷ Art. 397, para. 4 of the Act on Foreigners.

⁶⁸ Art. 32 para. 5 the Act on Granting Protection to Foreigners.

⁶⁹ HFHR, Małoletnia Somalijka zwolniona ze strzeżonego ośrodka dla cudzoziemców – sąd uznał, że organy dokonały nieprawidłowej oceny jej wieku, 2023; A. Tymińska [in:] O. Łachacz, J. Markiewicz- Stanny, A. Tymińska, Małoletni cudzoziemcy poszukujący ochrony..., op. cit.

⁷⁰ The Association for Legal Intervention, Małoletnia Somalijka bez opieki zwolniona ze strzeżonego ośrodka, 2023; District Court in Grójec, decision of 16 October 2024, file reference No. II Ko 3183/2024. The principle of in dubio pro reo (here – a foreigner placed in a detention centre) is also provided for in Art. 5 § 2 of the Act of June 6, 1997 – the Code of Criminal Procedure (consolidated text in the Journal of Laws of 2025, 46).

force⁷¹. This restriction has been in force on the Polish-Belarusian border since 27 March 2025.

Unaccompanied minors are one of the groups whose applications for international protection should always be accepted. Despite this, the regulations do not specify how and when to determine the age of a foreigner who claims to be a minor but does not have identity documents on them; they do not decide whether they will be referred for medical examinations according to the procedure described in this chapter or whether it will be solely an arbitrary decision of the Border Guard officer.

It should be emphasized, however, that the refusal to accept an application for international protection does not take the form of an administrative decision and in each of these cases the minor does not have any effective means of appeal at their disposal. Therefore, in 2024 the issue of determining the age of the foreigner influenced mainly the form of the procedure for international protection and reception conditions. As this report is issued, the result of the examination decides on the fundamental issue - whether the minor will be admitted to the territory of the Republic of Poland or whether they will be expelled from it.

B. AGE EXAMINATIONS – INTERNATIONAL AND EUROPEAN STANDARDS

The issue of determining a child's age has not been directly regulated in the Convention on the Rights of the Child. However, based on its provisions, in particular Art. 3 para. 1 (taking into account the best interests of the child), Art. 8 (the right to identity), Art. 12 (the right to be heard) and Art. 20 (special obligations to protect a child temporarily separated from their family environment), basic standards in this area have been developed.

Given that the age examination procedure can be traumatic for children and may violate their privacy and dignity, it should only be initiated in necessary and ultimate situations, after ensuring that it will certainly be in the best interests of the child (e.g. it will allow them to access social services, will not cause or increase the level of trauma in the child)⁷². This position is supported by the CRC, together with the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families ("CMV"), emphasizing that medical age assessment of a child should

only be carried out as a last resort, if the child does not have relevant identity documents or other evidence of minor age. They also postulate that, as a rule, documents submitted by a child should be considered authentic, unless there is evidence to the contrary⁷³. The statements of minors and their parents and relatives should also be taken into account⁷⁴. The CRC also requires that the person examined be given the benefit of the doubt and treated as a minor until the definite results are obtained⁷⁵.

While deciding on age assessment procedures, the CRC considered that applicants' rights had been violated – due to the failure to factor in the documents confirming their minor age that they had submitted. In the decision of 18 September 2019, the CRC took into account that although the minor had provided the Spanish authorities with a copy of his birth certificate, his identity had not been respected, as the evidentiary value of this document was undermined. The competent national authority had failed to assess the information provided therein, nor had it been confirmed with the authorities of the country of origin⁷⁶. The CRC found that, apart from Art. 3 and Art. 12 of the Convention on the Rights of the Child, Art. 8 had also been violated, due to the change of identity elements, attributing to the minor an age and date of birth that did not match the documents he submitted. Similar practices of questioning the evidentiary value of photographs, scans and copies of birth certificates, passports and other documents are used towards minors in Poland.

The CRC requires implicitly that during the age examination the child should have a designated representative – their presence is necessary to ensure the best interests of the minor and the right to be heard⁷⁷. Failure to comply with this requirement, as well as failure to provide the child with an interpreter during the examination, will lead to a violation of the Convention on the Rights of the Child⁷⁸. In Poland – contrary to the decisions and standards of the

71 Art. 33a-33c of the Act on Granting Protection to Foreigners.

72 United Nations Human Rights Council, op. cit., pts. 42-44; 42-44; T. Smith, L. Brownless, Age Assessment: a technical note, UNICEF, 2013, pt.3.

73 CRC and CMV, Joint general comment No. 4 (2017)...., op. cit., p. 4.

74 Ibidem.

75 CRC, decision of 27 September 2018 in the case of N.B.F. against Spain, no. CRC/C/79/D/11/2017, pt. 12.3.

76 CRC, decision of 18 September 2019 in the case of R.K. against Spain, no. CRC/C/82/D/27/2017, pts 9.9.-9.10.

77 Ibidem, pt. 9.3. CRC, decision of 27 September 2018, op. cit., p. 12.8.; CRC, decision of 25 January 2023 in the case of S.E.M.A against France, no. CRC/C/92/D/130/2020, p. 8.10; UNHCR, Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/ or 1967 Protocol relating to the Status of Refugees, HCR/GIP/09/08, 2009, pt. 75.

78 CRC, decision of 18 September 2019, op. cit., pt. 9.8.; CRC, decision of 25 September 2023...., op. cit., pt. 8.9.

CRC – the medical age assessment of an unaccompanied minor is generally carried out without any a representative or legal guardian of the child being present (at this stage, they are usually not yet appointed and this is not among their statutory duties), similarly to the fact that the child also does not have the possibility of using interpreter's assistance to explain the course of the examination.

The CRC does not indicate a specific method to be chosen for age assessment, but emphasises the best interests of the child as the paramount value of the entire process⁷⁹. It stresses that age assessment should be interdisciplinary and should also take into account aspects other than physical maturity, and that radiological bone or dental examinations should be abandoned. In addition, the assessment must be carried out in a scientific, safe, minor-oriented, gender-sensitive and fair manner, excluding the risk of violating the principles of the child's physical integrity, and taking into account due respect for human dignity and, in the event of further uncertainty, the benefit of the doubt should be given to the individual, in the sense that if there is a possibility they are a child, they should be treated as such⁸⁰.

The Guidelines are expanded upon in the General Comment of the CRC No. 23 and the CMV No. 4: "To make a reliable age assessment, States should carry out a comprehensive assessment of the child's physical and mental development, conducted by specialized paediatricians or other professionals who are skilled in various aspects of development. Such assessments should be conducted in a prompt, child-friendly, gender-sensitive and culturally appropriate manner, including interviews with children and, where appropriate, accompanying adults, in a language the child understands [...]. States should refrain from using medical methods based on i.a. bone and dental analysis, which may be inaccurate, have a large margin of error, and may be traumatic and lead to unnecessary legal proceedings. States should ensure the possibility of review or appeal of decisions to an appropriate independent authority⁸¹".

In the decision of 27 September 2018, the CRC referred directly to the age assessment based on radiological examinations of the hand and Hand Bone Age Atlas by Greulich and Pyle⁸², which did not include a margin of error. The CRC indicated that "[...] this method is imprecise and burdened with a wide margin of error and is therefore not suitable for

use as the only method of determining the chronological age of a young person claiming to be a minor⁸³".

The United Nations High Commissioner for Refugees ("UNHCR") also expresses the need for an interdisciplinary assessment of the age of a child seeking protection, while emphasizing the need to pay special attention to cultural differences in relation to calculating age⁸⁴. In contrast, the United Nations Children's Fund ("UNICEF") emphasizes that professionals who are to assess the age of a child should be independent of the authorities and organisations that are to provide services to the child if they are confirmed as minors⁸⁵.

The CRC also requires that minors whose age has been determined in such a procedure have an effective right to appeal against such a decision to a higher authority or court⁸⁶. The CRC was critical of situations in which the decision to determine the child's age was not translated into a language the child understood, nor did it contain information on the means of appeal or the possibility of applying for legal aid, and the appeal did not have a suspensive effect⁸⁷.

It is worth mentioning that Polish regulations do not provide for any means of appeal against the opinion based on which the child's age is determined. There is also no practice of providing individuals with a translated medical opinion, nor is there any guaranteed free legal assistance at the stage of accepting an application for international protection.

The ECtHR has also dealt with cases concerning the age assessment procedure for minor foreigners. In the judgment in the case of Darboe and Camara against Italy⁸⁸, where the applicant had an X-ray examination of his hand and wrist, the ECtHR stated that his right to private life was violated due to the failure to respect the key principle of the presumption of minority and, as a result, the failure to provide him with procedural rights including, at least, the appointment of a representative, access to a lawyer and the possibility to consciously participate in the age assessment procedure. In the subsequent judgment in the case

79 CRC, decision of 27 September 2018, op. cit.; CRC, decision of 25 January 2023, op. cit., pt. 8.3.

80 CRC, General Comment No. 6 (2005)...., op. cit., p. 31 (A).

81 CRC and CMV, Joint general comment No. 4 (2017)...., op. cit.

82 W. W. Greulich, S. I. Pyle, Radiographic Atlas of Skeletal Development of the Hand and Wrist, Stanford University Press, 1959.

83 CRC, decision of 27 September 2018 ... , op. cit., pt. 12.6.

84 UNHCR, Guidelines on International Protection ..., op. cit., pt. 75.

85 T. Smith, L. Brownless, op. cit., p. 17.

86 CRC and CMV, Joint general comment No. 4 (2017)...., op. cit., pt. 4.16.

87 CRC, decision of 27 September 2018, op. cit., pt. 12.3.; CRC, decision of 18 September 2019, op. cit., pt. 9.3. CRC, decision of 25 January 2023, op. cit., pt. 8.7.

88 ECtHR, judgment of 21 July 2022, Darboe and Camara against Italy, no. 5797/17, p. 153-155.

of Diakite against Italy⁸⁹, the ECtHR found that placing the appellant in an adult centred based on the results of X-ray examinations, which showed that he was at least 18 years old, was a violation of his right to privacy, even though, upon his arrival in the country, the applicant had provided the authorities with a birth certificate indicating he was a minor. The ECtHR stated that also in this case the national authorities failed to ensure minimum procedural guarantees and failed to respect the presumption of minority, which is an inherent element of the right to respect the private life of an unaccompanied foreigner declaring to be a minor.

In addition, within the Council of Europe, basic standards for age assessment of unaccompanied minors are set out in Resolution No. 1810 (2011) of the Parliamentary Assembly of the Council of Europe⁹⁰. They were developed by the Committee of Ministers of the Council of Europe in Recommendation CM/Rec(2022) 22 of 14 December 2022⁹¹. The Committee requires in particular that:

- in the absence of a valid identity document, other documents of the minor should be taken into account: such as school documentation, an invalid passport, a parent's identity document with an annotation about the child or other documents that may constitute evidence of the child's date of birth;
- the best interests of the child are treated as a priority, including in the selection of age assessment methods, and the child is ensured active participation in this procedure;
- the age examination be carried out in a language that the child could understand or with the participation of an interpreter with appropriate qualifications, and without the use of coercion, force, restriction or deprivation of liberty;
- the presumption of the child's minority be applied until the final decision is obtained;
- in assessing the child's age, a combination of various factors be taken into account: physical, psychological, developmental, environmental and socio-cultural, and specialists from various specialisations be involved in this procedure;
- the examined person should have the right to appeal

against the decision concerning the determination of their age, with suspensive effect, and the examination of the appeal is to be carried out as quickly as possible.

C. THE MIGRATION AND ASYLUM PACT

As part of the Migration and Asylum Pact, the art. 25 of the Regulation of the European Parliament and of the Council (EU) 2024/1348 of 14 May 2024 on the establishment of a common procedure for applying for international protection in the Union and Directive 2013/32/EU abrogation specifies new regulations on the procedure for age assessment of minor foreigners applying for international protection, implementing some of the standards described above.

According to it, in cases where the person applying for international protection submits a declaration or presents available documentation and there are other relevant indications that rise doubts as to whether they are a minor, the authority will be able to carry out a multidisciplinary assessment. This includes a psychosocial assessment, carried out by qualified specialists in order to determine the age of the person applying for international protection as the application is examined. The age assessment cannot be based solely on the physical appearance or behaviour of the person being examined. Also, available documents should be considered authentic, unless there is evidence to the contrary; statements of minors should also be taken into account.

If, despite the above assessment, doubts about age persist, a medical examination may be the last resort. This should be as minimally invasive as possible and carried out with full respect for the dignity of the person concerned, and should be performed by doctors with experience and expertise in age assessment. The results of the medical examination and the multidisciplinary assessment should be considered together to obtain the most reliable result possible. However, if the result is inconclusive or falls into an age range below 18 years, Member States will have to assume that the person examined is a minor.

Before the medical examination is carried out, the applicant for international protection, their parents, the person responsible for them or their (temporary) representative will have to be informed – in a language they understand and in a child-friendly and age-appropriate manner – that the age of the applicant may be assessed by means of a medical examination. This information should include how the examination will be carried out, the possible consequences of its result for the assessment of the application, as well as the possibility and consequences of refusing to undergo the medical examination. All

89 ECtHR, judgment of 14 September 2023, *Diakite against Italy*, no. 44646/17, p. 22.

90 Parliamentary Assembly of the Council of Europe, Resolution No. 1810 (2011) on unaccompanied children in Europe: issues of arrival, stay and care, pt 5.10.

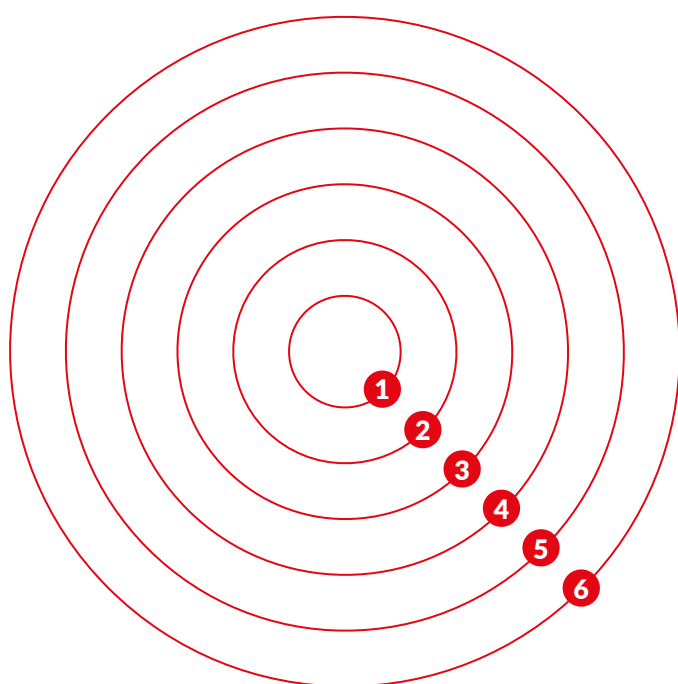
91 Committee of Ministers of the Council of Europe, Recommendation CM/Rec(2022) 22 to member states on human rights and guidelines on age assessment in the context of migration of 14 December 2022, para. 31 et seq.

related documents will have to be attached to the applicant's file. The examination may only be carried out if the person being examined, their parents, the adult person responsible for them or their (temporary) representative have given their consent. However, the refusal to allow a medical examination for the purpose of age assessment by any of these persons will not prevent the determining authority from taking a decision on the application for

international protection. Such a refusal can only be treated as a rebuttable presumption that the person applying for international protection is not a minor.

Member States will be able to recognise age assessment decisions made by other Member States provided that these assessments were carried out in accordance with EU law.

ACCESS TO RIGHT PROTECTION AND IMPLEMENTATION IN CASE OF CHILDREN WHO CROSS THE POLISH-BELARUSIAN BORDER IRREGULARLY



- 1** Children, who were identified as minors, submitted an application for international protection and were placed in foster care
- 2** Children, who were identified as minors, submitted an application for international protection and were placed in a place outside the foster care system which is not adjusted to children's needs
- 3** Children who were identified as minors but who left Poland and didn't apply for international protection or interrupted the procedure for protection (as a result of the slowness of the system, lack of information, being involved in human trafficking or independent decision)
- 4** Children who were not identified as minors but who submitted an application for international protection and were referred to a detention centre for foreigners (open or guarded)
- 5** Children who were not identified as minors, didn't apply for international protection and continue their irregular migration to Western Europe
- 6** Children who were pushed back to Belarus without any attempt to determine their age

3. AGE ASSESSMENT AND HUMANITARIAN ASSISTANCE IN THE BORDER FOREST

01 *In 2024 it was very rare for the Border Guard to accept declarations of intent to apply for international protection without NGOs' assistance. Thanks to NGOs the chances of an application being accepted would increase.*

02 *Unaccompanied children whose minor age was easily confirmed with the original passport had a much greater chance of applying for international protection. Children who declared to be minor but who lost or didn't have a travel document, were more often returned to Belarus.*

03 *Some young people often consciously raise their age as they believe that it will make their further travel easier or allow them to end up in an open centre instead of foster care. This strategy may result from misunderstanding of the system or being misled. Sometimes the age is raised in the country of origin – when the passport is issued.*

As we have already written, in 2024, there were extremely rare situations in which declarations of intent to apply for protection were accepted from foreigners crossing the Polish-Belarusian border (including minors) without the assistance of NGOs. The age did not seem to matter. Over the last couple of months foreigners did not always manage to submit a declaration even with the assistance of NGOs. However, minors, whose age was easy to confirm, had a much greater chance of success in this case. All those who failed to successfully submit an application or travel unnoticed further into the country were (and currently are - also after the change in regulations) taken to the border line with Belarus and forced to cross it.

Both interviews conducted with migrants and the field experience of NGOs working on the border indicate that in 2024, pushbacks took place not only directly from the forest, but also after prior transportation to a Border Guard facility (sometimes – an order to leave the territory of the Republic of Poland was issued too)⁹². Both the conditions of capturing foreigners in the forest and their stay at the facility make it impossible or at least difficult to precisely determine the age, health status or relationships between members of a group traveling together. It may be difficult to estimate the age due to natural conditions (time of

year and day), sometimes stress, and also the language barrier. NGOs representatives point out that the above factors (and, in some cases, fear of being discovered by the services) are an obstacle for them as well.

In most cases, especially when the interventions took place at night everyone was wearing hoods or caps, I was rarely aware that these were very young people. (INT_NGO_FOREST_1)

In the forest it is hard to judge someone's age by their appearance, because of tiredness and so on, but sometimes you really feel it... People so young who claim to be older, and I have doubts whether they really are older than 18 or 17. (INT_NGO_FOREST_4)

Well, sometimes you can see at a glance that it's a child for sure and sometimes you can't tell if it's a seventeen-year-old or a twenty-year-old. (INT_NGO_FOREST_3)

⁹² WAM, "Mamy tutaj jedną wojnę..." .

If a young person decides not to apply for protection in Poland and plans to travel further, unless they decide to provide their age when initially applying for help, they may not be identified as a minor at all.

We probably met more of these minors than we were able to notice and report, because sometimes people look very young and do not always tell us their age, it is not always a topic of conversation. (INT_NGO_FOREST_3)

If someone intends to apply for protection, determining their age becomes much more important. According to the observations of NGOs representatives, some people who want to apply for protection have documents with them (usually a passport, sometimes also others), some only have their photo on their phone, some - do not have any.

[...] they had photographs, for example, sometimes passports or other documents, but there were also situations when they themselves would enter the date of birth [...] in the powers of attorney [for administrative activities, for activists]. (INT_NGO_FOREST_1)

[...] or these people inform us about it, sometimes they can confirm it with a document, and sometimes it is an oral declaration. (INT_NGO_FOREST_2)

The experiences of our interviewees confirm that having original documents definitely makes the process easier and if a minor tried to submit an application with the support of an organisation - at least over the past year - they were most often successful. However, if they did not have documents, they were subjected to a radiological bone examination. According to the observations of NGO representatives, the scan basically always indicates an age above 18 years⁹³.

Next, when it comes to accepting the application itself, if a person declares that they are under 18, they usually perform this bone X-ray, which usually, I don't know of any other cases, but maybe I don't know about everything, shows that you are at least 18. (INT_NGO_FOREST_3)

According to the interviewees, there are also situations – caused by various factors – when young people pretend to be older. In 2024, they were motivated by the desire to avoid complications related to the expected placement in foster care instead of an open center.

The fact that they didn't want to reveal their age later on, thinking that if they're older, it will be easier, there will be fewer complications. They usually end up in an open center. I'm talking based on what happened last year and they seem to get out of the forest faster. It's easier to get out of the forest and go to a place where they can decide for themselves, not some institutional care facility, because if you are, I don't know, 15, 16 or 17... [unintelligible] minors, they even deliberately raise[their age] . (INT_NGO_FOREST_4)

Sometimes the desire to "avoid complications" is caused by a misunderstanding or misleading information provided by representatives of the Polish system.

The girl has a broken ankle and has just gone to the ortho[pedics], there will be a surgery. She says she is 17, but in order to stay in the hospital and have the operation, the doctor asked her to say she is 18. (ED_WAM_2404_05)

The reports also include descriptions of situations where young people explained the discrepancy between their declared age and the date of birth entered in their passports as an administrative mess in their country of origin; sometimes they would directly inform that the date of birth in the document was false and indicated an older age than the actual one, because that was the only way they could leave the country on their own. One of the interviewees recounts the story of a young Sudanese who declared to the Border Guard that he was 14 and explained that the age entered in his passport (21) was

⁹³ Detailed results of bone examination in the case of minors from the Belarusian border are given below. See Table 2.

due to difficulties in leaving Sudan. After he was taken by the Border Guard to the post – according to his account – he was intimidated and eventually “pushed back”.

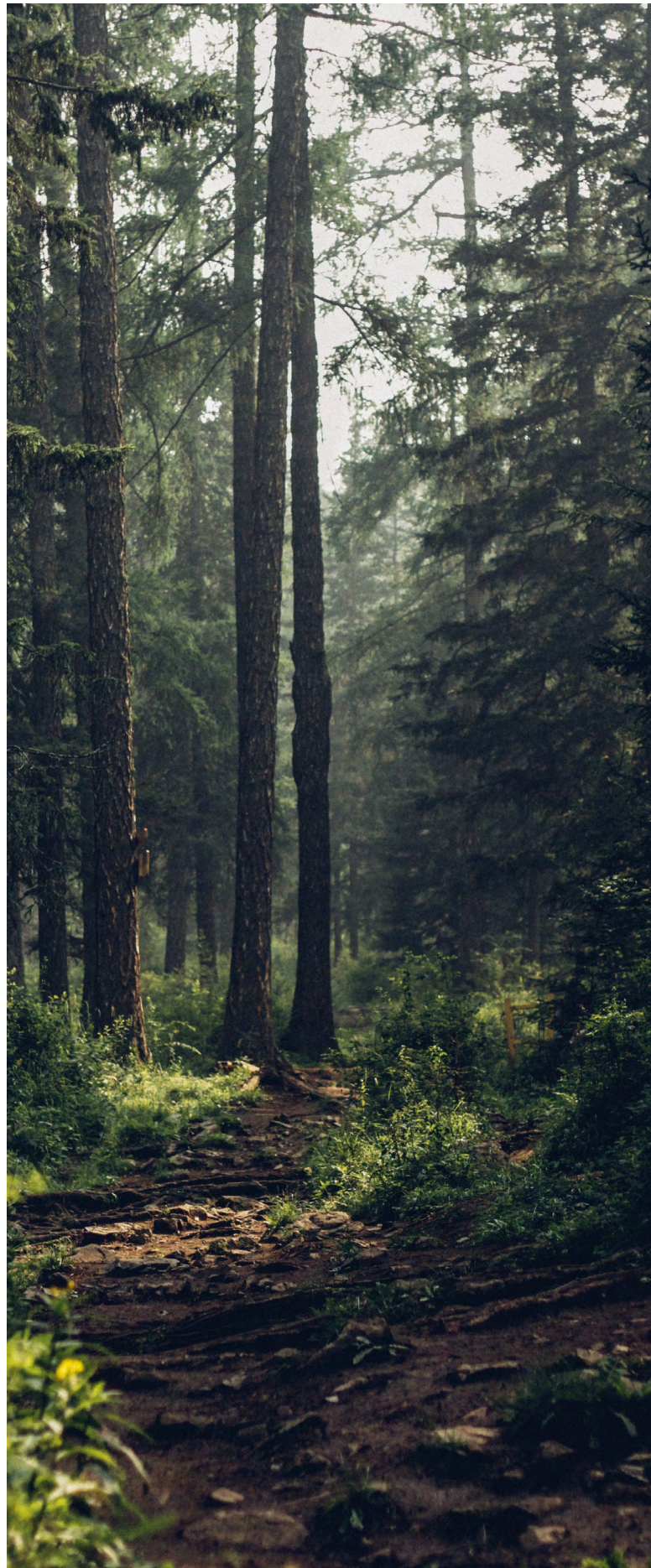


He declared he was 14 years old, and he looked like that [...]. And he was also treated terribly by the officer right there. They brutally handcuffed him, searched him brutally; he was crying. Even at that stage, in the forest, you could see that he was taking it very badly. He was "pushed back" from the post, [...] because he had withdrawn his will to apply for protection. He later said that he didn't understand anything, that they were simply shouting at him, telling him to do something, that the atmosphere was terrible, full of aggression. There was an interpreter, but it didn't change anything. He didn't understand anything and was terribly afraid. And because of that, he refused to sign anything, which is one of those classic variants. So he didn't have any documents, but you could really see that he was a child. (INT_NGO_FOREST_3)

After experiencing pushback, the boy managed to cross the border again. During the next attempt to submit the application, he did not mention the age discrepancy in the passport.



The second time] he simply said firmly that he didn't want to, that he wouldn't even mention the fact that he was 14, that... He had the feeling that it deteriorated his situation, that he said he was a child, but there was something else in his passport, even though his story was completely coherent, very understandable. He wasn't the only one to adopt such a strategy to escape the country on his own, this time he said no, that he simply wouldn't say anything, showed his passport as it was and that he absolutely asked not to mention that he was a minor. And then it worked, he submitted the application, it wasn't rejected, which of course I consider an absolute lottery. (INT_NGO_FOREST_3)



4. AGE ASSESSMENT – DIFFICULT DECISIONS OUTSIDE OF PROCEDURES

- 01** *One of the most important factors that influence the referral to age examination is lack of an identity document or having it only as a photograph in the telephone. The primary age assessment based on the appearance is a common practice.*
- 02** *Chronological age examination has a vague legal status. Despite the fact that its results lead to categoric and far-reaching legal effects, it is not an administrative decision. Provisions don't provide for any formal way of appeal to the medical opinion or attacking its result by the Border Guard authorities.*
- 03** *Age examinations are usually performed before applying to international protection. In practice, the legal representative of a child doesn't participate in them.*

When considering the issue of assessing one's age visually in forest conditions it is important to try to answer the following question: when and for what reasons are people posing as children and teenagers referred for age examination? The decision is made by the Border Guard - ultimately, it is individual officers who decide on this. They do so based on premises that they themselves consider important, and the regulations are not specific in this matter.

In 2024, 286 people were referred for age examination at Border Guard posts near the Polish-Belarusian border (see Annex 1). Only in 48 cases (17%) did they lead to the recognition of a person as a minor.

One of the most important circumstances that decide whether a person should be referred to age examination is the lack of an identity document or having it only in the form of a photo on the phone – which, as we already know, is very common on the Polish-Belarusian border. Due to the researchers' lack of access to voices from within the Border Guard (see Annex 3), it is impossible to assess the significance of someones "too adult" appearance. Some of the interviewees certainly refer to appearance when they argue why, in their opinion, some people were considered adults contrary to their actual age.

TABLE 2. PERSONS REFERRED FOR AGE TESTS AT BORDER GUARD POSTS NEAR THE POLISH-BELARUSIAN BORDER – DIVIDED INTO PERSONS RECOGNIZED AS MINORS AND ADULTS, AND INTO BORDER GUARD UNITS.

| BORDER GUARD UNIT | NUMBER OF PERSONS RECOGNIZED AS MINORS | % OF PEOPLE RECOGNIZED AS MINORS | NUMBER OF PERSONS RECOGNIZED AS ADULTS | % OF PEOPLE CONSIDERED AS ADULTS | TOTAL |
|-------------------------------|--|----------------------------------|--|----------------------------------|-------|
| PODLASKIE BORDER GUARD UNIT | 46 | 17 | 229 | 83 | 275 |
| NADBUŻAŃSKI BORDER GUARD UNIT | 2 | 18 | 9 | 82 | 11 |
| TOTAL | 48 | 17 | 238 | 83 | 286 |

Source: data provided in response to a request for access to public information by the Podlaskie and Nadbużański Border Guard Units.

However, as another interviewee notes, trying to visually assess a person's age – whether it leads to recognizing them as a child or an adult – is doomed to failure.

[...] when it comes to recognizing the ages of Slavs, we'll often guess right. Well, that's the truth, but for example, if we are to guess the age of, I don't know, a Korean or a Sudanese or a Somali, then we won't be so [...] (INT_LG_3)

A similar objection can be formulated regarding the most commonly used method of age testing – wrist X-ray. X-rays of migrants are compared with anatomical atlases from several decades ago, which presented the standards for the Polish population or the white population of the United States at that time⁹⁴. It should be added that these publications were not created with the intention of determining age in the chronological sense, but bone age. One may not correspond to the other for reasons such as belonging to a different ethnic group or experiencing malnutrition.

The root of the problem with age testing is also its uncertain legal status. The examination is a medical procedure, and its result is recorded in a certificate, a document which lacks legal force on its own. In this case, however, it entails categorical legal consequences. Recognizing a person as an adult or a minor has an impact on many matters – from the mode of conducting proceedings and the issue of legal representation, to custody guarantees. Despite such great power, a medical certificate of age examination is not additionally confirmed in any of the modes provided for causing such far-reaching legal effects. It does not require either an additional administrative decision or a court order – and therefore there is no way of appeal.

The categorical nature and impossibility of attacking the results of age tests are mentioned by the interviewees. Most often by those who meet with migrants as part of their legal work – in their opinion, they are often incorrectly recognized as adults.

Some kind of appeal procedure [would be needed], in matters related to determining a person's age. Because the current situation is just dramatic. It's enough to have a wrist X-ray and the case is closed, without the possibility of appeal. The only way to appeal this is to file a complaint against the decision on detention, and it's usually too late for that. Because it happens so fast. (INT_LG_3)

Age examinations are not a formal part of any procedure. They are usually performed before an application for international protection is filed. No one participates in them except the person declaring to be a minor and the doctor, and possibly Border Guard officers. At this stage, there is no question of any legal representation.

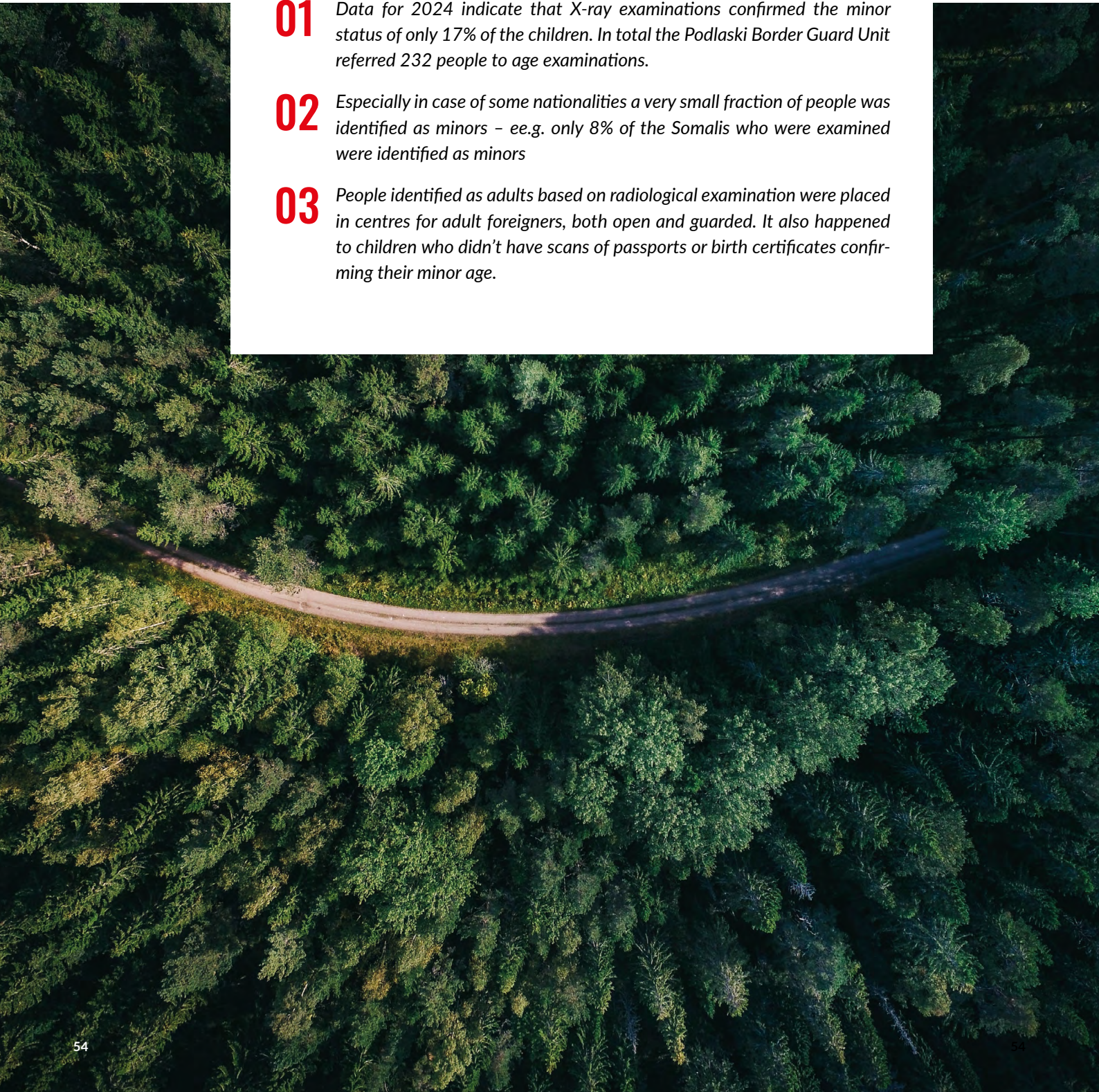
The result of the age examination determines, among other things, whether a given person can be placed in a guarded detention center. The interviewees say within the framework of detention proceedings they sometimes try to verify the results of age tests that are unfavorable for migrants. Among other reasons, the court conducting the proceedings has the possibility to appoint an expert and sanction his opinion with a decision. There is this possibility, but in practice no one uses it, thus not questioning the Border Guard's findings.

So of course I appealed this decision, claiming an error in the factual findings, because you are a minor, and the court did not agree to conduct an age examination. And so we wait. If it turns out now that he is a minor, well, the court will shoot itself in the foot a bit. We will see what can be done about it, because there will be a third or fourth decision, where in my opinion the court did not exercise due diligence. (INT_LG_3)

One of the interviewees mentioned a unique case in which the court agreed to verify age examination results. However, it was not due to the initiative of the panel of judges, but rather the intervention of the Ombudsman for Children.

94 M. Poszytek, M. Sługocki, Metody oceny wieku chronologicznego w postępowaniach z udziałem cudzoziemców, HFHR, 2023, p. 15-31.

5. CHILDREN IDENTIFIED AS ADULTS

- 
- An aerial photograph of a dense, green forest. A narrow, light-colored road or path winds through the trees, curving from the left side towards the bottom right. The trees are mostly coniferous, with some deciduous trees visible. The lighting suggests it might be late afternoon or early morning, with some shadows cast on the road.
- 01** *Data for 2024 indicate that X-ray examinations confirmed the minor status of only 17% of the children. In total the Podlaski Border Guard Unit referred 232 people to age examinations.*
 - 02** *Especially in case of some nationalities a very small fraction of people was identified as minors – ee.g. only 8% of the Somalis who were examined were identified as minors*
 - 03** *People identified as adults based on radiological examination were placed in centres for adult foreigners, both open and guarded. It also happened to children who didn't have scans of passports or birth certificates confirming their minor age.*

The interviews bring up a recurring situation of children being incorrectly recognized as adults.

However, the worst period in terms of numbers is probably from March to June 2024, when a huge number of minors was flowing through the border and the Border Guard ruled that almost 100% of them were adults. After doing ridiculous wrist X-rays, all these children were given a date of birth of 1 January 2006 and were identified as adults; they were placed in open or closed detention centers. (INT_NGO_AC_2)

Damn, I remember exactly, it was also spring last year, somewhere near Łozice, there were three boys and they were probably [...] 13, 14, 16 [the interviewee got lost] I don't remember, but definitely two of them, well, they were like, you know, under 15, so it's quite rare for us to meet unaccompanied minors that young. There were three of them and they were all minors. [...] I think Sudan. And they didn't have any documents either and I also remember that this intervention took a very long time, because they would decide on something among themselves for a long time. It was also some kind of early spring, [...] the scale of submitting applications for protection was starting to increase, but it wasn't so obvious yet [how the Border Guard would react to this]. And they were wondering for a very long time what to do, because they didn't have any identity documents, so they were informed that they would most likely end up in a guarded detention center and they were very afraid of it and they would debate for a long time whether to decide to do it or not, whether to try to manage it differently, but I think they decided that they didn't really have any plan, any idea, what else they could do and they decided to apply for protection and imagine that all three of them ended up in a guarded center. It was incomprehensible to me, because it was like... I understand that the bone scan may be inaccurate, if there is a difference there, I don't know, two, three years or something, but since those boys who were under 15 also came out as adults, well, I was wondering if they, you know, if they were taken for an age examination at all or not. (INT_NGO_FOREST_3)

According to NGOs representatives working on the border, such a situation is beneficial for the Border Guard, which is then not burdened with the need to look for places in foster care and with other formalities.

I also always try to remind the Border Guard at the moment when [...] they are leaving with this person, that since they are minors, that I kindly ask [...] for an application to the court, for appointing a legal guardian and referral to a care and educational facility. And then sometimes I hear, quite often, comments like "we will see whether they are adult or not". I have also heard a comment that "what are you telling me that they are minors for - we do not have places in institutional care facilities anyway". My response is that I am aware that there are no places in institutional care facilities, but that it is a systemic problem, and not the problem of specific boys. [...] So here, for example, I was already very afraid that these applications would not be accepted, because they would have a problem with facilities to send these people to, because I know that such situations have happened. (INT_NGO_FOREST_2)

It is clearly more convenient for the Border Guard to treat these people as adults when accepting an application for protection, because they simply do not have to start the whole fuss with the court, the legal guardian and then worry about where such people should and should not be placed. So I think that the fact that these bone tests always show at least 18 years of age simply suits them. (INT_NGO_FOREST_3)

According to the interviewees, it is very rare to verify an incorrect test result. Apart from attempts to challenge it in court proceedings, there are cases in which it was possible to verify the identity through the embassy of the country of origin or Border Guard officers took the initiative to repeat the tests.

Information obtained from the Nadwiślański Border Guard Unit for 2024 mentions three people transferred to the guarded detention centre in Lesznów from other guarded detention centers. The reason for the transfer was that they were recognized as minors already during their stay in the center. Contrary to the primary age assessment, they were recognized as adults.

Apart from that, persons recognized as minors at a later stage of the proceedings and during their stay in a guarded detention center are sometimes released from the center directly into foster care.

From what the Border Guard told me, he had already been examined upon detention. And, if I'm not mistaken, it seems to me that it was performed in Białystok, that examination showed that he was an adult. However, after two or three weeks of staying here in the center, the local Border Guard, our Department, were getting a strange feeling. And they referred the boy to another examination. And the examination showed that he was between 15 and 16 years old. (INT_LG_3)

The aforementioned story is one of those that expose the weaknesses of the research commissioned by the Border Guard. Two studies conducted on the same person using the same or similar methods lead to completely different results (over 18 years old and 15 years old). Ultimately, the scan of the birth certificate sent by the boy's mother showed that none of these measurements were precise.

In both cases, the bone examination determined that they were considered minors. One was considered seventeen, the other fifteen. However, it later turned out that the fifteen-year-old was actually seventeen. He was just so tiny. Because his mother sent a copy of his birth certificate, so we learnt that he was 17 afterwards. (INT_LG_3)

Several interviewees indicated that the problem of being incorrectly recognized as adults concerned to a greater extent people from the countries in the Horn of Africa or black people in general.

There were still a lot of people from Africa, but these people from Africa were not believed to be minors [...]. In most of these cases, unfortunately, we were not able to confirm that they were minors. Apart from those cases where they had documents on them and then the court actually believed those documents and it was actually confirmed that they were minors. (INT_LG_1)

TABLE 3 . PERSONS REFERRED FOR AGE ASSESSMENT AT BORDER GUARD POSTS NEAR THE POLISH-BELARUSIAN BORDER – DIVIDED INTO PERSONS RECOGNIZED AS MINORS AND ADULTS, AND BY MOST FREQUENTLY INDICATED COUNTRIES OF ORIGIN.

| COUNTRY OF ORIGIN | NUMBER OF PERSONS RECOGNIZED AS MINORS | % OF PERSONS RECOGNIZED AS MINORS | NUMBER OF PERSONS RECOGNIZED AS ADULTS | % OF PEOPLE RECOGNIZED AS ADULTS | TOTAL |
|-------------------|--|-----------------------------------|--|----------------------------------|------------|
| Somalia | 15 | 8 | 175 | 92 | 190 |
| Jemen | 4 | 36 | 7 | 64 | 11 |
| Iran | 9 | 82 | 2 | 18 | 11 |
| Erytrea | 1 | 10 | 9 | 9 | 10 |
| Maroko | 2 | 20 | 8 | 80 | 10 |
| | NUMBER OF PERSONS RECOGNIZED AS MINORS | % OF PERSONS RECOGNIZED AS MINORS | LICZBA WSZYSTKICH OSÓB UZNANYCH ZA PEŁNOLETNIE W 2024 R. | % OF PEOPLE RECOGNIZED AS ADULTS | TOTAL |
| | 48 | 17% | 238 | 83% | 286 |

Source: data provided in response to a request for access to public information by the Podlaskie and Nadbużański Border Guard Units.



The fact that people from the countries in Horn of Africa are less likely to have their minor age confirmed than other groups is also indicated by statistical data. **Only 15 out of 190, or about 8% of Somalis crossing the Polish-Belarusian border who declared they were minors, were recognized as children. This proportion is twice as low than the general figures. There, the level of recognition is about 17%.**

However, we approach the statistics with caution in this case. Firstly, because the number of people from Somalia is many times greater than in the case of other groups. It is difficult to say whether the proportion of recognition for people from Yemen or Iran claiming to be unaccompanied children would not be different if there were 190 of them, not 11. Apart from that, the lack of an effective path to challenge age examination results makes it impossible to estimate in how many cases someone was mistakenly recognized as an adult.

Not all children who are considered adults are necessarily opposed to this. Some young people may want to function as adults in order to gain access to work or freedom of movement



więcej o tym w części 3, rozdział 2:
Gdy dziecko planuje dalszą drogę (str. 105)



[...] our lawyer said that they were minors, that they just were there. But, first of all, they were either not interested in revealing themselves here as minors somehow, because they simply knew that as soon as they got out, they would go...(INT_LG_2)

6. ADULTS CONSIDERED CHILDREN

01 *It happens that adults mistakenly identified as children end up in care facilities. Such situations are a problem and a source of anxiety for care workers, especially considering the predominantly female staff of the facilities.*

Although the stories of children mistakenly recognized as adults predominate in the interviews, some of the interviewees tell opposite stories – of adults recognized as children. They do not rely solely on their own assumptions, which might always be erroneous. Foster care workers mention a situation when young men who ended up in their facility admitted to being adults themselves and showed pictures of their wives and children.

[...] when these people arrived, my caregivers called and said that they were adult men. And we are convinced that this was the case many times, that we had people who were adults and well over eighteen. It turned out later on, already in everyday life, because they showed us their wife, child [in photos] etc. So this is also an unsolved problem. (INT_CG_3)

Situations like these are a source of anxiety for caregivers, especially considering that the staff there is heavily feminized and sometimes relatively young.

The minors who end up in our facility are actually adult men, adult women; they often have children. They have access to the Internet, they have laptops and they are in touch with their families. We had a married couple who declared that they were siblings. (INT_CG_1)

A situation in which a seventeen-year-old ends up in a facility that mostly cares for early school-age children is a challenge for caregivers in providing appropriate care. The circumstances in which adults end up there cause care workers to be clueless. "Young men," especially those from the Middle East, are causing general concern. Women working in care facilities talk about their fears and uncertainty about who these people are. Placing Polish children in foster care is accompanied by the transfer of documentation collected about them by other institutions, such as a social welfare center or a family court. When it comes to unaccompanied children, the information that the facility receives is fragmentary. The language barrier and incomplete knowledge of intercultural differences can deepen the distance between caregivers and "wards" in such situations.

And it was always somewhere in the back of our minds when Syria, Iraq, Iran would arrive. Who is it? Well, we felt a little better if these people came from a guarded center. And there they already underwent this initial check, right, caregivers and educators also did some initial work. And a preliminary procedure was carried out. This is something that may not be articulated out loud, but everyone is afraid of it. (INT_CG_3)



02

**WHAT IS THE
“CARE SYSTEM”?**

WHAT IS THE “CARE SYSTEM”?

1. CAN WE TALK ABOUT A ‘CARE SYSTEM’?

- 01** *The process leading to the granting of international protection involves many people and institutions, but does not create a coherent and secure care network.*
- 02** *Unaccompanied minors do not have legal capacity, so they cannot file an application or conduct proceedings on their own – a legal guardian must be appointed.*
- 03** *In the period between declaring the intention to apply for international protection and submitting the application, the child is in a ‘state of limbo’: they have no identity documents, limited access to medical care, and the financing of their stay in the facility is unclear.*
- 04** *Polish regulations do not establish a comprehensive system of cooperation between legal guardians and public institutions involved in child care.*
- 05** *Regulatory fragmentation and narrow interpretation of responsibilities lead to legal gaps in terms of responsibility for unaccompanied children, coordination and information exchange.*



An unaccompanied child who, at least initially, declares their intention to seek international protection in Poland quickly becomes entangled in the competences and responsibilities of various individuals and institutions. However, this has little to do with what it should be: a safe and supportive network.

The identified gaps—legal, competence-related, and in care provision—cast doubt on whether a true 'care system' exists in the Polish context, because of the lack of cooperation and coordination between people and institutions. A key characteristic of any system, predictability, is also lacking in the case of unaccompanied children. In many cases, measures are taken ad hoc by various actors and depend on the willingness of certain institutions or individuals, rather than on consistent guidelines.

1. 1. STAGES OF PROCEEDINGS CONCERNING UNACCOMPANIED CHILDREN IN POLAND

A. DECLARING AN INTENTION TO SEEK INTERNATIONAL PROTECTION

Unaccompanied minors who declare to Polish authorities at the border that they wish to apply for international protection should be allowed to enter the territory of the Republic of Poland. The declaration can also be made after entering Poland. In such cases, the Border Guard is required to follow specific procedures. There is no single Border Guard authority with territorial and substantive jurisdiction to receive these declarations—in practice, they can be made to any Border Guard officer⁹⁵.

An unaccompanied minor⁹⁶ does not have legal capacity and therefore cannot act independently as a party in administrative or court proceedings. For this reason, they can only declare their intention to apply for international protection, but in order to actually submit an application and pursue proceedings, it is necessary to appoint an appropriate legal representative – in this case, a legal guardian.

Therefore, the act of declaring the intention to seek

international protection should be separated from the formal submission of an application and the initiation of administrative proceedings. Exceptions to this rule apply in situations where an international or non-governmental organisation providing assistance to foreigners submits an application for international protection on behalf of an unaccompanied minor. The organisation may do so if, based on an individual assessment of the situation of the minor, it considers that he or she may need such protection. In this case, the application is considered to have been submitted on behalf of the child on the date of its submission to the Border Guard, but it is still necessary to appoint a legal guardian for the unaccompanied minor in order to continue the proceedings⁹⁷.

At this stage, the minor is not yet treated as an applicant and does not have access to the rights that come with it. Until their application is accepted, with the participation of a legal guardian, they do not receive a new document confirming their identity, for example. They have limited access to health care and cannot be transferred to another EU country where their family lives.

B. INITIAL PROCEDURAL STEPS

Upon receiving a declaration of intent to seek international protection from an unaccompanied minor, the Border Guard should prepare a report and enter the declaration into an appropriate register. In addition, if the declaration is accepted, but also if an application for international protection is submitted on behalf of an unaccompanied minor by a non-governmental or international organisation, or if the minor is transferred to Poland by another Member State on the basis of the Dublin III Regulation, the competent Border Guard authority should:

- immediately apply to the guardianship court with jurisdiction over the place of residence of the unaccompanied minor with a request to:
 - » appoint a legal guardian⁹⁸
 - » place the minor in alternative care⁹⁹
- place the unaccompanied minor with a professional foster family acting as an emergency or an intervention-type care and education facility. The child remains in this type of facility until a decision is issued by a guardianship court, on the basis of which the child may be placed in a facility or family-type alternative care. The court should review

95 According to the judgment of the CJEU of 25 June 2020 in case C-36/20 PPU *Ministerio Fiscal*, point 94, a foreigner should be able to make a declaration of intent to seek international protection even to a representative of another state authority, such as a police officer or a judge – in that case, the declaration should be forwarded to the authority responsible for receiving applications for international protection.

96 Art. 26(2) of the Act on Granting Protection to Foreigners.

97 Art. 61(4)(1) of the Act on Granting Protection to Foreigners.

98 Art. 61(1)(3) and (4) of the Act on Granting Protection to Foreigners

99 Art. 62 of the Act on Granting Protection to Foreigners

the application for placing a minor in alternative care immediately, no later than within 10 days – however, this is only a guideline for the court that is not binding¹⁰⁰.

However, the provisions do not specify the details of choosing a legal guardian for the child and the institution or foster family to which the minor is to be immediately taken.

Appointing of a legal guardian

The guardianship court is required to appoint a legal guardian within three days of receiving a request from the Border Guard. Although the regulations do not impose this obligation, in practice the Border Guard often recommends a specific individual for the role. Furthermore, there is no official, up-to-date list of people willing and qualified to serve as legal guardians that could assist either the Border Guard or guardianship courts. While guardianship courts do maintain lists of attorneys and legal advisors who can act as child representatives—pursuant to the Regulation of the Minister of Justice of July 29, 2024—this role differs from that of a legal guardian. These lists are not binding for guardianship courts in cases involving an appointment of a legal guardian for an unaccompanied minor seeking international protection. Despite the adoption of the said regulation, the issue of shortage of legal guardian candidates remains unresolved

Placement in alternative care

A similar issue arises when it comes to transporting an unaccompanied minor to a professional foster family acting as an emergency placement or to an intervention-type care and education facility. The Act on Granting Protection to Foreigners does not specify which institution or emergency family the child should be taken to. There are no specialised institutions for unaccompanied foreign minors in Poland and they are placed in the general alternative care system.

Institutional care facilities cannot refuse to admit a child brought by the Border Guard or the Police in an emergency. The limits on the number of children who may stay in this type of facility and the minimum age requirement do not apply¹⁰¹. The Border Guard should therefore be able to place an unaccompanied minor in any institutional care facility, regardless of location. In this case, territorial restrictions do not apply, so children can be placed in

these facilities regardless of where they are residing¹⁰². A minor should not remain in this type of facility for more than three months, unless the proceedings to arrange alternative care take longer. However, if the child is under the age of 10, they should immediately be transferred to a family-based alternative care setting¹⁰³.

A professional foster family acting as a family emergency service has the right to refuse to accept a child in exceptional circumstances, if the total number of children placed in that family exceeds three and if the child is over the age of 10¹⁰⁴.

If an unaccompanied minor is accompanied by an adult relative who is a second-degree relative in the direct line (e.g. grandparents), a second-degree relative in the collateral line (e.g. siblings), or a third-degree relative (e.g. the minor's aunts or uncles), the Border Guard may, in its application for placement in alternative care, indicate that relative as a foster carer, provided they consent to it¹⁰⁵. Along with the application, the Border Guard may request interim measures to ensure that a relative is made responsible for the care of the unaccompanied minor during the course of the proceedings.

Both unmarried partners and married couples can become foster families. The child's relatives should meet the requirements for becoming a foster family, as specified in Article 42 of the Act on Family Support. These include, above all, providing the child with adequate living conditions and the ability to care for them, which is assessed by the court¹⁰⁶. If the relatives are foreigners, they must have legal residency in Poland. While close relatives such as parents and siblings are exempt from some requirements, other relatives must complete mandatory initial training and demonstrate a stable source of income¹⁰⁷. However, if it serves the child's best interest, the guardianship court may temporarily assign the role of foster family to these relatives for up to 6 months, despite their lack of training¹⁰⁸.

C. APPLICATION FOR INTERNATIONAL PROTECTION

102 Art. 103 ust. 5 ustawy o wspieraniu rodziny.

103 Art. 103(7) and (9) of the Act on Family Support.

104 Art. 58(2) of the Act on Family Support.

105 Art. 61 sec. 1a and 1b of the Act on Granting Protection to Foreigners.

106 These circumstances are determined by a person who arranges family foster care (Article 42(7) of the Act on Family Support).

107 Art. 42(3) and Art. 44 of the Act on Family Support.

108 Art. 1125 § 2 of the Act of 25 February 1964 Family and Guardianship Code (FGC)

100 Art. 61(7) of the Act on Granting Protection to Foreigners

101 Art. 103 ust. 2 pkt 2 i ust. 3 ustawy z dnia 9 czerwca 2011 r. o wspieraniu rodziny i systemie pieczy zastępczej („ustawa o wspieraniu rodziny”).

Once a legal guardian has been appointed, an application for international protection may be accepted. An application submitted on behalf of an unaccompanied child by a legal guardian is received and registered by the Border Guard authority competent for the place of residence of the minor. This should happen immediately, and no later than three working days after the legal guardian's appointment by the court¹⁰⁹.

When accepting an application for international protection, the Border Guard is required, among other things, to¹¹⁰:

- establish the identity of unaccompanied minors,
- obtain data and information necessary to complete the application form, including the reasons for seeking international protection¹¹¹,
- take photographs of the minor and take their fingerprints,
- provide written information, in a language the child understands, on topics such as the procedures for granting international protection, his rights and obligations, organisations providing assistance to foreigners, the scope of social and medical assistance, the procedure and rules for obtaining free legal aid and the entities that offer such support – however, the regulations do not require this information to be presented in a special, child-friendly format,
- provide an interpreter when submitting the application,
- conduct medical examinations and necessary sanitary measures for the body and clothing,
- collect and deliver the minor's passport (if they have one) to the Head of the Office for Foreigners in order to place it in a deposit and issue them with a temporary foreigner's identity certificate¹¹². During its period of validity, it confirms the identity of the minor and their right to legally stay on the territory of the Republic of Poland until the final decision on the application for international protection is made¹¹³.

In addition, if the Border Guard unit receiving an application for international protection from a foreigner claiming to be an unaccompanied minor (on the basis of their

statements or other circumstances) has doubts about their age, they shall ensure that a medical examination is carried out to determine the person's actual age.

The law requires that the application for international protection be submitted in the presence of the unaccompanied minor and their legal guardian and, just as with adults, in conditions that ensure sufficient confidentiality and allow for a full and detailed explanation of the reasons for seeking international protection¹¹⁴.

D. PROCEEDINGS FOR GRANTING INTERNATIONAL PROTECTION

Once the application for international protection has been received and registered by the Border Guard, the case is forwarded to the Head of the Office for Foreigners. Their primary responsibility is to assess whether the unaccompanied minor qualifies for international protection. To do this, the Head of the Office gathers information about the minor's situation in their country of origin. They are also required to interview the unaccompanied minor, giving them the opportunity to explain the circumstances that led them to seek protection. The case should be resolved within six months, but in special cases this period may be extended to 15 months¹¹⁵. This does not include the additional time needed for appeal proceedings in the event of a negative decision at first instance. During this time, unaccompanied minors must remain in Poland and are not allowed to travel to other EU countries. Leaving the country will result in their application for international protection being considered withdrawn and their case may be dismissed¹¹⁶.

The country responsible for processing the application for international protection should be the one where the minor is present at the time of submission, provided this is in the child's best interests¹¹⁷. The only exception applies when the minor has family members legally residing in another Member State, as outlined below.

Interview

The interview of an unaccompanied child seeking international protection is a key procedural step. Their testimony is an important piece of evidence in the case, as it

109 Art. 61 ust. 3 u.u.c.o.

110 Art. 30 u.u.c.o.

111 The application form for international protection is specified in the Regulation of the Minister of Internal Affairs of November 4, 2015, on the template for the application form for international protection, Journal of Laws 2015, item 1859.

112 Art. 31(1) of the Act on Granting Protection to Foreigners

113 Art. 55 and 55a of the Act on Granting Protection to Foreigners

114 Art. 30(2) of the Act on Granting Protection to Foreigners

115 Art. 34 of the Act on Granting Protection to Foreigners

116 Article 40(1)(2) in conjunction with Article 40(2)(5) of the Act on Granting Protection to Foreigners

117 Article 8(4) of the Dublin III Regulation; CJEU, judgment of 6 June 2013, case C-648/11, p. 66



is used by the Head of the Office for Foreigners to assess their credibility and determine whether they would face persecution or other serious harm if returned to their country of origin.

The legal guardian is obliged to inform the minor of the date and place of the interview, its significance in resolving the case, possible consequences, and, according to legal provisions, how to prepare for it¹¹⁸. On the other hand, the Head of the Office for Foreigners is obliged to inform unaccompanied minors about the factual and legal circumstances that may affect the outcome of the proceedings for granting international protection and about the possibility of requesting an interview in the presence of an adult chosen by them¹¹⁹. The interview

shall be conducted in a language understood by the child, in a manner appropriate to their age, maturity and mental development, taking into account the fact that they may have limited knowledge of the actual situation in their country of origin. The Head of the Office for Foreigners shall inform the legal guardian of the possibility of recording the interview using a video or audio recording device¹²⁰.

¹¹⁸ Art. 64 of the Act on Granting Protection to Foreigners

¹¹⁹ Art. 65 of the Act on Granting Protection to Foreigners

¹²⁰ According to data from the Office for Foreigners, no interviews were recorded in 2023, and no such requests were submitted. The Office for Foreigners had recording equipment, but was in the process of establishing rules and procedures for the storing and sharing of the recordings in line with the GDPR, as well as the technical capacity to store the recordings (source: response from the Office for Foreigners to a request from the Association for Legal Intervention for access to public information for 2023). No data has yet been obtained for the year 2024.

An unaccompanied minor shall be interviewed in the presence of:

- a legal guardian, who may ask questions or make comments
- an adult designated by the legal guardian, if this does not interfere with the proceedings
- a psychologist or educator, who shall prepare an opinion on the minor's mental and physical condition
- an interpreter, if necessary.

The Act on Granting Protection to Foreigners does not specify the place where the interview should take place. However, according to the practice of the Office for Foreigners, it is conducted in an alternative care facility where the unaccompanied minor is residing¹²¹.

Proceedings in cases for granting international protection involving unaccompanied minors, including conducting interviews, may be carried out by an official who meets at least one of the following criteria:

- holds a master's degree in law and two years of work experience in institutions that support children,
- holds a master's degree or has completed vocational training has at least two years of experience in public administration, and has completed training on conducting international protection procedures involving minors,
- holds a master's degree in pedagogy, psychology, or sociology and has at least two years of experience in public administration¹²².

Searching for the family

Upon receiving an application for international protection from an unaccompanied minor, the Head of the Office for Foreigners is required to immediately take steps to locate the child's family. In particular, this includes:

- informing the minor about the possibility of searching for their relatives through international non-governmental organisations
- assisting the minor in establishing contact with international non-governmental organisations and initiating the search for their relatives¹²³.

If it is established that the parents (or guardians), siblings or other relatives of an unaccompanied minor are legally

residing in another Member State, the Head of the Office for Foreigners should transfer the minor to that country for the purpose of examining their application for international protection, provided that it is in their best interests¹²⁴.

Classifying as a particularly vulnerable group requiring special treatment

According to Article 68 of the Act on Granting Protection to Foreigners, the Head of the Office for Foreigners is obliged to assess whether a person applying for international protection requires special treatment in proceedings for granting international protection or with regard to social assistance. This applies in particular to minors, disabled people, single parents, victims of human trafficking, bedridden people, those struggling with mental health problems, victims of torture, victims of psychological, physical and sexual violence, as well as victims of violence based on gender, sexual orientation and gender identity. This assessment should be made immediately after the application for international protection has been submitted and at any time until the end of the proceedings, if new circumstances relating to the person come to light.

According to Article 68(2) and Article 69 of the Act on Granting Protection to Foreigners, special treatment in terms of social assistance for unaccompanied minors may involve placing them in an extended care facility, a nursing home, a hospice, or placing them in alternative care appropriate to their physical and mental health. In cases involving international protection, proceedings should be conducted in a manner that respects the unaccompanied minor's right to express themselves freely and is adapted to their physical and mental condition. This includes scheduling proceedings at appropriate times, considering medical appointments, and—when justified by the child's health—holding them at the child's place of stay. If needed, a psychologist, doctor, or interpreter should be present. At the minor's request, those involved in the proceedings should be of the same sex or the gender specified by the child.

In order to make the assessment, the Head of the Office for Foreigners may, within the limits of the available budget, arrange for medical or psychological examinations. If a person does not consent to these examinations, they will be considered not to require special treatment.

121 Odpowiedź Szefa UdSC z dnia 22 stycznia 2025 r. za zapytanie w trybie dostępu do informacji publicznej.

122 Art. 66 u.u.c.o.

123 Art. 61 ust. 9 u.u.c.o.

124 Art. 8(1)-(3) of The Dublin III Regulation. Another relative with whom an unaccompanied minor may be reunited may be an adult relative who is a third-degree collateral relative or a second-degree direct relative.

Furthermore, if it comes to light during the proceedings that the applicant is an unaccompanied child, the Head of the Office for Foreigners requests the guardianship court to place the child in alternative care. Until the guardianship court issues a decision, the minor should be placed in alternative care under the intervention procedure outlined in Article 62 of the Act on Granting Protection to Foreigners. However, it has not been specified which authority is responsible for the placement¹²⁵.

E. COOPERATION BETWEEN AUTHORITIES AND FINANCING

Cooperation and exchange of information

Current legal provisions do not provide for a formal, comprehensive system of cooperation between legal guardians or representatives and public institutions involved in cases concerning unaccompanied foreign minors. They also lack clear procedures for ensuring cooperation in the child's best interests or for the exchange of information. As a result of fragmented legislation and narrowly interpreted responsibilities, there are significant gaps in the system regarding who is responsible for taking action, covering costs, or obtaining information.

Examples of the responsibilities of individual entities in cases involving unaccompanied children are outlined below. However, they are generally designed for all children and are not specifically adapted to the unique circumstances and needs of unaccompanied foreign minors. These include:

- A child's representative, who is legally authorised to obtain necessary information about a child to the degree necessary for their proper representation¹²⁶, and who may obtain such information from authorities, institutions, associations, social organisations or other entities to which the child belongs, and which provide assistance to the child or have information about them. These entities are obliged to provide information to the child's representative. A legal guardian of an unaccompanied minor does not have this type of legal authority.
- Documents concerning the child¹²⁷ are collected by the district family assistance centre and the foster family organiser, who forwards them to the directors of

institutional care facilities and foster family care providers. If the child is a foreign national, the documentation should also include: proof of identity, residence permits (if issued), travel documents, details regarding the circumstances of the child's presence in Poland and their referral to the District Family Assistance Centre, information about the child's parents, and relevant medical records. Directors of institutional care facilities and family foster care providers also have the right to obtain information and receive or view all available documents, including legal and medical documents concerning the child.

- In institutional care facilities, a dedicated team is established to conduct regular assessments of the child's situation. This team reviews both the child's circumstances and the approaches used in working with them, identifies their needs, and develops a support plan. In addition to the mandatory members, other individuals may also be involved in the team's work. These may include representatives of the court, the district family assistance centre, the social welfare centre, the police, healthcare providers, educational institutions, NGOs working with children and families, as well as individuals close to the child¹²⁸. Whenever possible, the legal guardian or representative of the child should also participate in the team's work, although it is not formally required as part of their statutory responsibilities.

- Institutional foster care facilities should cooperate with the court, the district family assistance centre, the child's family, the family assistant, the foster care organiser, and other individuals or institutions involved in supporting educational activities—especially those focused on preparing the child for independent living—provided they have the approval of the facility director and a positive recommendation from the family foster care organiser.

- The district family assistance centre should cooperate with the court and provide updates at least every six months on the overall personal situation of a child placed in a foster family or family foster home, as well as on the situation of the child's family¹²⁹.

Covering the costs of a child's stay in alternative care

The Head of the Office for Foreigners covers, from the state budget managed by the Minister of Internal Affairs, the costs of an unaccompanied minor's stay only in a professional foster family acting as an emergency family or in an intervention-type alternative care facility, starting from the date the application for international protection

¹²⁵ Art. 61(8) and Art. 62(2) of the Act on Granting Protection to Foreigners.

¹²⁶ Art. 99 § 1-2 of the FGC.

¹²⁷ Art. 38a, Art. 47(3), Art. 99a and Art. 113 of the Act on Family Support.

¹²⁸ Art. 135-137 of the Act on Family Support.

¹²⁹ Art. 47(5) of the Act on Family Support.

is submitted until the conclusion of the proceedings¹³⁰. However, if during the procedure a minor is transferred to a foster family or a facility other than an intervention-type facility, the costs of the child's stay in alternative care are covered by the district authority with jurisdiction over the place where the child is staying in family or institutional alternative care¹³¹.

The Chief of the Border Guard or the Commander-in-Chief of the Police covers, from the state budget managed by Minister of Internal Affairs, the costs related to the placement and stay in alternative care of an unaccompanied foreign minor in the following situations:

- when the minor has been denied refugee status and subsidiary protection – until they are transferred to their country of origin
- when the minor is staying in an institutional care facility – until the application for international protection is accepted. However, there are doubts as to who is responsible for covering the costs of the child's stay in alternative care in the period between the declaration

of intent to apply for international protection and the date of submission of the application – whether it should be the Head of the Office for Foreigners or the Chief of the Border Guard (or the Chief Commander of the Police). In practice, the Head of the Office for Foreigners assumes responsibility only from the moment of accepting the application¹³². According to the Act on Foreigners, the costs of the child's stay in an intervention-type care facility should be covered by the Chief of the Border Guard or the Commander-in-Chief of the Police. However, the provisions do not specify which part of the budget should cover the child's stay in a professional foster family acting as an emergency family during this period¹³³.

If an unaccompanied minor is granted refugee status or subsidiary protection, the cost of his or her stay in alternative care shall be covered by the competent district authority in accordance with Article 191(1)-(3) of the Act on Family Support.

130 Art. 63 of the Act on Granting Protection to Foreigners

131 Art. 191(4a) in conjunction with Article 5(1)(5) of the Act on Family Support.

132 Response from the Head of the Office for Foreigners dated January 22, 2025, to a request for access to public information.

133 Art. 67 of the Act on Granting Protection to Foreigners; Article 397(6) of the Act on Foreigners.



2. THE FIRST PERIOD OF STAYING IN POLAND – SEARCHING AND WAITING

- 01** *The Border Guard is obliged to request the appointment of a legal guardian and to place the child in alternative care. However, the regulations do not specify how the process of finding both a legal guardian and a care facility should look like. The Border Guard does not have access to a database with information on free places in care facilities.*
- 02** *The practice of searching for candidates for legal guardians is inconsistent: sometimes the Border Guard searches for people itself, while other times the district court does so upon the Border Guard's request. The courts rarely verify the candidates' qualifications, and decisions are made in closed sessions.*
- 03** *The shortage of places in alternative care is a systemic issue, but the lack of intervention-type facilities and foster families—who should be the first point of contact for unaccompanied children—is especially concerning. While the Border Guard searches for a place, children are held in Border Guard facilities, which are completely unfit for their needs and may worsen their already vulnerable condition.*



2. 1. BETWEEN THE DECLARATION AND THE APPLICATION

Unlike EU regulations, Polish law does not grant applicant status in international protection proceedings to individuals who have made a declaration of intent but have not yet submitted a full application. Although this difference may seem minor, in practice it is of great importance for unaccompanied children. The period between making a declaration and formally submitting an application involves numerous actions and decisions that directly impact the child's status. This gap also highlights broader issues in how institutional care is provided.

When the Border Guard receives a declaration from an unaccompanied child expressing the intention to seek international protection, their first steps are to submit two applications to the court: one for the appointment of a legal guardian for the proceedings, and another for the child's placement in alternative care. As outlined in the legal analysis in previous chapters of this report, the regulations only state that the Border Guard is required to submit these applications. However, they do not provide guidance on how the process of finding a legal guardian or appropriate care facility should be carried out in either case.

At the Polish-Belarusian border, the highest number of declarations from unaccompanied children was recorded at the Border Guard post in Dubicze Cerkiewne, with 27 cases. At the Border Guard posts in Białowieża and Narewka, ten unaccompanied children submitted applications for international protection.

A. WHERE DO LEGAL GUARDIANS COME FROM?

The practice of searching for candidates for legal guardians is not standardised. Sometimes it is done by the Border Guard, and the application submitted to the court includes a recommendation for a specific person to be appointed. Usually, the candidate is someone who works in the legal field or for a non-governmental organisation. Sometimes, the search for candidates is based on established cooperation between the Border Guard and a non-governmental organisation. In other cases, candidates are sought by the district court to which the application is submitted.

That's how it happened, the first time, back in 2022 or 2021, I got to know the judge who handles these applications, over the phone. As if she already knew, she asked for my number [...]. And later, together with the director – because this family judge works very closely with the director of the orphanage – they asked me if I would be willing to [be a legal guardian]. Because, for example, the Border Guard had sent a request to the court, asking them to forward the question to the Chamber or the Council to suggest people who would be willing to be legal guardians. (INT_LG_5)

According to data from district courts located near the Polish-Belarusian border, legal guardians are typically sought through contact with the Regional Bar Council or the Warsaw Bar Association, or via referrals from non-governmental organisations.

Regardless of whether the search for legal guardians is carried out by the court or the Border Guard, our interviewees highlighted the key role of local networks and cooperation. These networks help identify suitable legal guardians more efficiently—particularly those with relevant experience, appropriate qualifications, and knowledge of migration law.

However, this isn't always the deciding factor. One of the legal guardians we interviewed said that the local Border Guard preferred to look for candidates through the Warsaw Bar Association or the Regional Bar Council, despite being aware of his experience and willingness to take on the role.

Because the Border Guard [in my town] at least knows that I am willing to help, etc. But they choose different local lawyers, so to speak. Public defenders, right? They contact the Bar Association or the Council and ask them to recommend someone who could act as a legal guardian, rather than contacting me directly. (INT_LG_5)

Being able to act locally also allows applications for legal guardianship to be processed quickly and legal guardians are sometimes appointed within a few hours.



There is an emergency telephone number at the family court. And when a minor appears, the Border Guard contacts the judge. And it was like, for example, at 9 p.m. they called to say that there would be a hearing the next day, and we had to quickly make a decision so that the minor would not remain at the Border Guard post or somewhere else. (INT_LG_1)

People working in larger cities, outside the Polish-Belarusian border area, describe the lengthy proceedings for appointing a legal guardian as follows:



Given the pace of proceedings in the family court, any requests to change the legal guardian would likely have taken so long that the proceedings would have already been concluded by the time a decision was made [...]. (INT_LG_2)

The legal guardians we interviewed said that, in most cases, the courts do not check their qualifications, and decisions are made behind closed doors. One interviewee recalled an unusual case where a court, unfamiliar with unaccompanied foreign children cases, did decide to verify his qualifications. However, since the Act on Granting Protection to Foreigners doesn't set out any specific requirements for legal guardians, the court used the criteria typically applied to foster parents.

The regulations state that a legal guardian should be appointed within three days of the child's detention. According to data provided by district courts, this deadline is typically met, although in four cases heard by one court, it was extended to more than ten days.

TABLE 4. DURATION OF PROCEEDINGS FOR APPOINTING A LEGAL GUARDIAN FOR UNACCOMPANIED MINORS IN DISTRICT COURTS NEAR THE POLISH-BELARUSIAN BORDER.

| TIME PERIOD | 1-3 DAYS | 4-10 DAYS | MORE THAN 10 DAYS | TOTAL |
|-----------------------|----------|-----------|-------------------|-------|
| Number of proceedings | 45 | 7 | 4 | 56 |

Source: data provided in response to a request for access to public information submitted to district courts (see Annex 2).

In total, 56 proceedings for the appointment of a legal guardian in international protection cases involving

unaccompanied minors were pending before district courts located along the Poland-Belarus border in 2024. The highest number of cases were handled by the District Court in Bielsk Podlaski (36), and the District Court in Białystok (11).

TABLE 5. NUMBER OF PROCEEDINGS FOR APPOINTING A LEGAL GUARDIAN FOR UNACCOMPANIED MINORS IN DISTRICT COURTS NEAR THE POLISH-BELARUSIAN BORDER.

| NAME OF THE COURT | NUMBER OF PROCEEDINGS |
|-----------------------------------|-----------------------|
| District Court in Bielsk Podlaski | 36 |
| District Court in Białystok | 11 |
| District Court in Biała Podlaska | 4 |
| District Court in Augustów | 4 |
| District Court in Sokółka | 1 |

Source: data provided in response to a request for access to public information submitted to district courts (see Annex 2).

B. DO YOU HAVE A FREE SPOT?

Although finding a candidate to act as a legal guardian is not always easy, it is far more difficult to secure a place for an unaccompanied child in an alternative care facility. Once again, the law does not specify how this search should be carried out. In practice, responsibility falls to the Border Guard, which is tasked with taking the child to the facility and submitting a request to the district court for a decision approving the placement.

At the same time, the Border Guard does not work regularly with the foster care system and does not have access to a list of care facilities with available places. Due to the fact that many facilities refuse to accept children, the search often involves time-consuming phone calls to various facilities, only to be told that no places are available.



Six of them showed up, and it was at a time when the Border Guard was having problems in general, because they already knew that they'd probably turn out to be minors, and it was also a time when they were looking for places in alternative care, which was a problem. And since I was also working with the foster care organisers, I sort of called around to ask if they had any spots available. (INT_LG_3)

As the interviewees point out, the lack of spots in alternative care facilities is a systemic problem and affects all children. There is a significant shortage of intervention centres, i.e. facilities that should be the first point of contact for unaccompanied minors.

Firstly, there is a significant issue with intervention centres in Poland in general. There are very few intervention centres. There was a time when districts started shutting down the intervention centres, and in reality, we were the only one in the immediate area – with Warsaw nearby, but basically nothing else. There aren't many intervention centres, because local authorities have generally moved to a model where they create intervention spots within existing care facilities. So, instead of creating separate intervention centres, they just create intervention spots. (INT_CG_4)

While the Border Guard searches for an available place in alternative care, unaccompanied foreign children remain at Border Guard facilities. The longer the search takes, the longer the child stays in an environment that is entirely unsuitable for their needs, and may even worsen their condition.

And then, as [name] said, [at the Border Guard unit], they were locked in a cell without windows. Because in those facilities, those places for foreigners were adapted from some kind of basements, or something, and they didn't even have windows. And they were locked up. So yeah. (INT_NGO_AC_3)

The process of placing children in specific institutions often depends on the relationships between the directors of those institutions and officers from individual Border Guard units. Most alternative care facilities are both socialisation and intervention centres. That is why it is possible to admit more children than in purely socialisation centres, where the limit is 14 children. 'So if a child needs help, we take them in regardless of whether we have space or not,' says one person working in alternative care. Despite this possibility, facilities have a limited number of places and staff resources. The goodwill of management plays a key role in their willingness to accept children beyond the usual limit, and good relationships often help to speed up the otherwise lengthy process of finding a placement for a child.

They called us from all over the place. I say that, because I know everyone, and they know me too. So they call and say, 'Ms [name], do you have a free spot? They didn't even ask about me if I had a free spot, if we could accommodate them, because of the specific situation. So if I had a spot, I said yes. If I didn't have a spot and I knew I couldn't take anyone else in, then I said no, unfortunately. (INT_CG_2)

However, when the Border Guard has no relationship with the facilities' staff or when the facilities with which it is in contact are full – which happens often – it has to look for alternative solutions. Interviewees mention, among other things, approaching facilities with a *fait accompli*, especially intervention centres or those with intervention spots.

*They presented the facility with a *fait accompli*. They arrived – because normally, when there is a conversation, when the Border Guard calls, everyone says, "No, no, no, no." But once they are there with the children, it's not so easy to refuse when you look into their eyes. (INT_LG_3)*

Another solution is to place the child in alternative care facilities located far from where they were initially detained. As a result, unaccompanied children have been sent to intervention centers in a large city in central Poland, where one of our interviewees works.

However, when the war in Ukraine started, that's when they started moving these foreign minors to Poland. And that's when we really started slowly taking in these children. I think I started working with the Border Guard in 2023. I was working at the centre in Kętrzyn at that time. Since they had nowhere to place these minors, they somehow contacted me and we took some of them in. (INT_CG_4)

According to data from the Office for Foreigners, unaccompanied children were placed in alternative care across various regions of Poland. In 2024, most were located near the Polish-Belarusian border – in and around Białystok, Augustów, and Hajnówka in the Podlaskie Province, as well as Biała Podlaska in the Lubelskie Voivodeship. Several were also placed in institutions near Rzeszów

and Przemyśl, likely after being released from detention centres following age verification. Finally, the map is completed by the areas around Warsaw and Piaseczno, as well as Łódź, where several unaccompanied foreign minors also resided. According to our interviewees, at least some of these children had crossed the Polish-Belarusian border and were relocated due to a lack of available care facilities near their original place of detention.

Placing children in care facilities far from the place of detention can make it difficult to ensure proper legal representation. In some cases, the legal guardian is appointed by a local court—often from a list provided by the Warsaw Bar Association or a regional bar—and the alternative care facility is then located in a completely different part of the country.

It seems that, in response to these challenges, the Border Guard entered into an agreement with Caritas in EtK to refer some unaccompanied foreign children to a retirement home for priests run by Caritas (see Chapter 5).

In 2024, district courts near the Polish-Belarusian border recorded 65 proceedings concerning the placement of unaccompanied foreign children in alternative care. The highest numbers were at the District Court in Bielsk Podlaski (35) and the District Court in Białystok (21).

TABLE 6. NUMBER OF PROCEEDINGS FOR PLACING UNACCOMPANIED MINORS IN ALTERNATIVE CARE CONDUCTED BY DISTRICT COURTS NEAR THE POLISH-BELARUSIAN BORDER – BY COURT.

| NAME OF THE COURT | NUMBER OF PROCEEDINGS |
|-----------------------------------|-----------------------|
| District Court in Bielsk Podlaski | 35 |
| District Court in Białystok | 21 |
| District Court in Bielsk Podlaski | 3 |
| District Court in Augustów | 4 |
| District Court in Sokółka | 1 |

Source: data provided in response to a request for access to public information submitted to district courts (see Annex 2)

Of the 65 proceedings, only two resulted in the child being placed with close relatives. In all other cases, the children were placed in institutional care facilities. Throughout 2024, none of the courts mentioned recorded any cases of unrelated foster care.

C. WHEN WILL THE APPLICATION BE SUBMITTED?

An application for international protection should be submitted within three days of appointing a legal guardian. This is not always possible, but sometimes is – as one interviewee noted, in their experience, the process of submitting an application began almost simultaneously with the legal guardian's appointment. In other cases, however, the wait can stretch to several weeks. Sometimes it is difficult to find an interpreter for a rare language, and sometimes there is a lack of initiative from the institutions and the legal guardian.

I think [it's] a matter of finding an interpreter for a rare language, and bringing them to some distant location is not a quick thing, so it could take a week or two. So that's what it's related to, and this interpreter doesn't do it online when children submit applications. (INT_LG_4)

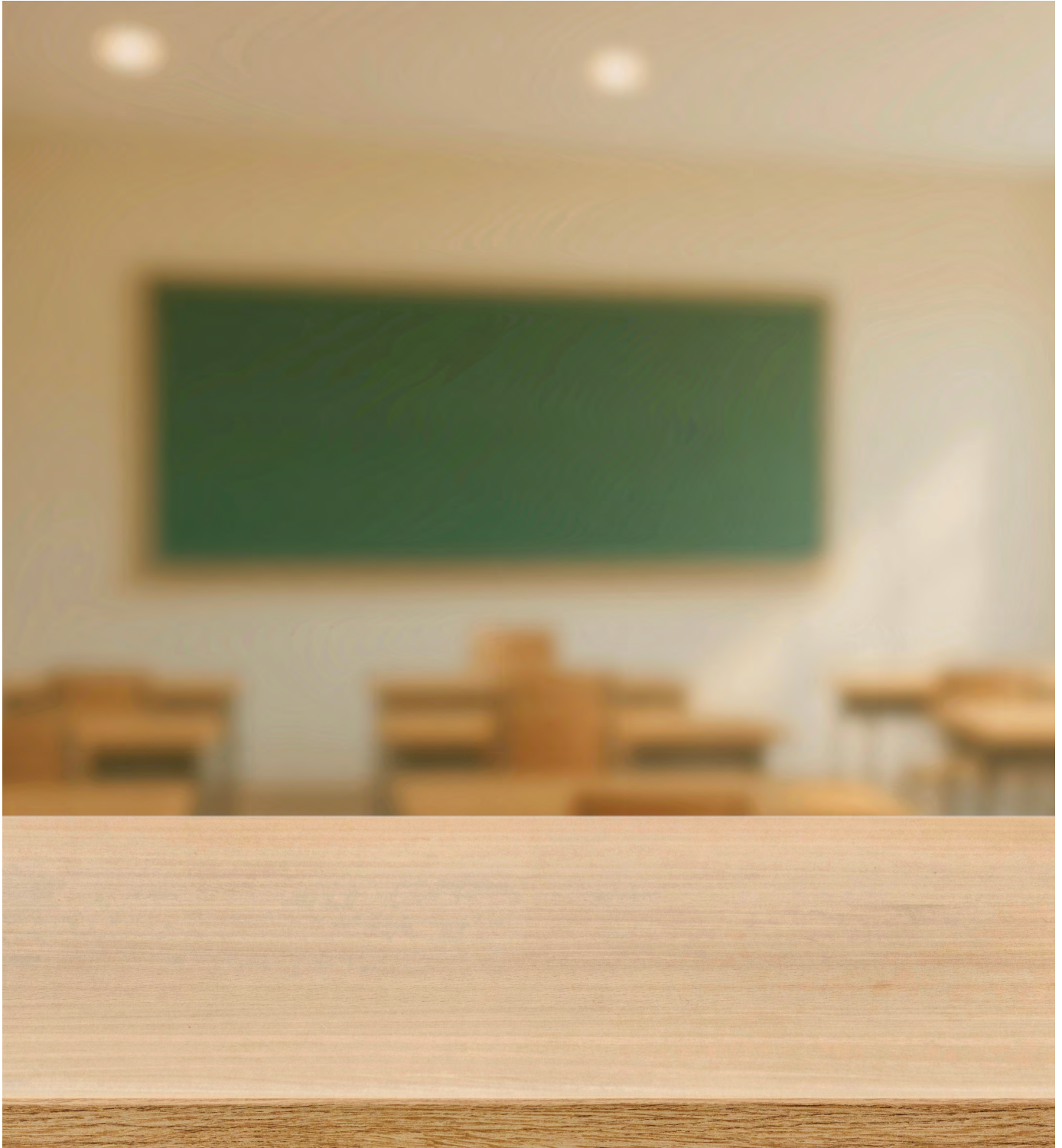
The only thing I managed to do at that moment was to force the Border Guard, I was [his sister's] legal representative, I managed to force them to set a date for submitting an application for this boy, because he had already been in the facility for almost two months, he had a legal guardian appointed by the office, who didn't take care of it, didn't submit an application on behalf of the minor, so that's the only thing I managed to do, to organise it. (INT_NGO_AC_2)

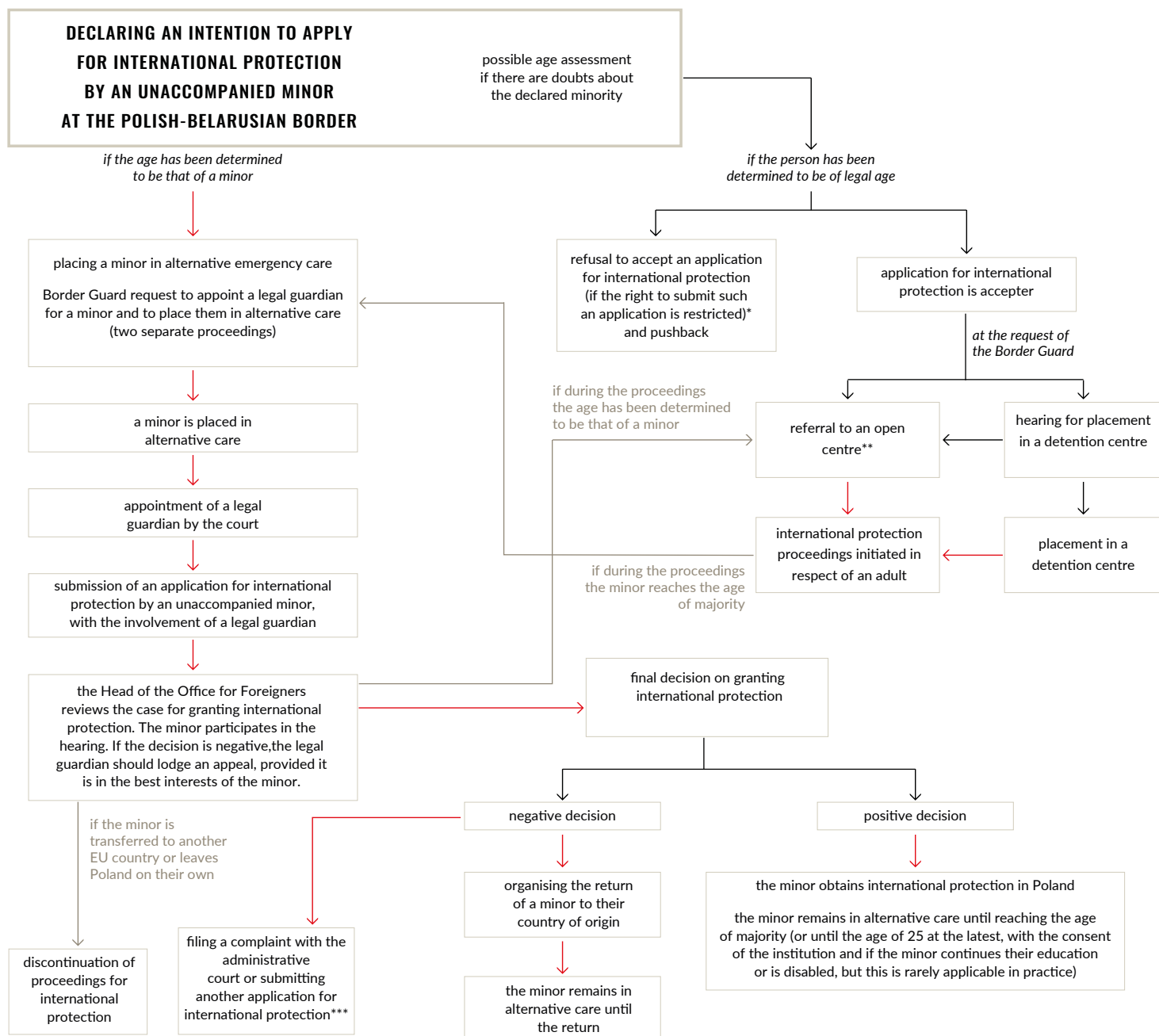
The period between the declaration and the submission of the application is particularly challenging due to the state of limbo in which unaccompanied children find themselves in, as they do not even have identity documents during this time. This situation creates both formal and financial difficulties that directly affect their well-being and access to healthcare. The Office for Foreigners assumes financial responsibility for the child's stay in alternative care and for providing medical assistance, but only if an application for international protection has been submitted. Until then, it remains unclear which institution is responsible for covering these essential needs. Although financial responsibility should be assumed by the Border Guard Headquarters or the Police Headquarters, in practice, access to medical care is a huge problem and a systemic gap that leaves unaccompanied children vulnerable.

As a consequence of the prolonged waiting period, in many cases no application is ever submitted. In the meantime, children disappear from alternative care facilities. Curators interviewed for this report say that they have not even managed to establish contact with some of the wards.



I didn't have any contact with him at all because I didn't manage to get there. Because then the group of six was divided into two groups. Two people ended up in an orphanage in [city], and four ended up in a centre in [another city]. And I didn't manage to get to [another town] because these young people just disappeared. (INT_LG_3)





→ standard next step

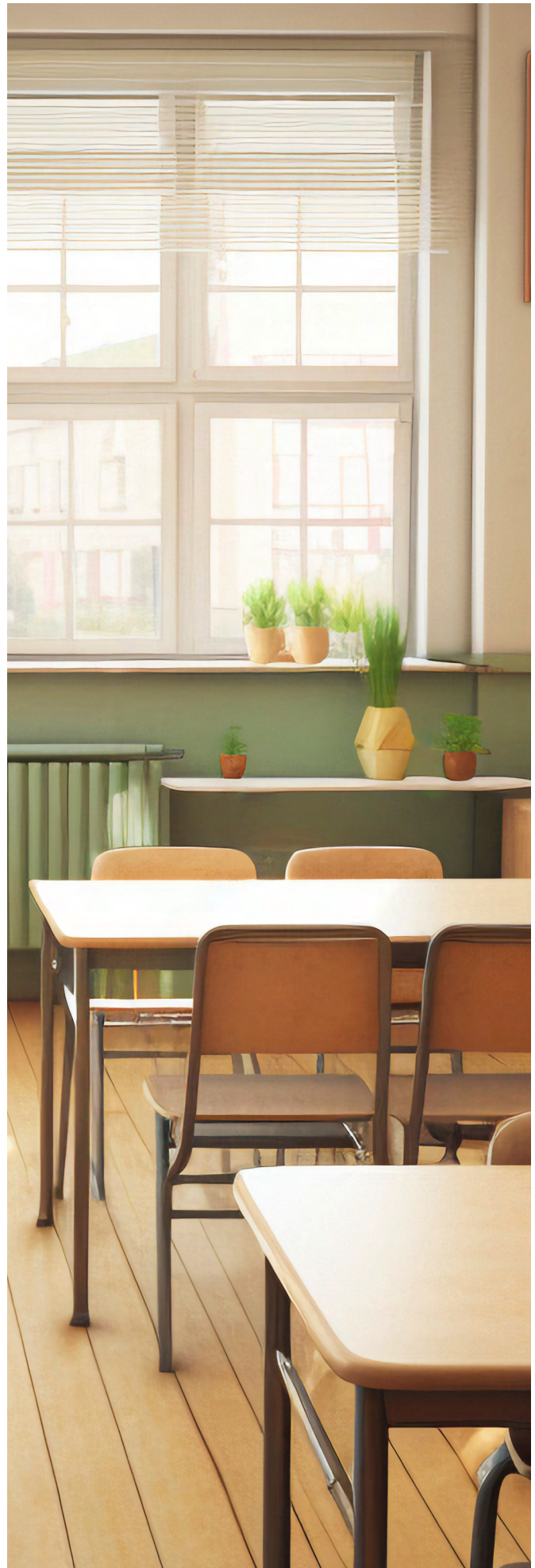
→ alternative next steps (e.g., either a positive or a negative decision)

→ a potential step that may happen

* Pursuant to Article 33a of the Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland, the Council of Ministers may introduce a temporary restriction on the right to apply for international protection. This restriction does not apply to unaccompanied minors or other vulnerable groups, such as pregnant women; individuals who may require special treatment, particularly due to age or health conditions; persons in circumstances which, in the opinion of the Border Guard, clearly indicate that they face a real risk of serious harm in the country from which they have arrived directly into the territory of the Republic of Poland; or citizens of a country engaging in the instrumentalisation of migration, from whose territory foreigners enter Poland. If an unaccompanied minor has been assessed as an adult but falls within one of the other vulnerable groups, their application for international protection should still be accepted. Currently, a restriction on the right to apply for international protection is in force from 27 March to 26 May 2025, though this period may be extended.

** There is no obligation for foreigners to reside in an open centre. They may arrange their own accommodation and are entitled to receive financial support for this purpose. In theory, unaccompanied minors who reach the age of majority during the international protection procedure may remain in alternative care, provided the facility gives its consent and they are continuing their education or have a disability; however, this may not extend beyond the age of 25. In practice, however, this provision is rarely applied.

*** Alternatively, it is possible to pursue other legal avenues to regularise a minor's stay in Poland, such as applying for a temporary residence permit on the grounds of the need to uphold the rights of the child, or for a humanitarian residence permit (as part of the return commitment procedure). In such cases, the minor remains in alternative care until they reach the age of majority.



3. LEGAL GUARDIANS – BETWEEN STRICT LEGALISM AND REALISTIC TASKS

- 01** Polish law requires unaccompanied children to receive ongoing support and legal representation.
- 02** European and international regulations use the terms "guardian" or "legal representative". A guardian is responsible for the child's overall well-being and acts in their best interests, while a legal representative focuses on legal matters.
- 03** Polish law does not have an equivalent role to a 'guardian.' There is no single institution tasked with comprehensively representing minors in all aspects of their lives and acting in their best interests. The system is fragmented.
- 04** The legal guardian (a specific type of legal representative) plays a key role in protecting unaccompanied children. Usually, they are appointed by the court solely for issues related to the international protection procedure and can represent the child only in this context, which is an inadequate solution that fails to address the child's complex needs.
- 05** The current system suffers from a lack of cooperation and information exchange between key institutions.

3. 1. LEGAL REPRESENTATION OF UNACCOMPANIED CHILDREN IN THE LIGHT OF REGULATIONS

The Polish legal system requires that all children without parents or other legal guardians, including foreign children, are provided with ongoing support and legal representation in all proceedings involving them. Minors lack legal capacity in administrative proceedings. If a child has no parent or legal guardian, this role must be assigned to a designated person.

Defining the role of a legal guardian and a child's representative

There is no single definition in European and international regulations for a person who represents or provides ongoing support to an unaccompanied foreign child. In English, terms such as "guardian", "representative" or

"legal representative" are used¹³⁴. According to a study by the EU Agency for Fundamental Rights, a (legal) representative has a more limited role, focused solely on representing the child in legal matters. A guardian, however, is someone whose duty is to ensure the child's overall well-being, act in their best interests, and "supplement" the child's legal capacity, which the child lacks¹³⁵.

Polish law also lacks a single, clear definition for a caregiver of unaccompanied foreign minors, equivalent to the English word "guardian". There are different legal institutions with different rights and responsibilities. Legal representation is provided by legal guardians or representatives of the child, while day-to-day care is the responsibility of alternative care institutions. This division often leads to confusion, with courts sometimes struggling to distinguish between legal guardians and representatives

¹³⁴ EU Agency for Fundamental Rights, Guardianship for children deprived of parental care. A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking guardianship, 2014, pp. 13-14.

¹³⁵ a Ibid.

appointed for different proceedings. For example, in case file VII NSm 331/24, the District Court for Łódź-Śródmieście in Łódź appointed a child's representative rather than a legal guardian for international protection and related proceedings. Conversely, in case file No. III

Nsm 179/24, the District Court in Grójec appointed a legal guardian for proceedings concerning the costs of implementing a return decision, despite regulations not providing for the appointment of a legal guardian in such cases.

| LEGAL GUARDIAN | CHILD'S REPRESENTATIVE |
|---|--|
| LEGAL GROUNDS | |
| <ul style="list-style-type: none"> • Art. 61 et seq. of the Act on Granting Protection to Foreigners • Art. 178 et seq. of the FGC | <ul style="list-style-type: none"> • Art. 99 et seq. of the FGC • Art. 5831 §1 of the CPC • Regulation of the Minister of Justice of 29 July 2024 concerning the manner of providing representation for a child by a child representative. |
| PROCEDURE FOR APPOINTING A LEGAL GUARDIAN | |
| <p>A legal guardian is appointed when:</p> <ul style="list-style-type: none"> • an unaccompanied minor has declared their intention to apply for international protection, or • an application has been submitted on their behalf by a representative of an international or non-governmental organisation, or • an unaccompanied minor has been transferred to Poland by a Member State under the Dublin III Regulation and has not previously been assigned a legal guardian or been placed in alternative care¹³⁶. | <p>A representative is appointed for a minor who remains under parental authority but whose parents are unable to represent him or her¹³⁷. In practice, they may represent unaccompanied foreign children in proceedings where no legal guardian has been appointed, such as return procedures or cases involving the placement of a child in a detention centre.</p> |
| <p>A legal guardian is appointed by the guardianship court at the request of the competent Border Guard authority¹³⁸. The provisions of the Act on Granting Protection to Foreigners do not specify who should apply to the court for the appointment of a legal guardian, or how this should be done, if the minor's age is established during an ongoing international protection procedure. One possible approach is for the Head of the Office for Foreigners to submit the request.</p> | <p>The child's representative is appointed by the guardianship court. The regulations do not specify which entities may request the appointment. One possible approach is for the administrative authority intending to initiate proceedings against an unaccompanied minor to submit the request¹³⁹.</p> |

¹³⁶ Art. 61(1)(3)(a) and (4) of the Act on Granting Protection to Foreigners

¹³⁷ Art. 99 et seq. of the FGC.

¹³⁸ Art. 61(5) of the Act on Granting Protection to Foreigners

¹³⁹ Art. 34 § 1 of the Code of Administrative Procedure

| | |
|--|--|
| The request for appointing a legal guardian and his appointment by the court should be made immediately (theoretically, the court should do it within 3 days) ¹⁴⁰ . | The court should appoint a representative for the child immediately, no later than within 7 days of receiving the application ¹⁴¹ . |
| No maximum number of children that can be assigned to one legal guardian has been specified. | No maximum number of children that can be assigned to one representative has been specified. |

REQUIREMENTS FOR CANDIDATES

| | |
|---|---|
| <p>No specific requirements regarding qualifications, work experience or training in the field of children's rights, or migration and asylum law.</p> <p>Only formal requirements:</p> <ul style="list-style-type: none"> • full legal capacity • full public rights • meets the conditions outlined in Article 148 of the Family and Guardianship Code (e.g. not deprived of parental authority, no convictions for certain crimes, no bans on activities involving children) • provides assurance of their ability to properly fulfill the role. <p>There are no requirements regarding the territorial area from which a legal guardian for an unaccompanied minor may be appointed.</p> | <p>It should ideally be:</p> <ul style="list-style-type: none"> • a lawyer or legal advisor who has extensive knowledge of matters relating to children, or has completed training on the principles of representing children, children's rights or children's needs, or • a person with higher legal education and proven knowledge of children's needs (if the complexity of the case allows it), or • a person without higher legal education (except for criminal proceedings), if special circumstances justify it. <p>In addition, they must meet the formal requirements as in the legal guardian's case.</p> <p>A lawyer or legal advisor is appointed as a child's representative from a court-maintained list, which is compiled based on names submitted by local bar associations. These professionals must be knowledgeable about child-related matters and must have expressed their willingness to represent children¹⁴². In the case of a representative who is not a lawyer or legal advisor, the court shall examine whether he or she is familiar with the child's needs and meets the requirements necessary to assume this role¹⁴³.</p> |
|---|---|

¹⁴⁰ Art. 61(1)(3) and (2) of the Act on Granting Protection to Foreigners

¹⁴¹ Art. 5831 § 1 of the Act of 17 November 1964 – Code of Civil Procedure ("CPC")

¹⁴² Art. 5831 § 2 CPC; The method of managing these lists and selecting a representative is specified in the Regulation of the Minister of Justice of 29 July 2024 on the method of ensuring representation of a child by a child representative, i.e. Journal of Laws of 2024, item 1159.

¹⁴³ § 11 Regulation of the Minister of Justice of 29 July 2024 on the method of ensuring representation of a child by a child representative, i.e. Journal of Laws of 2024, item 1159.

RIGHTS AND OBLIGATIONS

The scope of statutory authority is limited to representing minors in proceedings related to:

- international protection,
- transfer to another Member State under the Dublin III Regulation;
- social assistance,
- support with voluntary return to their country of origin¹⁴⁴.

The role of the legal guardian ends either when the proceedings for which they were appointed conclude, or when the foreign child reaches the age of majority.

In international protection proceedings, the Act on Granting Protection to Foreigners places the sole responsibility on the legal guardian to submit an application on behalf of the minor. The guardian must also explain the significance and potential consequences of the hearing, as well as how to prepare for and take part in it. During the hearing, the legal guardian has the right to ask questions and make comments¹⁴⁵.

The powers and duties of the legal guardian are strictly limited to the administrative proceedings mentioned above. They are not authorised to make any other decisions regarding the child, such as those related to education or medical treatment.

The child's representative acts solely on the child's behalf in specific court or administrative proceedings for which they are designated by the court's decision. The list of possible types of cases in which a child may be represented has not been specified. The types of cases in which a child may be represented are not clearly defined¹⁴⁶. The representative's authority does not extend beyond the proceedings specified by the court.

The role of the child's representative ends either when the proceedings for which they were appointed conclude, or when the foreign child reaches the age of majority.

The child's representative has broader informational duties as part of their role¹⁴⁷. Wherever possible, they should keep the child's parents and foster carers informed about the progress of the proceedings.

They should also gather information about the child, including their health, family situation, and environment, from parents as well as relevant social organisations and institutions—only to the extent necessary for the proper representation of the child. If the child's mental development, health, and maturity allow, the representative should establish contact and explain the steps being taken, the course and outcome of the proceedings, and the implications for the child's legal situation, in a way the child can understand. All information obtained in the course of their duties must be kept confidential, except in cases where there is credible evidence of crimes committed against the child or risks to the child's welfare.

¹⁴⁴ Article 61(1)(3)(a) of the Act on Granting Protection to Foreigners

¹⁴⁵ Art. 64(1), Art. 65(3) and (4) of the Act on Granting Protection to Foreigners.

¹⁴⁶ Art. 99 § 2 of the FGC

¹⁴⁷ Art. 99 § 2 of the FGC

In practice, there are instances where courts grant legal guardians or child representatives broader powers than those set out in the law, or use the roles of legal guardian and representative interchangeably. For example, in its decision of 7 June 2023 (ref. no. III Nsm 360/23), the District Court in Biała Podlaska appointed a legal guardian to 'represent the interests of a minor in matters related to their stay in a detention centre for foreigners, including conducting medical examinations, arranging outpatient treatment, managing financial resources, extending the minor's stay in the centre, and submitting an application for their release.'

In case no. VII NSm 331/24, the District Court for Łódź-Śródmieście in Łódź, in its decision of 22 April 2024, appointed a child's representative rather than a legal guardian in a case concerning international protection and related proceedings. Meanwhile, the District Court in Grójec, in a decision dated 29 April 2024 (ref. no. III Nsm 179/24), appointed a legal guardian in proceedings to determine the costs of enforcing a return decision, despite the fact that the regulations do not provide for the appointment of a legal guardian in such cases.

SUPERVISION

No specific procedures have been established to monitor the work of legal guardians. Under the general provisions of the FGC, the guardianship court is expected to regularly review the legal guardian's activities and provide them with guidance and instructions. The court may also request explanations and documents relating to the performance of their duties¹⁴⁸. Legal guardians should submit reports on the child under their care to the court within the timeframes set by the court, and at least once a year.

There is no clear procedure for unaccompanied foreign minors to lodge complaints about their legal guardian's actions or to request a change of guardian.

As with legal guardians, general oversight of the child's representative should be exercised by the guardianship court, which should be kept informed of the representative's actions on an ongoing basis. The child's representative is expected to report to the court on their activities and the performance of their duties within the timeframes set by the court, and at least once every four months¹⁴⁹.

There is no clear procedure for unaccompanied foreign minors to lodge complaints about their legal guardian's actions or to request a change of guardian.

PROTECTING A CHILD'S BEST INTERESTS

There are no specific guidelines for how legal guardians should perform their duties or assess the best interests of the child, particularly in light of the specific vulnerabilities of unaccompanied foreign minors.

According to the general provisions of the FGC, a legal guardian is required to carry out their duties with due diligence, in line with the child's welfare and the public interest. Before making decisions on important matters concerning the child, they should listen to the child—provided the child's mental development, health and maturity allow—and take their reasonable wishes into account as far as possible¹⁵⁰.

See the section regarding legal guardians¹⁵¹.

¹⁴⁸ Art. 165 in conjunction with Art. 178 § 2 of the FGC.

¹⁴⁹ Art. 99 2a FGC

¹⁵⁰ Art. 154 in conjunction with Art. 178 § 2 of the FGC; Art. 95 § 3 and 4 in conjunction with Art. 155 § 2 in conjunction with Art. 178 § 2 of the FGC

¹⁵¹ Art. 95 § 4 in conjunction with Art. 154 of the FGC in conjunction with Art. 99 § 2 of the FGC

FINANCING

There is a lack of clarity regarding the funding of legal guardians, particularly in relation to the amount of remuneration. According to Article 179 §1 of the FGC, the court that appointed the legal guardian shall award them remuneration, to be paid either by the person for whom the guardian was appointed (if possible) or by the entity that requested the appointment. However, no basis for calculating this remuneration has been specified.

Nonetheless, according to the Head of the Office for Foreigners, legal guardians are paid upon request, in accordance with and in the amounts set out in the provisions governing the remuneration of legal guardians in civil cases¹⁵².

The remuneration of the child's representative and the reimbursement of expenses are determined by the court or public authority before which the child is represented¹⁵³.

The remuneration of the child's representative and the reimbursement of expenses are determined either in accordance with the provisions governing the remuneration and reimbursement of legal guardians appointed in civil cases, or under the regulations¹⁵⁴ on the costs of court-appointed legal aid provided by a lawyer or legal advisor.

SUPPORT

Neither legal guardians nor representatives of children receive comprehensive organisational or substantive support to enable them to effectively carry out their duties towards unaccompanied foreign minors—for

example, access to interpreters. There is no single institution responsible for coordinating, monitoring, or supporting the work of legal guardians and representatives.

International and European Standards for Guardianship

Standards for guardianship of unaccompanied foreign minors emphasise the vital role of the legal guardian in securing the child's fundamental rights and legal protections, as well as promoting their well-being and successful integration into society.

For the purposes of this chapter, the term 'guardian'—as used in English-language sources—will be translated as 'child's representative'. The representative's primary responsibility is to ensure the overall well-being of the unaccompanied minor, facilitate their access to basic services, and support their integration while safeguarding

their best interests¹⁵⁵. If the representative is unable to provide professional legal representation on their own, they should be assisted by other people¹⁵⁶. Therefore, their role must extend beyond legal representation.

The representative should be appointed immediately upon the arrival of an unaccompanied minor in the territory of the State concerned, without delay and free of charge, as this is a 'crucial procedural safeguard to ensure the best interests of the child'¹⁵⁷. They should carry out their duties at least until the child reaches the age of majority, permanently leaves the territory or jurisdiction of the State, or a durable solution is found, such as reunification with their parents¹⁵⁸.

The representative should work closely with other state actors and institutions involved with the child, acting

152 Regulation of the Minister of Justice of 9 March 2018 on determining the amount of remuneration and reimbursement of expenses for legal guardians appointed in civil cases, Journal of Laws 2018, item 536.

153 Art. 99(3) of the FGC

154 Regulation of the Minister of Justice of 14 May 2024 on the costs of unpaid legal aid provided by court-appointed lawyers by the State Treasury or local government units, Journal of Laws 2024 item. 763; Regulation of the Minister of Justice of 14 May 2024 costs of unpaid legal aid provided by court-appointed legal advisors by the State Treasury or local government units, Journal of Laws 2024 item. 764.

155 EU Agency for Fundamental Rights, Guardianship for children..., op. cit., p. 38.

156 CRC, General Comment No. 6 (2005)..., paras. 33, 36.

157 CRC, General Comment No. 6 (2005)..., para. 21.

158 Ibid., para. 33; EU Agency for Fundamental Rights, Guardianship for children..., op. cit., p. 61.

as a liaison between them¹⁵⁹. They should have regular access to information about all arrangements and actions concerning the child, and the right to be present at all planning and decision-making processes related to the child, including asylum hearings and the search for durable solutions¹⁶⁰.

The EU Agency for Fundamental Rights has established six principles that should underpin the system of representation for unaccompanied minors¹⁶¹:

Non-discrimination

The quality of representation should be the same for all unaccompanied minors, regardless of their background, age or migration status.

Independence and impartiality

The representative should be independent. They shouldn't be connected to any migration services or authorities responsible for formally identifying the child as a victim or for decisions related to their migration situation, or to public institutions or authorities responsible for providing the child with accommodation or daily care.

Quality

Representatives of unaccompanied minors should possess the necessary expertise in child care and protection, especially for particularly vulnerable children, as well as a solid understanding of the legal framework, including migration and refugee law, along with cultural and gender issues. They should receive regular training and be fairly remunerated for their work. Where possible, the representative should be of the same gender as the child.

Responsibility

The rights and responsibilities of representatives should be clearly defined in national law. An effective, regular mechanism for monitoring their work and the possibility of replacement must be established. A single state body should be designated to manage the work of representatives for unaccompanied minors.

Sustainability

Systems of care and legal representation for unaccompanied minors should form an integral part of the national child protection system, supported by adequate human

and financial resources. Effective monitoring and supervision of representatives' work, along with ongoing professional development, should also be accounted for in the budget.

Child's participation

Regulations and procedures concerning the representation of unaccompanied minors should respect the child's right to be heard and to express their views at every stage. Children should be given age- and language-appropriate access to all information about the representative's work, other available services, and their own rights and responsibilities. There must also be a child-friendly mechanism for lodging complaints against representatives who do not fulfil their duties properly.

Pact on Migration and Asylum

The Pact on Migration and Asylum¹⁶² introduces new, detailed solutions for the representation of unaccompanied minors. These are based on safeguarding the best interests of the child and their informed participation, as well as on building sustainable and effective solutions.

Definition and role of the representative

- The representative will act as the legal representative of the unaccompanied minor, ensuring that their best interests and overall well-being are taken into account. This enables the minor to enjoy their rights and fulfil their obligations under the Pact on Migration and Asylum, while safeguarding their welfare and best interests.
- A new role of temporary representative has been introduced to ensure that unaccompanied minors receive support from trained personnel from the very start, before a permanent representative is appointed. The temporary representative must be properly trained or possess the skills and expertise necessary to care for the child. This could be, for example, a member of staff at the child's accommodation or care facility, social services, or another designated organisation—unless this would conflict with the best interests of the unaccompanied minor.
- A legal adviser will have a separate role, providing legal support to both representatives and unaccompanied minors.

¹⁵⁹ European Union Agency for Asylum, Guidance on reception conditions for unaccompanied children: operational standards and indicators, 2018, p. 17.

¹⁶⁰ CRC, General Comment No. 6 (2005)...., op. cit., p. 33; UNHCR, Guidelines on Policies and Procedures...., op. cit., para. 5.7.

¹⁶¹ EU Agency for Fundamental Rights, Guardianship for children...., op. cit., p. 26 et seq.

¹⁶² The Pact on Migration and Asylum is a new set of EU rules on migration and establishing a common asylum system at the European Union level, adopted in May 2024. At the time of publication of this report, the details of the Pact's implementation in Poland are not yet known.

Appointing a representative

- A representative must be appointed within 15 days of the application for international protection being lodged, and within 25 days in the event of a disproportionate number of applications lodged by unaccompanied minors.
- The same person will be able represent the unaccompanied minor throughout all procedures and should only be replaced if absolutely necessary. A representative must also be appointed if there are doubts regarding the child's age.

Independence and impartiality

- The (temporary) representative must be independent so that the interests of the child are always central to their actions.
- Once international protection has been granted, the unaccompanied minor may be assigned a new representative or the current representative may be assigned new responsibilities

Child participation and information exchange

- It is essential to ensure effective communication between the competent authorities, representatives and unaccompanied minors.
- The right of unaccompanied minors to receive information, and the role of representatives in facilitating access to this information, must be strengthened. In particular, the (temporary) representative should be informed immediately of the unaccompanied minor's application for international protection, as well as of all relevant facts, procedural steps, and deadlines relating to the case. They should also have access to the documents in the child's case file. Unaccompanied minors must be informed without delay when a (temporary) representative has been appointed.
- All information should be provided in a clear, transparent, and child-friendly manner.

Representative's tasks

- In particular, these tasks will include: meeting with unaccompanied minors and providing them with information about their cases while taking into account their views on the measures being taken; cooperating

with relevant authorities and institutions; assisting and representing minors in procedures concerning them (especially those related to screening, biometric data collection, age assessment, family tracing, and determining the Member State responsible for their international protection application), supporting them during status interviews and ensuring access to their rights (including education, employment, healthcare, and social care).

Quality

- Representatives will need to possess the necessary skills and expertise to carry out their duties effectively, particularly in working with children and addressing their specific needs, safeguarding their best interests and overall well-being, and enabling them to exercise their rights and fulfil their obligations. The requirements for temporary representatives will vary depending on the procedure the child is undergoing.
- Representatives will require ongoing training.

Representative's capacity

- The number of children a (temporary) representative can care for must be limited—up to 30 children at a time, or 50 in cases where there is a disproportionate number of international protection applications from unaccompanied minors. The maximum caseload should also be defined for unaccompanied minors who have been granted international protection.

Monitoring

- Representatives will be subject to regular monitoring, including criminal record checks.
- Unaccompanied minors will have the right to lodge complaints against representatives in a safe and confidential environment. They will be informed of this procedure in a language they understand and in a way appropriate to their age.
- An effective process should be established for replacing representatives who fail to fulfil their duties properly.

Sustainability

- Representatives will need to be provided with access to appropriate resources and support to perform their tasks properly.

3.2. THE ROLE OF A LEGAL GUARDIAN – WHAT IS IT AND WHAT SHOULD IT BE?

A. LEGAL GUARDIAN FROM A LIST, LEGAL GUARDIANS WITH A MISSION

If we were to follow the letter of the law, the role of a legal guardian would be limited to representing the child in specific proceedings and maintaining occasional contact to provide information and address any questions or concerns. However, this narrow interpretation doesn't capture the full complexity of the role a legal guardian can play.

During international protection proceedings for an unaccompanied child, the key role should be played by a legal representative who is genuinely responsive to the child's needs. This includes taking part in all relevant activities—such as submitting applications and attending hearings—and ensuring they are handled diligently. It also involves prompting institutions to act, for example by requesting evidence or expediting procedures to reduce the child's period of uncertainty as much as possible.

In their relationship with the child, the representative must be sensitive to their needs, keeping in regular contact and checking in to help ensure the child is given a positive outcome (broadly speaking) and feels secure throughout the process. It is crucial to keep the child informed about what has happened, what may happen next, what opportunities exist, and what potential risks there might be.

They are children and they probably just need reassurance that everything will be fine, and that's basically enough for them. Of course, I try to explain how it works, what the purpose of the procedure is, and so on – that there is no need to worry. (INT_LG_5)

And from our side, what we can do for them is try to encourage the authorities to make a quick decision on this matter so that it can be resolved quickly. (INT_LG_4)

This process begins with the most basic information. Children who suddenly find themselves in a new country and in a completely new situation usually have no idea what is going on. They are confused, do not understand the next steps and procedures, and cannot comprehend why everything is taking so long.

They were taken from there and put in conditions they don't understand, they don't know where they are. Someone told them to say this and that. They don't know what's happening to them, what the procedures are. (INT_CG_1)

Explaining the legal situation was sometimes very complicated for some of them. But it was even more complicated to explain why the procedure was taking so long. The timeframe was completely incomprehensible to these children. And the fact that there was this procedure. (INT_CG_3)

The procedure for granting international protection and other related processes are very specialised, and not all lawyers are familiar with their nuances. This is why our interviewees stressed the importance of appointing legal guardians who have knowledge and experience in this area.

The legal guardians we spoke to often encounter systemic and legal loopholes, which can have very specific and sometimes difficult consequences for the children they represent. Our interviewees explained that they try to identify these loopholes and find solutions, at least on an ad hoc basis. For example, they sometimes represent minors in proceedings beyond those for which they were originally appointed, including criminal cases if the child is a victim of a crime. They also occasionally work alongside alternative care institutions, where regulations and procedures concerning foreign children are often new and confusing (see section 3).

So I participated in all of this, even though it's not strictly my responsibility. Well, just like with foreigners, I always try to take a holistic approach and help where I can, even if it's not entirely within the scope of my duties. (INT_LG_3)



Alternative care facilities obviously try to take care of everything, but they also often ask me to help with some formalities, which isn't really part of my job. It's not about submitting documents, applications, etc., but just helping to write or arrange something. So it's not 'formal support', so to speak. (INT_LG_5)

One of the most significant loopholes is that Polish law does not explicitly provide for the appointment of a person authorised to make decisions on behalf of unaccompanied children regarding serious medical procedures. For simpler tests or medical appointments, the consent of the foster carer providing day-to-day care for the child is sufficient. The problem arises when, for instance, surgery is required. The legal guardians we spoke to have experience of urgently applying to the court on behalf of the children to obtain permission for more serious medical procedures. However, they acknowledge that this is only a temporary solution. Initiating court proceedings involves formal requirements that take time, yet decisions about such procedures usually need to be made swiftly.



When I had a child with various health issues, I had to go to court every now and then to get permission for some medical procedures, right? For medical consent, and because they processed these requests quite slowly, it ended up with the doctor getting frustrated waiting for the court's consent—for example, a bone was healing, right? He called the court himself and got permission over the phone. And then I get called to pay the fee for the application to perform the procedure. At that time, there had been a change in fees—it used to be 60 zloty, now it's 100 zloty. But I paid 60 out of habit, and the court, you know—it's an application for consent to surgery, there's a broken leg in several places, the bones are healing, the girl is lying there, suffering—and they send me a letter instead of calling, or, I don't know, the office could have called and got the matter moving quickly. (INT_LG_5)

Some of our interviewees see their role as extending beyond the usual representation and legal assistance. The non-legal aspects are the hardest to define — they relate to various everyday needs where children require support but which fall outside the remit of official systems or institutions. Getting a mobile phone, contacting an NGO or a psychologist who speaks the child's language, finding a place in another facility — these are all matters that legal guardians may also handle. Or they may not, as opinions differed among our interviewees. Some see their work as encompassing a wide range of activities.



I got information from this child, so to speak, and passed it on to [...] foundations and institutions that were helping with getting a phone, getting, I don't know, clothes, other things – resources that were needed on an ongoing basis. (INT_LG_1)

Many people would say that these are just technical duties related to the procedure in this particular case, where you are authorised to perform this function as part of the proceedings. So outside of these proceedings, you are not a legal guardian, you have no connection with the person – with the minor. So from this perspective, you could say that you are a quasi-representative, and that's it, right? However, I approach it a little more broadly. Because I see that these other needs are often not secured, not 'taken care of'. (INT_LG_5)

It is precisely these individuals who highlight that the most important quality of a “good curator” is the ability to build a relationship of trust with the child in their care. This trust is not easy to establish, especially when the children are only staying in Poland for a short time.

I am basically in touch with them on WhatsApp, you know, just making small talk, keeping in touch on a fairly regular basis. You know, I also tried to help with logistics, knowing what these people are going through. (INT_LG_5)

I went to the facility, met them, and it looked more or less like this: some woman showed up, wanted something from them, they didn't understand what she was talking about, because at that point I didn't have an interpreter yet, I just wanted to meet them. And because they had seen so many adults over the past few days, there was a huge barrier preventing them from interacting with me. (INT_LG_3)

Others, however, emphasise the strictly legal nature of the legal guardian's role.

We are not caregivers, we are not able to look after them, raise them, or deal with many issues that are not our responsibility. We are not familiar with the social and living assistance provided in institutions, which we leave to the facilities or foster families. (INT_LG_4)

Regarding the role of legal guardians, the interviewees contrasted those who carry out their duties with dedication and integrity with those assigned cases by chance, based on a list provided by the Warsaw Bar Association or the Regional Bar Council. The interviewees identify with the former group (see Annex 4).

They generally view the work of legal guardians “from the list” negatively, even describing it as an “institutional fiction.” According to them, major shortcomings include a lack of knowledge of migration law—a very specialised area that not every lawyer or legal advisor has experience with. This is especially important because such gaps can lead to irreversible consequences in proceedings involving the child.

Inappropriate actions will be taken that cannot be reversed later. This means that an application will not be submitted on time, actions will not be taken [approval for something will not be granted]. There are a number of different things that could cause a person who is not knowledgeable about the subject to lead to irreversible consequences later on. (INT_LG_1)

The child's legal guardian is afraid to send us the documents. We don't know why. He claims that he has to send them back to the Office for Foreigners as a legal guardian. [Name] doesn't even know, because I found out today that [date] is the date his case is supposed to be concluded. No one gave him the case number. He couldn't, he didn't have it, no one informed him so that he could send any clarifications. No one told him anything. No one helped him in this matter. [...] Because he was not notified, he has no idea what his situation is. Today he will find out that he is, colloquially speaking, in deep shit. Because there is no case file. His identity document was not even sent. He never had his identity document with him because it was with his legal guardian. And he should have had this document. (INT_NGO_AC_1)

The interviewees also report that curators 'from the list' tend to see their role as limited solely to representing the child in specific proceedings. This narrow view does not necessarily address the needs of a child in crisis. It often results in little or no initiative to make contact with their wards. According to our interviewees, a legal guardian 'from the list' is typically only involved in specific procedural steps, such as submitting an application or attending an interview. One NGO worker supporting children in alternative care recalled a case where the appointed legal guardian took part in the submission of an international protection application only by telephone.

Critical voices about cooperation with legal guardians also come from foster care workers. Some participants go so far as to say that "legal guardians are a fiction," criticising their lack of interest in the children's issues. "I had to spend the whole day trying to find out the name of the legal guardian," says one study participant.

I have the impression that the legal guardians were not in a hurry to take on the tasks that are their responsibility. Something has already happened there. Also, out of those 170 people, there were only a few incidents where we were in contact with the legal guardians. (INT_CG_3)

At the same time, alternative care workers report a need for genuine cooperation with legal guardians, who can guide them through the process of legalising a child's stay. In the accounts of former residents of alternative care, legal guardians are practically absent. If anyone is mentioned, it is more likely to be a volunteer or an NGO worker.

And some help from this legal guardian. He himself doesn't know what he's there for or what he's supposed to do – he should be someone who helps with the whole process, who helps with getting a personal identification number, etc. And we don't know who to ask. Legally, we don't know what to do next. (INT_CG_1)

Criticism of legal guardians 'from the list' does not necessarily imply bad faith on their part. Interviewees note that at least some of the problems stem from the lack of financial support for this role from the state. This relates not only to remuneration for the work carried out, but also to the reimbursement of travel expenses (particularly when

the legal guardian is based in a different city from the child) and the funding of translation services. The current amounts are described as insufficient even to cover the costs of corresponding with institutions.

It seems that way, but let's assume some ridiculous things – because the curator's salary is so incredibly low, the official one. The stamps for my correspondence... Well, I could have sent it electronically, but sometimes it's better to send a letter – so even silly stamps are sometimes an issue, a total of 150 zloty, because 20 letters will cost that much. (INT_LG_3)

All of our interviewees cooperate with non-governmental organisations. Some are employed by these organisations and receive a regular salary, while others are paid for handling specific cases or benefit from their support – for example, through access to translation services. As a result, they are generally in a more secure position than those 'on the list' – even if it's not a big difference.

So I don't think there are any heroic legal guardians who would do that, because their usual professional duties take up their time. Fortunately, we have an organisation that can get involved and cover these costs from its own resources and so on. (INT_LG_4)

However, the financial situation of non-governmental organisations is not always stable. Filling systemic gaps with human labour is, at best, a temporary solution.

B. LEGAL GUARDIAN, CHILD'S REPRESENTATIVE OR CASE WORKER?

The interviews reveal a clear need to make the role of the legal guardian more realistic. This would involve expanding the statutory list of tasks and moving away from appointing legal guardians solely for specific proceedings, in favour of a more holistic approach. Broadening their decision-making powers would help address some of the most significant gaps in the current system.

Well, I have repeatedly encountered difficulties related to medical issues, with some permits outside these proceedings. For example, you have to apply for a PESEL number, some other everyday things. So literally, we have a court decision appointing a legal guardian, and this decision only applies to the proceedings in question. So, as in the case of a minor who had various health problems, I had to apply to the court every so often for permission for certain treatments, right? (INT_LG_5)

Making the conditions more realistic would mean ensuring better funding – or at the very least, sufficient resources to cover the costs of handling the case and to provide fair compensation for the work carried out.

I think it is necessary. I think it should come from the state budget, because it is a service and assistance, and I think it is necessary and should be [paid] adequately for the effort involved. Not some pennies, because no one wants to do anything when they are appointed as a legal guardian – they simply don't want to. Legal guardians don't want to do anything because the pay is so low that it simply doesn't encourage them to do their job. (INT_LG_1)

Financial security also means having clarity about which institution is responsible for providing remuneration. Even among the people we interviewed, there is no consistent understanding of whether this should be the Office for Foreigners, the Border Guard, or the district court that appointed the legal guardian.

The people we spoke to also emphasised the importance of setting clear requirements for legal guardians – and, previously, for candidates for this role. They believe that, as part of the process of appointing a legal guardian, the court could assess their qualifications, including subject-matter knowledge (such as migration law), communication skills (particularly in working with children and teenagers), and, where relevant, prior experience. The possibility of introducing regular reporting to the court – to enable oversight of whether the guardian is acting in the child's best interests, as is already the case for Polish children – was also raised. Two of the interviewees said they submit such reports, but this practice is not applied systematically.

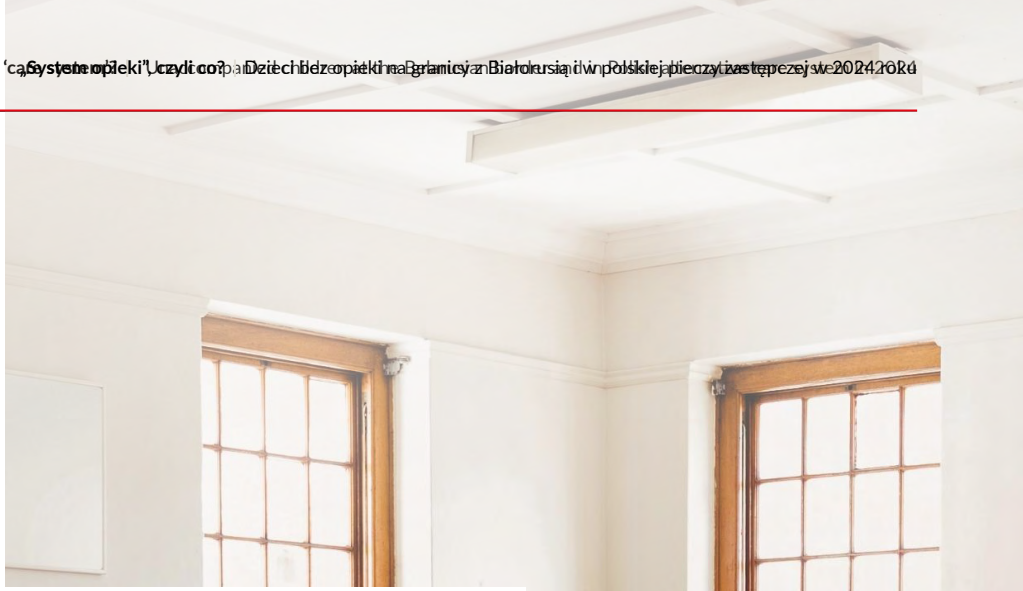
Among the interviewees, only one person had practical experience with the institution of the child's representative – she was not a legal guardian but acted as a child's representative. From her perspective, however, the difference is mostly a matter of terminology. In her view, the only noticeable change is the new obligation to submit periodic reports to the district court.

It's just a slight change in terminology. Later on, the courts started saying that the representative has to complete certain courses and be on a list, but then they dropped that requirement because it applied to other types of cases. As far as I'm concerned, it's really just a matter of changing the name. That's how I see it. Maybe it better reflects what the person appointed as representative is actually meant to do – because they're supposed to represent. (INT_LG_3)

Another solution, proposed by one of the interviewees, would be to introduce case workers, either instead of or alongside legal guardians. Their role would not focus solely on legal proceedings, but rather on acting as a bridge between children and the various institutions they encounter, including those taking action in relation to them.

However, when it comes to seeking and introducing new solutions, some interviewees remain cautious. They stress the importance of practical experience and express concern that new regulations could further complicate matters and blur lines of responsibility.

What I mean is, you can create a whole set of laws, but if someone doesn't know how to do something, they won't do it – and it'll be pointless. Even without a law, you can sometimes figure something out and get certain benefits, so you end up creating a kind of foundation for a law that doesn't really exist. You can apply what's in other legal regulations to the cases of foreigners, and judges will go along with it. I just think that sometimes a thousand regulations only make things more confusing and unclear. I believe it's more about soft skills and abilities – and also about judges who are willing to see things that way. (INT_LG_1)



4. WE'RE PAVING THE WAY

- 01** *The lack of systemic solutions places the burden of responsibility on individual care workers, who must navigate legal, administrative, and logistical challenges alone in order to provide basic care for children and legalise their stay.*
- 02** *Care workers report a lack of information flow and cooperation between institutions such as the Border Guard, the Office for Foreigners, and the courts. They put it bluntly: 'We're paving the way for others; we don't even know what to do ourselves.'*
- 03** *The system is ineffective, reliant on individual effort, and leads to a great deal of time being wasted on procedural matters instead of focusing on providing genuine support to the children.*



The alternative care system in Poland faces significant challenges, particularly when it comes to foreign children placed in institutions after crossing the Polish-Belarusian border. A lack of clear procedures, limited support from state institutions, and the need for staff to devise their own solutions are part of the daily reality for caregivers and other people working in these facilities.

It all begins when the Border Guard is unsure where to place a child. The intervention centres that receive children from the border are often full, and Border Guard officers are neither equipped nor adequately trained to care for them, even on a temporary basis.

It looked like this: Ms [name] simply called me because she had contacted another foundation we work with and asked if we could help the Border Guard in [city] because they couldn't handle the situation and didn't know what to do with these minors. And they also have to comply with the regulations – that is, when a minor tells them that they theoretically want to stay in Poland, and they are a minor, they no longer have the right to stay at the Border Guard post. That is, at the post, at the centre run by the Border Guard, and because of that, [city] had a pretty big problem, because there weren't many intervention units in the area around those posts. And so, somehow, I agreed and when I had free time, I took these kids in. And that's how it came about. (INT_CG_3)

One of the biggest challenges arises when the Border Guard brings a child to a facility without any identity documents. In such cases, alternative care facilities are left to manage on their own – they lack even the most basic information about the child, their legal status, or what steps should be taken next.

I had to spend the whole day trying to find the name of the legal guardian. The Border Guard knows nothing, there are no documents. We have to beg to get any documents for this child. I have to write official letters to the court asking them to inform us whether the child has a legal guardian, or to the Office for Foreigners asking whether the child has international protection. (INT_CG_1)

The institutions that are meant to work together – the Border Guard, the Office for Foreigners, the courts, and legal guardians – do not have a shared system for informing care facilities about a child's legal status. As a result, caregivers spend a great deal of time trying to obtain the basic information needed to legalise the child's stay and ensure appropriate conditions are provided.

Facility staff often feel powerless because they do not have clearly defined procedures to follow. Each case requires individual involvement and a continuous fight for the child's basic rights.

I have to fight every office to do anything with this child, I have to fight. (INT_CG_1)

We are paving the way, we don't know what to do either. Nobody tells us anything. When you call the Office for Foreigners, they send you from one place to another. They don't know anything. (INT_CG_1)

The Border Guard usually knows nothing, it's not their responsibility, they tell you to call the court, etc. They are just messengers. They hand the child over and don't know what happens next. (INT_CG_1)

This work was unknown to us. There was little information available on the subject. And we had no help from anyone. So I understand how facilities that have no knowledge in this area feel, and they suddenly have to do something and arrange care. (INT_CG_3)

Care workers we spoke to report that the legal guardians they deal with – who are formally responsible for overseeing the legal and residential status of foreign children – often fail to engage with the children's cases in practice. They are difficult to reach, and their involvement is usually limited to administrative formalities.



The legal guardian is a fiction, a piece of paper. We cannot get through to them on the phone, they are not interested at all, we contact them after some time and they say, 'Oh, yes, yes'; we have to call other institutions to find out if the child has international protection, it is impossible to find out anything. (INT_CG_1)

Alternative care facilities often take in more children than they are equipped to accommodate. The shortage of places in intervention centres, along with the need to adapt existing infrastructure, is making it increasingly difficult for these institutions to operate. One director of an institutional care facility described the situation as follows:



Later, at some point, I think it was 2023, I came to the conclusion that I needed to add some more couches to the rooms because they are spacious. So maybe not 14, but more. Especially since this is an intervention facility. So even though we have a limited capacity, right, because we only had 12 socialisation spots and 2 emergency spots. And when we have children in emergency care, we don't have any emergency spots left, right? Well, I often had to go to the regional office to explain why there were more children. There was even a time, but it was only for five days, when I had 22 pupils on the list. (INT_CG_2)

Due to the lack of clear guidelines, institutions are left to work things out themselves in order to navigate the procedures for legalising children's stay and securing benefits for them.



By trial and error, we developed a procedure for obtaining money for foreign children. We hadn't received this money before. (INT_CG_1)



You know, it's hard for me to say if there is such a thing as 'good practice'. You just have to learn it and work with the institutions... You know, it's just that not everything works the same everywhere. We had to figure out, I don't know, a way to reach the court, so to speak. (INT_CG_4)



However, I believe that every individual simply has to fight for certain things. (INT_CG_4)

Each facility must independently establish contact with the courts, government offices, and the Border Guard, making the system highly inefficient and reliant on the individual efforts of staff – and on whichever official they happen to deal with at those institutions. Staff report that a single case can take up an entire working day, as every step involves phoning various institutions and pushing for basic decisions. This often prevents them from focusing on providing meaningful support to the children and discourages them from intervening in other cases.

In addition, care workers often have limited knowledge of legal procedures, which means they are not always aware of the legal options available to them in cases involving, for example, children who are victims of human trafficking. When asked what training they needed, one alternative care worker replied:



I would like them to focus more on alternative care, more on us – what we can do in legal matters, and give us specific contacts. Specific examples. [...] What are my rights – what can I get if a child is, for example, a victim of human trafficking? We don't know (about additional benefits, etc.) (INT_CG_1)

The current situation shows that it is necessary to create a better support system for alternative care facilities. Clear procedures are needed for legalising the stay of foreign children, and legal guardians and institutions responsible for minors' legal status need to work more efficiently. It is also necessary to increase the availability of legal training and to create mechanisms for cooperation between institutions and non-governmental organisations, which will allow for more effective assistance to children in difficult situations.

5. RETIREMENT HOME FOR PRIESTS AND THE COLLAPSE OF THE CARE SYSTEM

- 01** In 2024, unaccompanied children crossing the Polish-Belarusian border were housed for at least six months in a home for retired priests. This illustrates the scale of the problems and the breakdown of the Polish alternative care system and its responsibility for unaccompanied foreign children.
- 02** Sending children to a home for retired priests was not supported by any legal changes or by reclassifying the home as an alternative care facility. As a result, the children placed there were unable to fully exercise their rights.

The scale of systemic problems in state alternative care and responsibility for unaccompanied foreign children was highlighted in 2024 by the case of a home for retired priests in Podlasie. According to an investigation by journalist Tomasz Słomczyński, under an agreement between the Podlasie Border Guard Unit and Caritas in Ełk, unaccompanied children who had crossed the Polish-Belarusian border were placed there for at least six months¹⁶³. We can assume that this cooperation was established due to the problems described above in finding places for unaccompanied children in alternative care institutions. However, since the agreement was not accompanied by any changes in regulations or in the status of the home as a care facility, this practical arrangement raises serious doubts about its compliance with the law and the best interests of the children placed there.

According to one interviewee who supports children in alternative care, between June and the end of 2024, eleven children were taken in by retired priests. Only two of them remained there until they were transferred to an institution within the alternative care system. The others left, cutting off all contact with Polish institutions.

Reports indicate that the institution was not adapted to accommodate children. It provided only a place to sleep and meals, but was unable to meet more complex needs, such as visits to certain specialists or enrolment in school. There were also shortages of everyday essentials, including cleaning products and clothing.

These children were never properly cared for there. Although they were given three meals a day and had a place to sleep, neither the director nor the two older men who lived there, nor the staff showed any interest in them. There was no psychological care, there were absolutely no activities, no walks, no trips, nothing. You just had a place to sleep and meals at set times. There was a piece of paper in Polish, French and English on the window sill with the meal times. And they asked you to show up on time. (INT_NGO_AC_3)

The nature of the retirement home and the care it provided did not change despite the arrival of children and teenagers. The facility reportedly had very limited staff. The interviewee mentioned three people employed mainly for cooking and a priest director, who was also retired. Consequently, it was impossible to provide the children with activities or an adequate standard of care, as would be expected in alternative care.

So, breakfast was at 8 a.m., lunch at 1 p.m. and dinner at 5 p.m. And during those hours, the children had to be at the facility. Other than that, they did whatever they wanted, whether they went out on the town or stayed in their rooms. No one cared about anything. The priest said outright that they didn't have to look after these children because the Border Guard only paid for food and accommodation. It was terrifying. (INT_NGO_AC_3)

163 T. Słomczyński, op.cit.

Another interviewee, a lawyer who had been in contact with a girl staying at the home of retired priests, expressed a similar opinion.



The girl from last year we were talking about said that they just wander around the city all day. (INT_LG_2)

Wśród problemów podnoszonych przez rozmówczyń pojawiły się również między innymi brak dostępu do opieki lekarskiej oraz naruszanie prywatności młodych osób. W kontekście dostępu do pomocy medycznej nie jest jasne, ile spośród zamieszkujących w domu księży emerytów dzieci dotarło do etapu składania wniosku o udzielenie ochrony międzynarodowej – a co za tym idzie, miało możliwość skorzystania z wizyt lekarskich opłacanych przez UdSC.



It turned out that he had been beaten up by Belarusians, pepper sprayed and hit in the eye. He needed a new lens. And then the priest, [...] called, 'Help, help, urgent help needed'. 'What happened?' , I asked. 'Call your friends, because he needs to see an eye doctor, and who's going to pay for it?' I said, 'The Border Guard, because he doesn't have any money, he hasn't applied for protection yet. The Border Guard delayed it, so the Border Guard should pay. I said, go there, because it was still before 4 p.m., so go there and sort it out. But instead of going there, he called me. He said that they would not pay under any circumstances. I told him that as long as the boy was in their care, all obligations rested with them, and if he was transferred to the Office for Foreigners, then things would change. But I said I would help. I called my friends, [...] to help him see a doctor. And of course, the girls agreed to help, and it turned out that he needed surgery. But who would pay for it? I said that once he has a green card, the Office for Foreigners will pay. So everything was sorted out, the tests were done, the preliminary date for the operation was agreed, and when he went for the final consultation, it turned out that there would be no surgery because the Office – and he already had his green card – the Office for Foreigners had no money and there would be no surgery. (INT_NGO_AC_3)

According to the interviewee, the lack of access to medical assistance was not only due to uncertainties related to financing, but also – and perhaps primarily – to the fact that the house for retired priests did not meet the standards of a care facility, which is where unaccompanied children should be placed.

Apart from all the specific shortcomings of the home for retired priests, the fundamental problem was that the children were placed in a facility that was not part of the alternative care system and did not meet the criteria to be recognised as such. It emerged as a substitute solution for the Border Guard, who were faced with a lack of places in emergency care facilities and the need to act swiftly. The use of a home for retired priests as a stand-in for a care facility also highlights the fragmented responsibility for unaccompanied foreign children among various institutions, which effectively sanctioned this solution through their actions—while, in theory, only performing the limited tasks assigned to them.



Well, transporting children to Augustów and placing them in some kind of day care centre is really just a way of marginalising the problem. Formally, something has been done, but in practice, nothing has changed. (INT_LG_2)



6. A SYSTEM THAT PUSHES OUT - SCATTERED RESPONSIBILITY

- 01 *The challenges piling up at the early reception stage create an unfriendly system that “pushes out” the child from Poland and forces them to travel further, which is often risky. Lack of stabilization, long waiting time for procedures, uncertainty as to the legal status as well as the approach of some facilities treating children as “temporary wards” cause children to decide to leave their care facilities and Poland.*
- 02 *The predominant approach is focused on a narrow task assignment instead of the holistic wellbeing of a child. As a result, systemic care gaps are not closed. Institution workers often limit themselves to procedural obligations only.*
- 03 *They visibly engage in the affairs of an unaccompanied child as part of narrow competences, but they lack a holistic overview of their needs.*
- 04 *It poses the question whether the scale of institutional negligence isn't an instrument of “pushing out” minor refugees of the Polish system.*

The situation of an unaccompanied foreign child in Poland is influenced by many people and institutions that are often located in very different parts of Poland. The declaration is made before the Border Guard unit on which territory the child was detained. Return proceedings are initiated upon detention; they are also conducted at this unit. On the other hand, the application for international protection is submitted before the Border Guard unit where the child currently resides - it may be the very same unit but it doesn't have to be - e.g. when a child was put in a foster care facility in another region of Poland. Then, the procedure for granting international protection is initiated by the Office for Foreigners located in Warsaw.

The minor is appointed with a legal guardian for individual procedures. If the function of a legal guardian for the procedure for granting national protection has been separated from the function of a representative in the return proceedings¹⁶⁴, there may be even two legal guardians. The provisions do not provide for a single person that would be responsible for full legal representation of an unaccompanied child.

¹⁶⁴ This refers to cases in which the return proceedings were initiated before the child applied for international protection. The return proceedings may not be initiated if there is an ongoing procedure for international protection. The return proceedings are suspended for the time of procedure for international protection. See diagram on page 75.

Eventually, the child is placed in a foster care facility that may be located near the original place of detention - yet it is not always the case. Due to lack of space, sometimes children are transferred to very different places in Poland. The child's stay in a foster care facility is paid by the Office for Foreigners but only in the narrow period between applying for international protection and being transferred to family or social foster care or finalizing the proceedings for granting national protection. This mere description shows the complicated map of institutions and persons whose roles are usually defined in a narrow way and who are sometimes many kilometers apart.

In theory decentralization doesn't have to be a negative phenomenon - it engages more entities in helping a person and it may be helpful in meeting different needs. However, in the reality of Polish institutions and provisions it has an opposite effect. The stiff division of competences into narrow and precisely determined scopes of duties makes it easier to understand your responsibility fragmentally - in isolation from the child's holistic situation.

In the introduction, we cite statistics from various institutions concerning an issue as fundamental as the number of unaccompanied foreign children who filed an application for international protection in Poland in 2024. The discrepancy in the statistics presented by different institutions indicates that they don't share and exchange

information in a consistent way. Our interviewees would also point that out. The contact between institutions was described as good and efficient only when it came to the local level, e.g., between the district court and the candidate for legal guardian.

One of the legal guardians told us that her ward was released from a guarded detention center based on an age examination that confirmed his minor age. While the Border Guard accepted the results and released the boy from the guarded center, the Office for Foreigners treated him as an adult for a longer time. Hence, the very same person was simultaneously deemed as minor and adult by two institutions of the same state apparatus.

The Office for Foreigners was initially unwilling to correct his date of birth even though we had the copy of his Egyptian birth certificate. They would finally correct that, but it was somewhat late. [...] There's this problem that the examination determined his age, that he was 16-17 years old, but it didn't determine his date of birth. So, they accepted the date that they had in the documentation all the time - the date that was entered by the Border Guard as they were preparing the first document, the detention protocol or quality control, I don't know whichever comes first, I think the immigration control. And it stayed like that. It worked because when I was filing my report, I sent a copy of this birth certificate to the court, so we managed to correct it in the decision, but we didn't have time to correct it at the Office for Foreigners, because he had already left somewhere. (INT_LG_3)

The geographical distance is not the only problem; as one of the interviewees noted, the dispersion of responsibility between central institutions (mainly the Office for Foreigners) and local government institutions (foster care) is also problematic. As a result, the responsibility of both institutions is dispersed.

[...] it requires lots of discussions - because the facilities are run by powiats, not by the state. Minor citizens belong more to the state than powiats. So there's a small conflict of interests here, because we receive funding only after a minor receives the protection of the Office for Foreigners. (INT_CG_4)

The tensions related to the responsibility also involve the issue of who is actually responsible for meeting the needs of an unaccompanied child in a holistic sense. In other words, who upholds their best interest. The interviewees don't necessarily focus on distinguishing levels of responsibility. They rather express the belief that it would be good to have a single person or institution who would cooperate with other entities and would be focused on the child's wellbeing and would have relevant competences, possibilities, and remuneration.

Because no one cares about that. So it seems to me that we deal with this kind of negligence and descent that needs to be addressed at the institutional level. (INT_LG_3)

They also notice the predominant approach that focuses rather on a narrow task division than the holistic wellbeing of the child - while the systemic or foster gaps are not closed. And there are many such gaps: from problems with funding to lack of additional support in places where unaccompanied children are referred to.

It's not about the workload. It's about the approach that only procedural obligations matter and nothing else. (INT_LG_3)

The same interviewee says that he even notices the Border Guard being sensitive to the needs of unaccompanied children - but only in the narrow scope of their own duties.

There's this sensitivity but I can also see that officers allow themselves as much as they can. There's empathy but nothing else despite that, right? In the sense that it's either detention or we accept one application or another, a somewhat technical approach. (INT_LG_3)

According to the interviewees, the responsibility is largely transferred downwards - to local institutions. From the Office for Foreigners and the Border Guard who are overburdened with tasks that go beyond their scope of duties (e.g., Border Guard officers have to look for a place in foster care facilities) to local government institutions - first and foremost onto foster care facilities that feel quite secluded. The latter is because they work directly

with the child, they don't avoid responsibility. They can refuse to receive a child who is deemed "problematic". And some of them use this possibility.



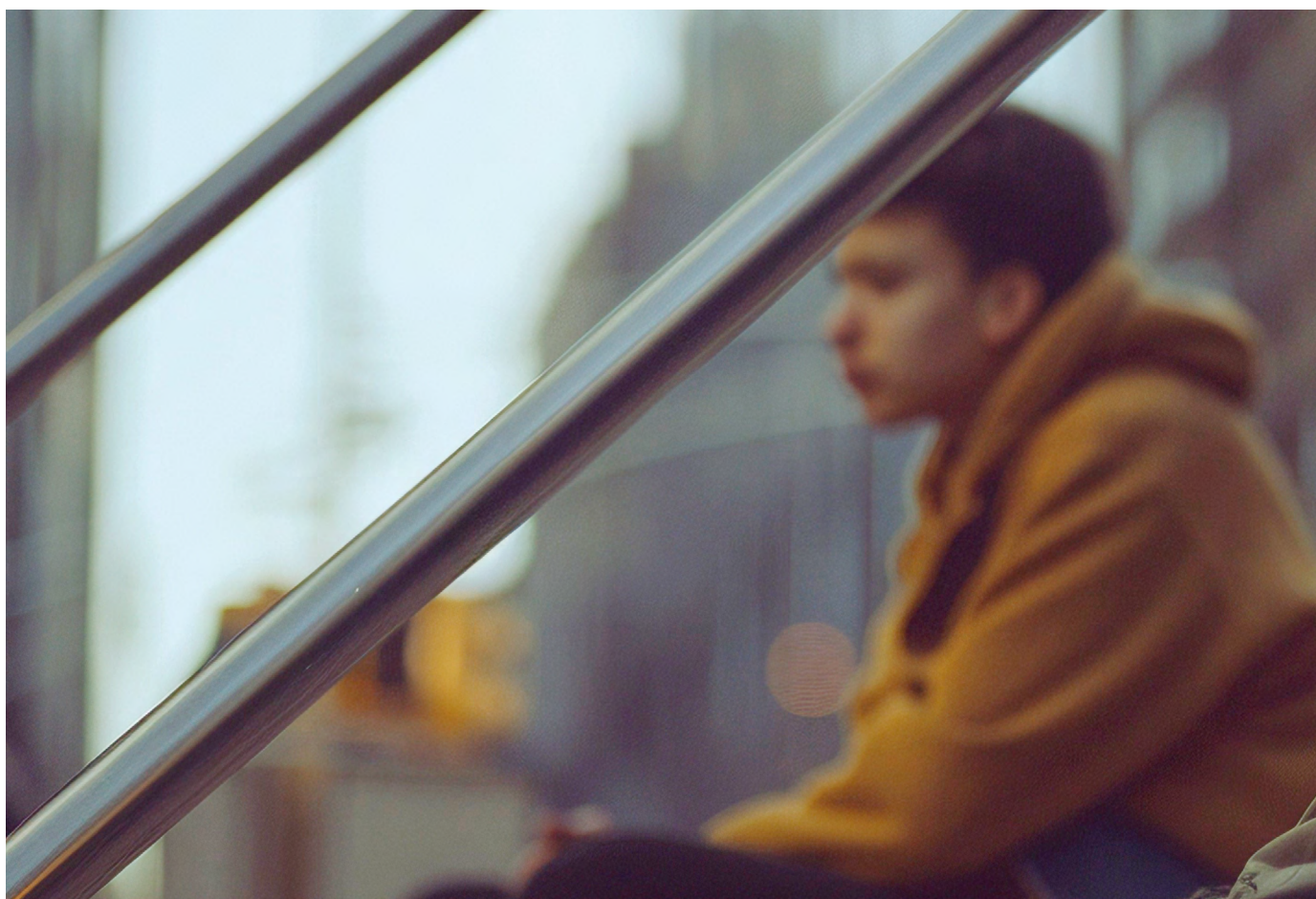
I think this task is forced onto the entities who cannot say no. So, it's eventually passed onto local governments and facilities. Because the head of a facility cannot say no. They simply cannot. At a certain point the Family Support Center can no longer refuse. Well, it is given this obligation that the head of the Office, the voivode, the border guard do not want to fulfill, so well, just put them here, right? And this is how it struggles with numerous problems. That doesn't relate to migration only. That is, each of these actors is unwilling to fulfill a certain obligation, so it is pushed down to the one who cannot refuse. (INT_LG_3)

Among the "great absentees", i.e., institutions that should be more involved, the interviewees mentioned primarily the Office for Foreigners – as the central body that should be the core of the system supporting persons applying for and covered by international and subsidiary protection in Poland. Apart from that they also list Powiat Family Support Centers and big international humanitarian organisations.

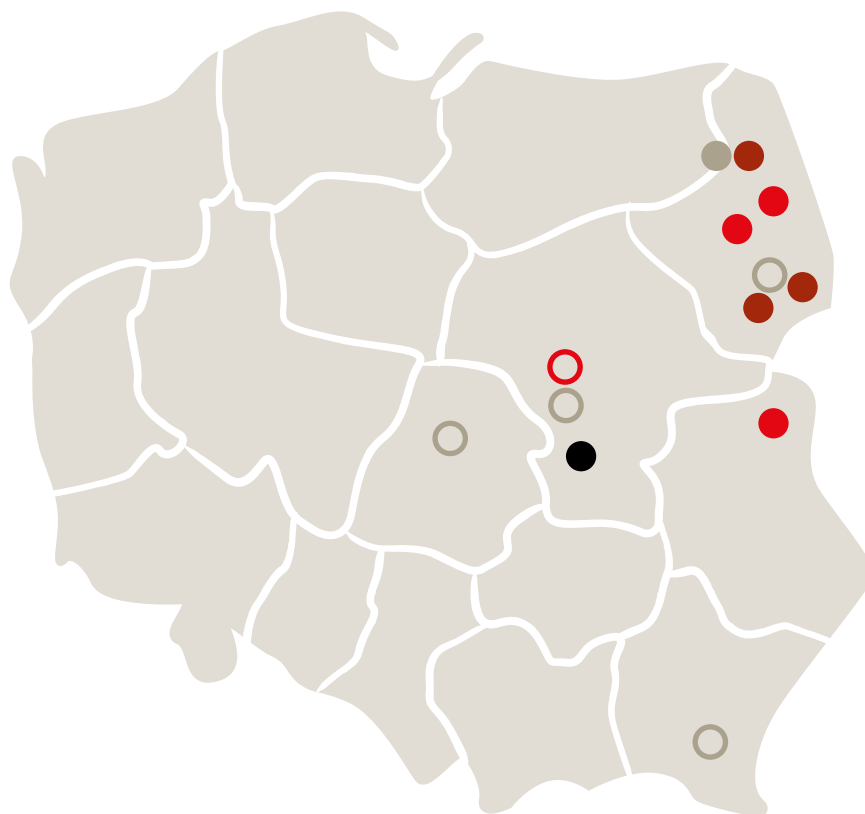
One of the interviewees even wonders whether the scale of institutional negligence doesn't constitute an instrument for "pushing out" migrants from the Polish system in a more or less institutionalized way.



Perhaps the reasoning of the public authority is that they travel to a better place. So, if we create better conditions for them, more of them will come here. And their policy doesn't want to have more foreigners with an unregulated status. Since the conditions are better in Germany, they let these children flee from institutional care facilities and go to Germany, the Netherlands or elsewhere. The most important thing is that they don't stay in Poland. So why should their wellbeing in Poland be improved? (INT_LG_3)



LOCATION OF OFFICES AND INSTITUTIONS DEALING WITH UNACCOMPANIED CHILDREN WHO CROSS THE POLISH-BELARUSIAN BORDER.



a. Border

- Locations of selected Border Guard posts where unaccompanied children have applied for international protection and/or where return proceedings are pending: BGP Białowieża, BGP Augustów, BGP Dubicze Cerkiewne
- Locations of selected district courts where proceedings were pending for the appointment of legal guardians and the placement of unaccompanied children in alternative care: District Court in Białystok, District Court in Biała Podlaska, District Court in Sokółka

b. Office for Foreigners

Location where international protection proceedings are ongoing.

c. Care

- Retirement home for priests where unaccompanied children were accommodated.
- Capitals of selected counties where institutions providing alternative care for unaccompanied children are located: Łódź, Przemyśl, Piaseczno County, Hajnówka County

- d. Detention centre for foreigners
Lesznów, to which unaccompanied children have been sent.



03

IN
ALTERNATIVE
CARE

IN AN ALTERNATIVE CARE

1. CHILDREN IN ALTERNATIVE CARE SYSTEM IN THE EYES OF THE LAW

- 01** *The decision to place an unaccompanied foreign child in foster care is made by a guardianship court, which applies the same regulations as for Polish children – it may refer them to various forms of care. The choice of placement is left to the care provider.*
- 02** *Foreign children may be placed either in institutional forms of alternative care (various types of care and educational facilities) or with foster families.*
- 03** *It remains unclear who is responsible for covering healthcare costs between the child's declaration of intent to seek international protection, the appointment of a legal guardian, and the submission of the application. Under EU law, healthcare should be provided from the moment the intention to seek protection is declared.*
- 04** *Staff in alternative care institutions and foster families are not systematically trained or supported in working with unaccompanied foreign children.*



After the Border Guard escorts an unaccompanied child to a professional foster family which acts as a family emergency shelter or to an emergency care and institutional care facility, the family court issues an order placing the child in alternative care, thereby approving the current situation. The court has no restrictions—it can place unaccompanied minors in various forms of alternative care and applies the same regulations as for Polish children. In practice, the court does not need to specify in its decision a particular facility or foster family to which the child should be placed, limiting itself to deciding that the child is to be placed in alternative care, while the choice of the specific facility or other form of alternative care is to be made by the organiser (most often the County Family Assistance Center).

Ultimately, foreign children may be placed both in institutional care facilities as well as in family foster care, not only of an emergency nature. However, alternative care facility workers and foster families are not systematically trained or supported in working with unaccompanied foreign children. There are no specific requirements for alternative care facilities or families regarding the qualifications and training of staff or foster families.

Forms of alternative care

Alternative care is arranged by the district authorities¹⁶⁵. The specific requirements that must be met by institutional alternative care facilities and family foster care in order to operate in accordance with the law are defined in the Act on Family Support. The following types of alternative care are distinguished:

1. Institutional in the form of:
 - a. Care and educational facility of the following types: socializing, emergency, or specialist-therapeutic, or family-based¹⁶⁶;
 - b. Regional care-therapeutic facility,
 - c. Emergency pre-adoption center;
2. Family foster care in the form of:
 - a. Foster family: related, non-professional, professional, including professional acting as a family emergency shelter and professional specialist foster family,
 - b. Family foster home.

c. Duties of a foster carer

Foster parents or directors of care facilities are responsible

for the day-to-day care of children in alternative care¹⁶⁷. In addition to providing daily care, they are also responsible for raising the child and representing them in matters related to their upbringing, especially when it comes to claiming benefits intended to support the child's needs (such as child allowances). It is also the responsibility of the directors of alternative care facilities or foster families to enroll unaccompanied children in school or take them to medical appointments.

Other parental rights and duties generally belong to the child's parents. In the case of unaccompanied foreign children, it is often not possible for the parents to exercise these rights. At the same time, there is no possibility to appoint a legal guardian who could handle these matters, nor is there a procedure in place to obtain court approval for any significant issues concerning the child or their property¹⁶⁸. Therefore, there is a legal gap for unaccompanied foreign children in alternative care who have not been assigned a legal guardian, but only a guardian or legal representative. It is not specified which authority is responsible for making decisions on important matters (e.g., concerning serious medical procedures) or for approaching the court to obtain such decisions, nor is the procedure for doing so clearly defined.

The family court has the ability to decide otherwise – for example, by granting foster parents or directors of alternative care facilities broader powers to care for the child, including extending their capacity to represent the child and make decisions concerning their welfare¹⁶⁹. In cases where the child's well-being is at risk, the court can also exercise its general power to issue the appropriate order¹⁷⁰. However, the absence of clear regulations can lead to conflicts over who holds the authority and what procedures should be followed to make decisions or obtain consent in other important matters concerning the child.

167 Art. 1121 § 1 FGC

168 Art. 156 FGC.; A legal guardian can be appointed only if neither parent has parental authority (e.g., both parents have been deprived of parental rights, or the parents are minors) or if the parents are unknown (e.g., neither the mother nor the father of the child has been identified). In practice, the application of the legal guardian institution to unaccompanied foreign children is limited due to factual and procedural difficulties in definitively determining that neither parent has parental authority or that they are unknown, as well as due to international treaties binding on Poland that exclude Polish courts' jurisdiction in appointing such a guardian.

169 Art. 1121 § 2 FGC

170 Art. 109 § 1 FGC

165 Art. 32 Act on Family Support.

166 A care and educational facility may combine the functions of facilities such as socialization, intervention, and specialist therapeutic types (Article 101, paragraph 3 of the Act on Family Support).

Access to education

Unaccompanied children are required to attend school until the age of eighteen¹⁷¹, just like Polish children.

The detailed conditions for admitting unaccompanied foreign children to the Polish education system, including how their education level is assessed, are set out in the Regulation of the Minister of National Education of 23 August 2017 on the education of non-Polish citizens and Polish citizens who have attended schools abroad. According to this regulation, a child is typically placed in the appropriate grade at a public school based on a certificate or other document confirming their previous level of education. If such documents are not provided, the child's grade placement is determined through an interview with the school principal, with the involvement of other teachers if necessary. For students who do not speak Polish, the interview is conducted in a language they understand.

Additionally, under Article 165, paragraphs 7–8a of the Education Law Act, students who are not Polish citizens and who do not speak Polish, or speak it at an insufficient level, are entitled to additional, free Polish language lessons for a period not exceeding 24 months. They also have the right to assistance from a person who speaks their native language, employed as a teaching assistant by the school principal. This assistance is provided for no longer than 12 months. The education is organised by the school's governing body. An intercultural assistant may also be employed at the school.

Access to medical care

Unaccompanied children applying for international protection are provided with medical care for the duration of the procedure. Until the final decision is issued, the costs of medical assistance on the territory of the Republic of Poland, regardless of the type of facility the child resides in, are covered by the Head of the Office for Foreigners¹⁷².

Although, under the provisions of the Act on Granting Protection to Foreigners, the applicant – meaning the person who exercises the rights and duties arising from the ongoing international protection procedure – is considered to be someone whose application has already been accepted and registered, according to the Reception Conditions Directive, an applicant is any person who has declared their intention to apply for international

protection¹⁷³. Therefore, from that moment onward, Member States are obliged to provide necessary health-care, which includes at least emergency medical services as well as basic treatment for illnesses and serious mental disorders¹⁷⁴. In practice, however, the Head of the Office for Foreigners covers the cost of medical care for an unaccompanied child only from the moment the application for international protection is formally submitted¹⁷⁵.

Ultimately, a range of different practices are used to cover the cost of treatment during the period between a child declaring their intention to apply for protection and the appointment of a legal guardian, followed by the submission of the application. Sometimes medical services are paid for from the facility's own budget or reimbursed by the Border Guard. The lack of clear regulations in this area creates significant difficulties in ensuring that unaccompanied children receive the medical assistance they need. The period immediately after admission to the facility is particularly critical – this is often when medical assistance is very much needed, as many children may still be recovering from spending weeks in the forest.

Access to medical care continues even if an unaccompanied child's claim for international protection is denied and they are due to be returned to their country of origin¹⁷⁶. In such cases, the costs of medical care are covered by the Chief Commander of the Border Guard.

An unaccompanied child who has been granted complementary protection or refugee status is entitled to medical care funded by public resources through the National Health Fund¹⁷⁷.

Reaching adulthood in alternative care

An unaccompanied child applying for international protection, or one who has already been granted it, may stay in the alternative care system until they reach adulthood. With the consent of the care facility, this period can be extended up to the age of 25 if the young person is still pursuing education or holds a disability certificate confirming a moderate or severe disability¹⁷⁸. However,

171 Art. 35 Act of 14 December 2016 on Education Law (consolidated text: Journal of Laws of 2024, item 737, as amended) („Act on Education Law”).

172 Art. 63 Act on Granting Protection to Foreigners; Response from the Head of the Office for Foreigners dated January 22, 2025, in response to a public information access request.

173 Art. 2(b) of the Reception Conditions Directive.

174 Art. 19(1) of the Reception Conditions Directive.

175 Response from the Head of the Office for Foreigners dated January 22, 2025, in response to a public information access request.

176 Art. 67(1) of the Act on Granting Protection to Foreigners.

177 Art. 2, paragraph 1, item 3, letter b), and Article 97, paragraph 3, item 2a) of the Act of 27 August 2004 on Healthcare Services Funded by Public Funds.

178 Art. 37, paragraphs 1 and 2, in conjunction with Art. 5, paragraph 1, item 3(b), and item 5 of the Act on Family Support

individuals who have reached adulthood and leave alternative care are entitled to financial assistance for continuing education, gaining independence, and accommodation, under the conditions specified in Articles 140 and following the Act on Family Support, provided that they have spent at least one year in alternative care based on a court decision (or three years in the case of a relative foster family). For this purpose, an independent living plan should be approved, and a guardian appointed to oversee the process. Those becoming independent must also be supported in securing suitable housing, finding employment, and accessing legal and psychological assistance.

A barrier to effectively obtaining the above-mentioned assistance may be the required period of stay in alternative care, as well as the generally low level of its implementation, including access to housing, which also applies to Polish children¹⁷⁹. Young adults for whom the international protection procedure is still ongoing have the right to reside in an open center for foreigners.

179 Supreme Audit Office, Informacja o wynikach kontroli. Udzielanie pomocy na usamodzielnienie wychowankom placówek opiekuńczo-wychowawczych oraz rodzinnych form pieczy zastępczej, December 2023.



2. WHEN A CHILD PLANS THEIR FUTURE

- 01 *For some children crossing the Polish-Belarusian border, Poland is not their final destination; they aim to reach Western European countries to join family members, communities, or employers, often unaware that they must complete procedures in Poland. However, some children travel without a fixed plan – their goal is simply to obtain protection in any EU country.*
- 02 *After traumatic experiences at the border, children sometimes see Poland as a dangerous place they must escape from as quickly as possible.*
- 03 *The decision to continue their journey or stay is difficult and depends on many factors, including support from trusted adults.*
- 04 *Factors discouraging them include: uncertainty around procedures, long waiting times for decisions, the knowledge that their loved ones are almost ‘within reach’ in neighbouring countries, and a lack of trust or connection with ‘safe adults’.*
- 05 *Care institutions tend to minimise the ‘investment’ of time and effort in relationships with children, assuming they will disappear anyway.*
- 06 *Leaving alternative care exposes children to serious risks, including the risk of human trafficking, especially as they often continue their journey with the help of strangers.*

2.1. SHOULD I STAY OR SHOULD I GO?

Moving onwards – often towards Western Europe or another destination – is the goal for many foreign children crossing the Polish-Belarusian border. Conversations with alternative care workers, activists, former foreign wards of institutional care, and guardians reveal that these motivations are both strong and recurring. Some children wish to reunite with family members already there, while others have been “sent” by relatives to quickly find work and financially support their families back home. Their journey rarely ends in Poland, and placement in alternative care facilities often disrupts or complicates the realisation of their plans.

[About foreign children crossing the border] The other individuals, when they set off and cross these borders, we know they have a set destination. And they often told us and described where they were going, showing us where they were headed. (INT_CG_3)

From the beginning, I wasn’t interested in staying in Poland because I didn’t think about Poland. I didn’t want to, because the language was very difficult for me at first, and people behaved differently, they looked at me strangely, they were looking down on me. In my language, we say “lift the eyes,” so I told myself that I couldn’t stay here. (INT_CL_3)

According to the account of one of the employees of a non-governmental organisation operating in the Podlasie region, out of more than thirty children she had worked with at various stages, only four decided to stay in Poland. The rest disappeared – most likely continuing their journey. Since then, she has had no contact with the majority of her wards.



[Activist about foreign children crossing the border who were under her care] So the children go and disappear. Out of more than thirty, we have four kids left, and the rest, I don't know, I don't know what happened to them. I don't know if they're safe [...]. We no longer have contact with them. So this happens very quickly, they disappear, so maybe some of them show up with their parents or with other children, and the rest... So it's also a problem that no one is really paying attention to this issue. (INT_NGO_AC_1)

One of the guardians expressed a similar view, noting that he hadn't even had the chance to meet most of his wards, as they left the care facilities in an unregulated manner within the first few days of arriving in Poland.



Of course, this is a request later on and a decision that has a short lifespan, in the sense that sometimes these children don't even have a chance to meet with us, because after being placed in care facilities, they usually disappeared before we were able to reach them. (INT_LG_4)

Children crossing the Polish-Belarusian border often do not understand why they have to stay in these facilities, as their travel destination is completely different. Many of them talk about families waiting in Germany, France, or Belgium – very close, but still out of their reach. Some of them, although they initially did not have a specific destination country, decided to leave Poland due to traumatic experiences at the border. The experience of violence, forced pushbacks, and multiple attempts to cross the border results in them perceiving Poland as a dangerous country – a place they must leave as quickly as possible before the situation repeats itself.

Dilemma – the perspective of the children

Some children face a difficult dilemma – whether to stay in Poland and try to build a new life, or continue their journey in line with their original plans. It's not an easy decision, and making it involves weighing up a number of pros and cons.

Children placed in alternative care facilities often experience a sense of safety for the first time in a long while, with access to shelter, warmth, and regular meals. For some, this is the first moment in weeks or months when they don't have to worry about what the next day will

bring. Suddenly, they experience a calm everyday life with a routine and friendly interactions with their peers. All of this sometimes leads to doubts and thoughts: "Maybe I should stay here after all? Maybe it will be good and safe?"



When they get here, it's like they've hit the jackpot. It's warm, safe, and there's food to eat. Here, they can catch a breath. (INT_CG_1)

Nonetheless, not all children choose to remain in Poland. Some, despite initial reservations, ultimately decide to continue their journey. Conversely, others who initially planned to move on begin to feel a sense of security, build trust in their caregivers, and choose to stay.

The support of others, particularly female volunteers and staff from non-governmental organisations, plays a crucial role in this decision. All the individuals who left alternative care and took part in the study chose to remain in Poland precisely because of this support.



Yes, of course, we talked about it, we planned it [leaving Poland]. I even had a plan to go with them [friends], to move further, but once I saw how they treated us humanely, how they treated us well from the border all the way here, I just changed my mind and decided to stay here. But they [friends] didn't, they went to Germany. (INT_CL_1)



I'm also talking about the experience, about my own experience. When I was here for the first time, when I met those people [activists], and also Ola¹⁸⁰ and her daughter, I was just surprised that they welcomed me so kindly and warmly. They treated me with warmth. Because I thought that all of Poland was racist and that they would treat us differently. (INT_CL_1)



[Director of a care and educational facility about one of the wards] He didn't know what to do. Whether to stay or go. Because he was receiving comprehensive support from us, NGOs, and private individuals. And he was fighting. He was fighting with himself, while deciding what to do. (INT_CG_3)

180 All names have been changed.

However, the uncertainty surrounding legal procedures, long waits for administrative decisions, and the knowledge that their loved ones are within reach (for example, just four hours away by car) act as strong push factors.



[legal guardian about their wards] The two who were in Warsaw – they would never have run away if it hadn't been for the fact that their procedure took seven months and the Office didn't issue a decision. It was horrendous that they had no certainty about how their case would end. They were interviewed, and still, after the interview, I said, 'Listen, in thirty days you'll have a decision, because that's how long it will take.' Because, as I said, I also had assurances from the Office that everything necessary for at least subsidiary protection status had already been done. And despite that, four months later, even though they had been interviewed around the end of December and January, by April nothing had happened, and they ran away in May. And they had been here for 7 or 8 months. They would have stayed, they would have received a positive decision. (INT_LG_4)

Children don't know how long they'll have to wait, or whether they'll even be allowed to legally leave for another country. Many receive messages from relatives who have already made it to the West. These stories become a catalyst for action, reinforcing the belief that Poland is just a stop along the way – their true destination lies elsewhere.

There's one more aspect worth mentioning. In alternative care facilities, the children we spoke with were asked, 'Why are you still here? Why aren't you going to Germany?'. Such comments make them feel alienated,

insecure, and reinforce the belief that Poland is not a place where they would want to stay. Moreover, such statements can lead to feelings of rejection and a lack of perspective, which ultimately discourages attempts to integrate and adapt to the new environment.



Once, the director called me, asked to talk to me, and when I was with her, she also said once again, 'What are you still doing here? Why are you sitting here? They will deport you.' And that kind of talking, that conversation, really had a bad effect on my mental state. I was even more stressed. (INT_CL_1)



When I came back from school, this lady [foster carer] kept bothering me, asking what I was doing here, why I was here, and told me to go to Germany, that life is better there, that it's better there, asking what I was doing here, told me to just leave. And she kept talking about it, asking what I was doing here. I asked her if it's really that good over there, and she said yes. So I answered, 'Why don't you go there yourself, if it's so good there?' (INT_CL_1)

Our interviewees interpreted such situations as a sign that Poland doesn't want them – that they are not welcome here. This sense of rejection makes the decision to continue their journey feel even more inevitable. Moreover, prolonged exposure to such attitudes can lead to a growing sense of hopelessness, a lack of motivation to learn the language or build social connections, which in turn increases the risk of marginalisation and future difficulties.



This passage discusses the efforts of alternative care workers and legal guardians to help children reunite legally with family members in other European countries through the family reunification process. Unlike informal comments or silent approval of the children's departure, these actions aimed to find legal ways to safely reunite the child with their loved ones. Depending on the circumstances, the procedure could be initiated during the international protection application process in Poland or, for children who have already been granted protection, could lead to legalising their stay in another EU country where their relatives live.

Despite this, as emphasised by the interviewees, such formal efforts received little response from the children themselves. Knowing that their relatives were just a few hours away by car, they were unwilling to wait – opting for a quicker, often more dangerous route instead.



[Director of a care and education facility about the family reunification procedure] It seems like they could quickly get the paperwork and move on with something. But then it turns out that it won't be that simple. It might take 4 months, or maybe 6 months. (INT_CG_3)



[Director of a care and education facility about her foreign wards] They are following this plan. Even though we show them that they are welcome to stay. That it is safe. So that they can have documents. And not to run away. And these are some of the things we tried, like using translators to explain, or using their language, if it was English. (INT_CG_3)



For me, it was more about supporting their plans and helping them actually reunite with their family and get out of this deadlock situation, which was often the case. For example, the entire family had been killed, and the only remaining family members were somewhere far away, maybe in Germany or France, for instance. I believe it would be great if they could reach Germany and reunite with their family there, and live normally, rather than staying here in institutional care for children in Poland. (INT_LG_1)

It's not hard to understand why this happens – the entire process requires formal confirmation of family ties and cooperation between the authorities of the two countries where the separated family members reside. Children are expected to patiently wait for their case to be resolved before they can reunite with their family, while their perception of the situation is often very different. Sometimes, their relatives put pressure on them to continue their journey, other times they don't fully understand their legal status or feel alienated and unwanted in the institutions they are currently in. Ultimately, they witness other children leaving the institutions in an uncontrolled way, which they perceive as a signal that they should try the same.

One of the key factors influencing the decision to flee is the strong economic pressure from their families who remained in the countries of origin. For many young people, migration was not only an attempt to find a safe shelter, but also a way to improve the economic situation of their loved ones. In their homes, there was often a clear expectation about where they should go and what steps they should take upon arrival, with the primary focus on finding a job and sending the money they earned back to their family.



[Director of an institutional care facility about her foreign wards] At home that they left, there was probably a commitment about where they were supposed to go and what they should do next, meaning they definitely had to earn money. And these individuals struggled a lot with that, as they received a full package here, yet, and I looked at it with great pain, because I was present at the conversation they took part in, including those with a psychologist. I was also present at the meetings at their request, where they talked about their situation, and basically, they made it clear that despite the fact that there were people working in Poland, leading their lives here – whether they were from Syria or Afghanistan – they made the decision to continue their journey. However, they continued, usually, illegally. Because it was another procedure to report this to the appropriate authorities. (INT_CG_3)

Children in alternative care facilities often experience significant stress from being unable to meet their families' expectations. They receive messages reminding them of their financial obligations to relatives, which only deepens their sense of powerlessness. Although their basic needs are met in the facilities, they feel trapped – unable

to work or earn money independently. The facilities are obligated to enroll children in school, but in practice, this process can be complicated, especially when there are not enough places in schools with preparatory classes. For children who feel strong pressure to support their families, education seems like a waste of time, and the lack of the opportunity to earn legally pushes them to seek other, often risky ways of making a living, which can expose them to exploitation and human trafficking.



And now, imagine that this 16-year-old child, who came here to earn money, has pressure from their family telling him, "You have to earn money, send us money," but he's locked in a care facility. He can't really do anything. And then, they make him go to school, for his own good and all that. But he doesn't understand it. So, it's also very hard for him to understand that he came here to earn money, but he's locked up. He can't go out, can't do anything. But at that moment, that's not what he needs at all. What he needs is the money. (INT_NGO_AC_1)

Economic pressure is one of the key factors that make children unwilling to stay in Poland. From their perspective, time is working against them, and every day spent in the facility is a wasted day that should be used to support their family.

The dilemma of "should I stay or should I go" is something that some children feel very intensely – the final decision is not easy at all, and the prospect of running away brings fear and uncertainty. This was the case with a boy from Syria, whose story was shared by one of the volunteers. At the last moment, he decided to use the first opportunity to leave, risking the loss of money in the process.



[Activist talking about one of her wards] So he asks me whether I will come before or after dinner. Of course, before dinner, and he insisted on it being before dinner, and he was really anxious about it. So I asked him if everything was okay. "Yes, yes, yes, it's fine, it's fine, it's fine." So I left the groceries I had bought there. And in the evening, he sent me a picture of the bus ticket [to Germany] and said he was supposed to go to his cousin's, but he didn't. And the ticket... Then he went on to explain. And the ticket was for that day, just for an earlier time, as if he hadn't used the ticket, right, he canceled it. But then his cousin demanded money for the ticket. And he asked me where he could get the money. Well, you don't just get money. (INT_NGO_AC_3)

In the end, however, economic pressure prevailed, and the boy left Poland. When children in alternative care decide to leave, they expose themselves to a range of serious dangers, including the risk of human trafficking. Desperate and without support, they can become easy targets for individuals and groups involved in exploiting people for profit. Many of these children, seeing no alternatives, may be tempted by promises of a better life abroad, especially in Western countries, where they are promised work or better living conditions. In reality, however, some of them may fall into the hands of those who exploit their situation for forced labour, prostitution, begging, or even involve them in criminal activities.

Children in such situations are often unaware of the consequences of their decisions. Due to the lack of education, emotional support, and access to appropriate information, they are vulnerable to manipulation and may not realise that, instead of seeking better prospects, they are stepping onto a path that threatens their safety. This risk is particularly high for children who do not have sufficient support from caregivers or institutions, and whose knowledge of legal migration pathways is very limited. They often lack access to information that could protect them from such dangers, as well as the necessary support services that could help them make an informed choice. As a result of economic pressure and a sense of hopelessness, children often decide to escape from the institution, not realizing that they may fall into the hands of those who will exploit them for profit in violent and inhumane ways.

2. 2. 'IT'S JUST A STOPOVER' – THE HARMFUL ASPECT OF RATIONALITY

Ensuring that children in alternative care have access to education, healthcare, and legal recognition often demands considerable effort from their caregivers. The formalities involved in enrolling a child in school, obtaining a PESEL number, registering with a doctor, and completing the necessary procedures are time-consuming and complicated, requiring numerous interventions and efforts for every administrative decision. The problem is that most of these children disappear quickly – they move on, searching for their families, connections, or opportunities for further travel. As a result, foster carers often adopt a strategy of waiting – before taking action regarding education or healthcare, they want to be sure that the child will remain in the institution for a longer period. From this perspective, the approach of institutions to foreign children becomes understandable but also highly problematic. As one of the directors we spoke with pointed out:



We had a boy who liked it here, he went to school for a few weeks, and then it happened that he went to school and didn't come back. We are just a stopover for these children. They're simply waiting here for contact, for someone to take them further. (INT_CG_1)

Caregivers are often convinced that since the child "intends" to leave the institution anyway, it is not worth investing time and effort in their education or healthcare, so these procedures are postponed.



We haven't gone that far yet to assign a PESEL number – they're here for a short time. (INT_CG_1)

This approach not only impacts the lives of children but also affects how they are perceived in alternative care facilities. One of the legal guardians emphasizes that institutions treat children as temporary residents, so the requirements related to their education, healthcare, or formalities are often overlooked.



And I think this is – I assume a certain hope from the authorities, because I've encountered this hope from the people running the facilities. "What am I supposed to do with this person? Everyone is telling me that they will run away, and they haven't run away yet." So, this is the kind of approach. I say, "Well, I don't know if this comforts you, but if you don't know what to do with this person, experience shows that this could be a short stay at the center. If you don't have the conditions, please approach this calmly, because it may turn out that you don't need to create these conditions right now, as it may turn out to be a short stay," and that's usually the case. (INT_LG_4)

Activists and NGO volunteers have also highlighted this issue. According to their accounts, some institutional care facilities enrolled children in the education system only after external intervention.



Researcher: How was it that [name] didn't go to school without your intervention? Activist: Because they kept saying that he would run away any minute, and every time I showed up and asked about anything or tried to make arrangements with them, there was always this discussion about why I was even bothering, since he would be gone soon anyway – like all of them, they all run away. (INT_CL_1)



This topic is inconvenient for everyone; they'd all prefer to bury it somewhere. It's best if those kids just run away as soon as possible, that way the facility won't have any problems. (INT_AK_P_1)

As previously mentioned, from the perspective of alternative care, this approach appears rational – each new procedure adds additional time-consuming work, which often turns out to be unnecessary because the child disappears before the formalities are completed. However, for the children who ultimately stay, this strategy has its consequences. They wait – for a decision, for documents, for the opportunity to get an education, and for access to healthcare. They cannot start building their future from the very beginning because they first have to prove they won't run away.

2.3. A SELF-FULFILLING PROPHECY

Children who remain in alternative care often do so because they have no other options. It is not their first choice. Some, like the boy quoted below, lose their entire family and have nowhere to return to and no one to turn to.



[Director of the care and education facility about one of her wards] He is very grateful for everything, thanks us, smiles when he sees us. The boy had a really tough time in [country name]. He has no contact with his parents; his father died, and his mother went missing. He is all alone. He says: "I'm staying here, I like it here." (INT_CG_1)

Other children don't have families or social networks in any other country. Therefore, they stay in Poland.

And as for this boy from [country name], well, he's currently staying with us for the time being, and it's likely that he will stay here. [...] He's alone. He's by himself, his family is in [country name]. He wants to build a better life for himself here in the future. (INT_CG_4)

The feeling of loneliness and the lack of other options lead to children in alternative care gradually accepting their situation. However, before they decide to stay, the alternative care system often does not yet treat them as permanent residents, which frequently results in delays in enrolling them in school, providing healthcare, and other essential support. Only later, when the situation becomes more stable, are they considered permanent residents, but this comes with many challenges and delays.

Meanwhile, we kept thinking about taking her [the ward] to Warsaw, because the girl is intelligent and, for example, she would have handled it well, since the care facility refused to enroll her in any school. And she spoke English, so, well, she would have fit in just fine. She also had some education from [country name], and she really wanted to learn. But the facility said no, just no. It was really hard to explain to these kids that they couldn't learn, that they couldn't... so they just sat there, couldn't really go out much. (INT_NGO_AC_1)

Regarding the boy I mentioned, he was with us for quite a long time – I don't remember how old he was, but he was about 12, just a little kid. After a lot of effort, we managed to reunite him with his mother, who was in Germany, together with the Border Guard. [...] It turned out that once he trusted us a bit and realised that he wouldn't be able to reach his mother on his own, he decided we should look for her. He revealed to us that he had a mother, and we then began the whole process. We didn't enroll him in school because we thought it would be pointless if we managed to reunite him with his mother. Unfortunately, we thought it would take less time, but I won't hide the fact that these procedures are really formal – it took several months of processing, because of the procedures and regulations. (INT_CG_4)

But I think that in the case of such experienced facilities, where children or families with children have been placed before, there might be a period after releasing a minor from a detention center where, after receiving a declaration, there is no rush. Why rush if it turns out that this child won't stay in Poland at all? And I think this is – I assume it's a certain hope of the authorities, because I have encountered this kind of hope from the directors of the facilities. (INT_LG_4)

On one hand, children in alternative care facilities are treated as temporary wards, but on the other hand, when they decide to stay, they may face delays in accessing education, healthcare, and legal stability. This creates a self-fulfilling prophecy: since children leave, there is no immediate investment in them, and because they lack access to basic care and stability, it becomes easier for them to decide to leave.

Due to the frequent cases of foreign children disappearing from alternative care facilities, some of them adopt a waiting strategy – especially when it comes to building relationships and a sense of stability. In the initial period, no real attempt is made to establish a deeper connection with the child or to foster a genuine sense of belonging. The absence of a trust-based relationship – further exacerbated by language barriers, limited access to interpreters, overworked staff, and a lack of preparation for working with foreign children – is a key factor influencing decisions about their future path.

Based on the above stories, it is clear that the alternative care system often does not take immediate actions that could provide foreign children with stability and support. This is not so much due to a lack of resources, but rather because of the belief that "investing" in children who may soon leave the facility on their own is not worthwhile. As a result, deprived of alternatives and access to education and care, the children see no future for themselves in this environment and decide to move on.

3. HOW DO CHILDREN DISAPPEAR FROM THE ALTERNATIVE CARE SYSTEM AND WHAT ARE THE RISKS THEY FACE?

- 01** *The unauthorised departure of foreign children from care institutions is common, but there are no accurate statistics.*
- 02** *Leaving the institution exposes these children to serious risks, including homelessness, abuse, and human trafficking.*
- 03** *Institutional responses after a child leaves are often delayed and ineffective, and the whereabouts of many remain unknown. For both institutions and the state, this may be a convenient way to avoid further difficulties and responsibility for the children's welfare.*

Unauthorized departures of children from alternative care facilities are a serious challenge for both institutions and law enforcement. Firstly, they carry many risks, and secondly, they present difficulties in preventing and responding to them. Although children are theoretically under constant supervision in alternative care facilities, as mentioned earlier, there is an assumption that the vast majority of them will eventually leave the facility, sooner or later.

So, in terms of records, meaning the admission of foreign children, it's still a small number. For example, last year, there were around ten or eleven children admitted. Unfortunately, the vast majority of them treat Poland as a stopover on their way further – so these children are admitted to us and simply run away, right? And they travel somewhere else. So, at the moment, out of all the foreign minors, I have just one child. (INT_CG_4)

Alternative care workers anticipate that a child may leave without permission, but it is difficult to predict exactly when this will happen. They often run away at night, though there are also instances where children go to school and never come back.

There are no signals, we don't know when it will happen [unauthorized departure], and they often don't know either. [Foreign children] are instructed on what to do. Often, it's families who leave, not even organised groups. New clothes with tags [that they received], everything stays behind – to avoid identification [of the children, e.g., by their clothing], which limits... (INT_CG_1)

Children who run away are often well-prepared – they know what to do to avoid being found. They are thoroughly instructed on how to handle these situations. It's hard to prevent them from running away. There is always someone waiting for them on a specific day.

There is always a driver, a car. (INT_CG_1)

Children almost always rely on the support of adults when they set off on their journey. Sometimes, these are smugglers hired by the family to transport children to the West, and sometimes, family members or people posing as them come to take the children.



Young children are a rare case. There were four of them, cousins aged 11, 13, 14, and 15, across 3 facilities. One day, an uncle came and took all of them. He came from Germany. The caregiver said there was no way he could take them, but the facilities are open, and they just left. It's unclear whether he was really their uncle, although in this particular case, they did greet him as such. (INT_CG_1)

Our interviewee emphasizes that children can be taken by individuals who are not always who they claim to be, which creates a significant risk. After fleeing the facility, children may find themselves in situations that lead to homelessness, exploitation, or even human trafficking. The third parties who "help" children escape do not always have good intentions – sometimes they are organised criminal groups involved in illegal activities.



We report the departure. No one is going to physically stop them. And the police are searching. (INT_CG_1)

When such situations occur, the response is often delayed and ineffective. The police typically fail to take sufficient action to prevent potential harm. Some children eventually get in touch with alternative care workers or activists, letting them know they are with family or that they are safe. However, in many other cases, the trail goes cold, and what happened to the children remains unknown.

The clear takeaway from these experiences is that the system for caring for unaccompanied foreign children has major gaps. The lack of effective cooperation and oversight from the Border Guard, the Office for Foreigners, the alternative care system, and juvenile court legal guardians leads to situations where children "disappear" and there is no adequate response. Unfortunately, the responsibility for these events remains unclear. For many facilities, and for the state as a whole, this may seem like a convenient solution that allows them to avoid further difficulties related to care, handling complicated paperwork, and responsibility for the fate of these children. In practice, even though children disappear, there is often no prompt reaction, as their departures simply resolve many of the problems described above.



4. CHILDREN WHO STAYED – LIFE IN ALTERNATIVE CARE

01 Children who remain in Polish alternative care are primarily those who travelled without planning their next steps. They also include those who considered continuing their journey but had no family in Western European countries.

02 This group also includes those who changed their minds about continuing their journey due to positive experiences in alternative care, as well as those who were persuaded to complete the legalisation of their stay or family reunification procedures.

03 Some of the children who end up in institutions in Podlasie experience discrimination.

04 Peer relationships play an important role: they reduce the feeling of isolation and give a sense of belonging.

05 Before an application for international protection is submitted, institutions cannot provide healthcare for children. The lack of access to translation services is also a huge problem for children and their caregivers.

06 Children awaiting a decision on international protection are not entitled to benefits available to Polish children (e.g. 800+).

07 There is also a lack of systematic support for becoming independent after reaching adulthood. After turning 18, most young people move to an open centre for foreigners.

4.1. WHO ARE THEY?

Conversations with study participants reveal that the majority of children who remain in the Polish alternative care system after crossing the Polish-Belarusian border do so primarily because they lack a clear plan for the future. These are often children who had considered traveling further but did not have family members in any Western countries they could connect with. This group also includes children who changed their original decision to continue their journey due to positive experiences during their stay in alternative care, as well as children who were convinced to complete the procedure for regularizing their stay or family reunification. The last group consists of children who stayed in Poland not due to their own decisions, but because of circumstances (e.g., health-related) that forced them to do so.

4.2. CONDITIONS IN CARE FACILITIES AND WILLINGNESS TO ACCEPT FOREIGN CHILDREN

Conversations with various groups of study participants reveal general limitations in the number of places available in institutional care. Interviewees also mention staff shortages – this issue is highlighted, among other things, in the context of the additional needs involved in integrating a foreign child into the facility's environment.

An additional person is needed to take him to school and pick him up – we don't have enough staff. (INT_CG_1)

To increase the number of educators. [...] From one or two. And indeed, we could [then] do great things. (INT_CG_3)

However, it is clear that the readiness and willingness of care workers to support foreign children varies. Some institutions actively embrace the challenge – seeking out knowledge, taking part in training, and refining their practices through trial and error to provide appropriate care.

And in reality, the foreigners that come to us require a slightly different approach and a different kind of care. So, we need to prepare for that. We decided to search for all the information on how to organise things so that everyone is safe, both Polish children and foreign children in the institutions. (INT_CG_3)

We realise that this requires more knowledge from the educators. We had training with a psychologist and a lawyer, we are educating ourselves, reading. (INT_CG_1)

Nonetheless, according to reports from staff and volunteers at NGOs operating in the Podlaskie region, some children arriving at local institutions experience discrimination. Not all facilities have the knowledge or skills needed to properly care for foreign children. Caregivers often lack an understanding of cultural differences, which in turn reinforces their fears. In such institutions, foreign children are treated differently from their Polish peers – actively isolated or simply not sufficiently included or integrated with the other children. One activist commented on the situation as follows:

We, as a society, simply don't know, we're scared, we have stereotypes in our heads. I think that the educators in these facilities are exactly the same; most of them, when they see a boy with darker skin, think he must be a terrorist or, I don't know, that he'll do something strange. And they are scared too. (INT_NGO_AC_1)

A former ward of institutional care facility, with whom we spoke, recalls his memories of interacting with one of the educators:

Another activist supporting foreign children in the Podlaskie region points out the need to work with foster carers. She talks about it as follows: [...] and this lady kept bothering me, asking, "What are you doing here? Why are you here? Go to Germany, in Germany it's better, life is better there, what are you doing here, just go." And she kept saying that. "What are you doing here?" I asked her, "Is it really that good, is everything good there?" She said yes. And I responded, "Why don't you go yourself, if it's so good?" (INT_CL_1) I think there should be much more work with the adults who work in the facilities. Work and activities that would help these people break out of their shells, open up a bit, and show them that whether we want it or not, the big world has come to us. You might have stayed in your small, provincial town, but this world has arrived here, and we need to deal with it somehow... and no one prepared us for this, so now we have to manage it. How can we do this best? For example, I see a lack of activities for Polish children that would make them more sensitive, show them many things. [Continues about the need for support for educators] These teachers need to feel strong, that they can handle it, that they can manage, that they know how, that they know where to look, that they have someone supporting them, that there's someone who can help them, that they have access to a translator. Listen, the simplest things. (INT_NGO_AC_2)

Alternative care institutions often have to navigate systemic challenges, such as securing funding for the stay of a foreign child or arranging for professional translators to facilitate communication with the child.

Institutions face a wide range of challenges in providing care for foreign children. The first is securing funding during the initial period of the child's stay (discussed in Chapter 2, Section 2). This phase – when the child is still under the responsibility of the Border Guard – is particularly difficult. It is well known that during this time, institutions are unable to provide healthcare for foreign children. Until the child submits an application for international protection and funding from the Office for Foreigners is secured, institutions lack the resources to cover even basic medical care. Where this gap is successfully bridged, it is solely thanks to cooperation with private individuals or non-governmental organisations. One alternative care worker explained how they deal with this issue as follows:



Well, it takes about two weeks, maybe up to three, before these procedures are really initiated. So, it's problematic, because the Border Guard has it a bit easier – they have dedicated funds for this and signed agreements with their centers where they treat foreigners. But that's only for foreigners who are staying with them, and for us, it's problematic. However, here we've already found some solutions, and we currently cooperate with organisations. Well, I won't hide it, we have one foundation that has good connections and a great collaboration with one of the private, large clinics in Łódź, and they treat our children there without any problems. [...] because the system doesn't provide anything for foreigners who haven't started the formal procedure yet. (INT_CG_4)

Children awaiting the outcome of their international protection application do not receive the benefits available to Polish children and other foreign children¹⁸¹, particularly the 800+ benefit. This creates a clear disparity in the support provided to children in care and may reinforce a “two-tier system” of care for Polish and foreign children, as reported by individuals working with non-governmental organisations. In institutional care facilities for children, there are different approaches to giving children pocket money. Some institutions, despite differences in funding opportunities, give pocket money to all children, while in others, foreign children are the only ones who do not receive it.



Because in our institution, children receive pocket money. But these foreign children don't have any benefits that were had, like the 800+ benefits for Polish children. They don't have that. Indeed, one could think about this. Because they don't have any money. The money was being sent by their families. (INT_CG_3)

Due to the lack of additional benefits for foreign children, institutions have limited capacity to provide extra, tailored support. One worker from an institutional care facility put it this way: “If I had the 800+ benefit for these foreign children who come to me, they would have everything – translations, a teacher...”

Another significant issue is enrolling foreign children in school. Only a small number of schools offer preparatory classes for non-native speakers, and even fewer have intercultural assistants. Schools also vary widely in their readiness to accept foreign children, particularly in smaller towns. There is also the practical challenge of determining the appropriate grade placement for each child.



We don't know how many schools or grades he's completed, what he knows, and so on. [...] Formally, by age, he should already be in secondary school because he is subject to compulsory education – but in reality, he should end up in primary school, because probably his education wasn't good enough for him to be in secondary school. So, we also have to somehow manage this. (INT_CG_4)

In order to be successful at school, a foreign child mainly needs support in learning the Polish language. According to the study participants, in some schools, it is possible to provide extra hours of Polish language lessons for foreign students. Other children receive support in this regard from private individuals or non-governmental organisations. However, this is not a systemic practice.

Although the relationships between care institutions and NGO staff or volunteers vary – with examples ranging from strong cooperation to mutual distance or even antagonism – organisations and individuals providing support often step in to fill gaps that institutions cannot address due to a lack of systematically planned resources. This includes both financial support and help accessing specific services, such as psychological, medical, or translation support. Despite occasional tensions in these relationships, institutions often turn to external actors for assistance or try to build broader support networks by establishing cooperation with a range of stakeholders.

¹⁸¹ The 800+ benefit is granted, among others, to children covered by international protection, children covered by temporary protection (under the special law on assistance to Ukrainian citizens due to the armed conflict in Ukraine), as well as children staying in Poland with their families under conditions related to access to the Polish labor market.

Thanks to the organisations I've been working with for many, many years... or even some companies I know, I ask them for money. And with the organisations, I generally ask for support in the same language the child was raised in if the child is foreign. So, the organisation looks across the whole country for someone, a specialist, who will take on such a task. There have even been psychiatric consultations in the child's native language, the language they speak. [...] I also have two foundations that I can rely on. I think that even if I called them in the middle of the night, they would help me. I just say, it's so nice to work when you have such a great support system, you know? And just knowing – I don't take advantage of it just like that, but just knowing, you know, that there are people out there – just a phone call away, and they will help. (INT_CG_2)

4.3. ADAPTATION IN THE FACILITY

Foreign children end up in alternative care institutions after experiencing the trauma of crossing a border – sometimes after being subjected to pushbacks, violence, or spending many days without shelter in the forest¹⁸². From the stories of alternative care workers, we know that children can adapt in different ways. Some adjust more quickly, while others need more time to "ease into a new environment" and rebuild their basic sense of security. One former ward of institutional care describes his first moments in the institutional care facility for children like this:

On the first day, or rather, at that time, I didn't look like I do now. They gave me clothes, told me I should take a shower. But I was very scared, very stressed. The first week, I didn't leave the room or the facility at all. (INT_CL_1)

As a result of the trauma they have experienced, children who cross the Polish-Belarusian border may experience so-called flashbacks, which are brief, intense episodes of

re-living traumatic experiences in the present moment. During these episodes, they behave as if they are going through the situation again. They are unable to control their nervous system's reactions. One former ward spoke about a flashback she experienced, when she was triggered by water in the shower.

I will never forget the first day I spent there. When I was taking a shower... because of the phobia I had, I was afraid of water. I couldn't step into the shower, under the water, and bathe, because of the experiences I had in the forest when I crossed the border. It was very rainy at that time. (INT_CL_3)

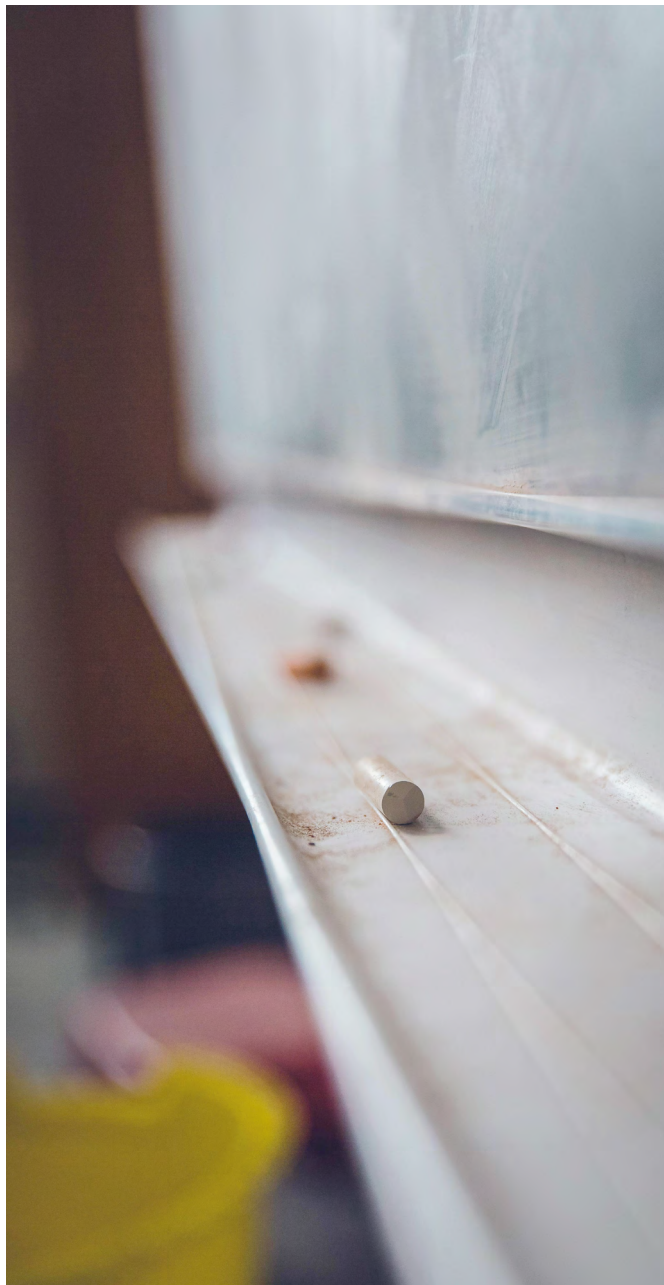
Alternative care workers speak of children's varying willingness to talk about their experiences and to seek psychological support.

Some want to talk, others don't. They shut themselves down. But they function with our children, they function in the warmth of our home. (INT_CG_3)

Another study participant notes that trust and a sense of security are built over time – only children who have stayed in the institutional care facility for children long enough decide to seek psychological support.

Alternative care institutions for children differ in their approaches to helping a child adapt to a new environment. However, they all share a commitment to ensuring the child's well-being, completing formal procedures, and meeting basic needs such as a place to sleep, clothing, and food. Not all institutions believe that foreign children require additional measures to integrate into life at the facility. Alternative care workers often speak of children's remarkable "adaptability" and their ease in adjusting to different conditions. In practice, however, the active support provided by adults during a child's adaptation process is often limited. Staff capacity is also constrained, as they are responsible for a diverse group rather than individual children. One activist working with institutional care and child welfare comments as follows:

¹⁸² According to the organisation Doctors Without Borders operating at the Polish-Belarusian border, in 2024 the average time refugees spend in the forest before they managed to submit an application for international protection was three weeks. See: https://lekarze-bez-granic.pl/wp-content/uploads/raport_lekarze-bez-granic_uwiezieni-pomiedzy-granicami.pdf



The upbringing of every child is influenced by their parents. Here, there are no parents, so it's just a system. The system provides them with care in terms of food, a bed, some clothes, and pocket money, but there are very few activities that stimulate these children. There's little time and few opportunities to talk to someone, to listen to what bothers them, or to think about how to help them. Here, more attention is paid to the child going to school and doing their homework, but no one really looks into what kind of person they are. (INT_NGO_AC_2)

From the stories of the alternative care workers, we also learn about different ways of coping with the language barrier. Caregivers sometimes try to learn basic words in

the child's language, while others use children's books to help the child learn basic Polish words. The study participants also talk about cooking together, celebrating various holidays, and discussing diverse customs. The workers also mention the important role of preparing Polish children in the facility for cultural differences.

However, institutional care facilities often lack the capacity to address the deeper developmental and emotional needs of children. They can provide only the basic necessities for survival: shelter, a place to sleep, and food. In the accounts of many care workers, there is a noticeable absence of deeper reflection on the individual needs of children and their best interests. Directors of institutional alternative care facilities tend to describe the functioning of foreign children primarily from an administrative standpoint, categorising them as “good” or “bad,” “obedient” or “disobedient,” and noting whether “incidents occurred” or not.

Moreover, when it comes to the minors themselves, these foreign children really adapt well if they want to stay in Poland. For example, the boy who came to us for three months, literally because of his uncle who already lived in Poland, wasn't difficult to manage – he behaved better than our Polish children, he was more obedient, more receptive. Because he knew that this was a better life for him, and he didn't try to push Islam on anyone – even though he was a Muslim – nor did he try to impose his own rules. He knew he couldn't eat certain things, so he just ate vegetables. Well, that's life, right? (INT_CG_4)

We know of many dedicated educators working in institutional alternative care – individuals who undoubtedly become important “good adults” for the children, supporting them in their current situation. However, care, as part of a broader system, operates much like the system itself: it centres its own interests. From this perspective, the “ideal” child is one who doesn't cause problems. A foreign child – facing legal procedures, language barriers, and unfamiliar customs – is often viewed as a problem. A child is considered “problem-free” when they are obedient, require little attention from adults, and don't ask for much. In reality, however, a “problem-free” child is often one who is quiet and withdrawn – a child who has given up.

When asked what might help other foreign children like him to adapt to institutional care, one of the former wards said:

First of all, they should take better care of everyone who ends up there, no matter who they are. Secondly, they should compliment us sometimes. Whatever you do, it would be nice to be complimented. Thirdly, they shouldn't add more psychological problems. Because we end up there [after crossing the border, after going through the forest], of course, it's not like being in the forest. [...], but when they add to our problems and stress, it shouldn't be like that. And fourth, they should take better care, ask more, because after all, you're still a child. When they see that you're sad, when they see you're withdrawn, they should make more effort to reach out to you, ask more about what's wrong, why... Not to add more stress, like scaring you that you'll run away or that you'll be deported anyway. (INT_CL_1)

However, from the stories of both former wards, alternative care workers, and NGO workers, it is clear that peer relationships play a crucial role in the functioning of children and can be an important factor in supporting their adaptation.

Everyone who was there, mostly girls or very young kids, but honestly, everyone liked me, and I liked them too. Yes, they were very nice there. There was one kid, a boy, three months younger than me. I really liked him. He really liked me. We played football and PlayStation together. Sometimes everyone knew that I didn't eat much there, and he would make me sandwiches, saying "this is for you," or "come eat with us," or he would call me, "let's play football, come on, let's play on the console." (INT_CL_1)

4.4. THE IMPORTANCE OF PEER RELATIONSHIPS

From the accounts of former wards, it appears that they were the only foreign children in the facilities. The other children, after crossing the border, were only there for a short period of time, not long enough to form deeper friendships with them.

Despite the age difference and language barrier, simply being present and spending time together has a significant impact on the children's well-being. As one of the care workers points out, the language barrier mainly concerns adults – children, in most cases, find ways to communicate.





In reality, the language barrier is more of an issue for us, the adults, than for the children. For the children, it doesn't really matter that much. [...] What they can manage, they do in English, and what they can't, they do with gestures. They don't really have a big problem because, if they want to go for a ride, I don't know, they go somewhere on a bike – such situations have happened, I'm not sure if it was on a bike or a scooter with that little Palestinian boy – they just showed him the scooter, and off they went, riding together. It wasn't about talking to each other, it was just about riding and having fun. (INT_CG_4)

Direct contact allows them feel 'together,' feelings of isolation, and fosters a sense of belonging. The children in the facility also learn from each other.



You can see a change in this boy; he's here, opening up, showing initiative. Yesterday, he was raking leaves. He feels safer now, 'Miss, give me the key,' 'Miiiiiss...' He's starting to become like a Kowalski. (INT_CG_1)

However, it must not be forgotten that in alternative care facilities – especially when there is a lack of appropriate adult intervention – foreign children are exposed to peer violence.



There were even instances where the children would throw sausages into the girls' beds – because they didn't eat pork – as a form of bullying. (INT_NGO_AC_1)

Foreign children simply spark the curiosity of Polish children, who often have not had any previous contact with foreigners. However, the curious stares cause significant discomfort and a sense of alienation for the former.



All the children had some trauma from their families of origin and looked at me differently... Plus, they didn't have permission to come and talk to me. And you know, when you're seen as a special person, but not because of good things, you think you're special because of bad things. That's how they acted. I didn't think of myself as special, I thought I was just trash, someone who didn't belong here. (INT_CL_3)

In this context, the work with Polish children and the approach of educators in shaping children's behavior appear to be especially important.

Another important aspect is the appropriate, supportive school environment. One care leaver spoke about how important his school class (in this case specifically a preparatory class) and the relationships he built with his classmates were to him.



Most of all when I got to school, I made friends, buddies. Those two days when I was without school, it was really boring for me. I wanted time to pass quickly so I could go back to school. But here, in this house, I don't know, I'm bored. I feel like I'm an outsider. (INT_CL_2)

For foreign children, being among peers who share the experience of migration can be very supportive. This shared experience creates an immediate sense of belonging. They know they are with others who have been through similar situations or who, like them, are 'others' – meaning non-Poles. Within such a group, it feels much easier and more comfortable, offering a greater sense of safety. When asked what being with peers means to him, the second of our interviewees said:

[...] when I'm with a group, when I'm here with my family, we go somewhere as a group. Then I talk, things are different, time passes differently. But when I'm at school alone, or when I'm sitting somewhere alone, then I don't talk to anyone, I keep thinking, I keep thinking about what's happening, what will happen. (INT_CL_1)

Being with people effectively distracts thoughts from the uncertainty of one's living situation and the associated lack of a sense of security. In the above statements, a broader context of the developmental needs of young people emerges – the need to belong to a group. What stands out particularly are the statements of former wards of institutional care facilities – individuals who have just turned 18. Right after stories about fun phone games and laughing about 'pranks' played on teachers with peers, comes a more serious story about the importance of legalizing one's stay and finding a job.

[...] first of all, to be mentally prepared for it [leaving the facility, becoming independent], and the second step is the old stage, what you have to finish, meaning, you need to have to do the paperwork [...] you must have the paperwork to continue studying and then work, learn the language, work, but without that, if the old procedure isn't finished, you're never mentally prepared for it because you're constantly thinking about the documents, constantly someone asks you to be at an interview for five hours, and so on. (INT_CL_1)

These young adults can't afford the luxury of gradually stepping into the next phase of life. They must struggle to stay above water.

4. 5. 18 YEARS OLD, AND WHAT'S NEXT?

Just like foreign children are not entitled to benefits such as the 800+ social program, they also lack systemic support in becoming independent. Upon reaching adulthood – in practice – they leave care institutions. The young people who do not immediately move forward are most often forced to move to an open center for foreigners. As one can easily imagine, this is not an easy start for an eighteen-year-old expected to stand on their own two feet. This was the situation facing one of the participants in our study. An activist supporting the young man described the situation as follows:

The child left the facility on January 15th. I mean, they were shown the door, and brought to an open center for foreigners. The funding for the boarding school, because he was studying, was also cut off. And then his city card expired on January 15th. So, it was just madness, and the boy got an allowance of 50 PLN. And that was it. Deal with it. (INT_NGO_AC_1)

In this case, however, the principal, concerned about the boy's situation, intervened and arranged for him to have a place in the dormitory. Foreign children in alternative care institutions who took part in the study received support after reaching adulthood only from private individuals and non-governmental organisations. Without this support, their chances of a smooth transition into adulthood would have been minimal. Recently, the issue of Ukrainian children in alternative care who have now reached adulthood has entered public debate, as until recently they lacked assistance in transitioning to independence. A significant proportion of these young people ended up homeless after turning 18.

We know of one case where the process of becoming independent was successful. A girl from an institutional care facility for children received support from the County Center for Family Assistance (PCPR). She was provided with an intervention flat, where she could live for a set period while taking her first steps outside the institution. The housing support, together with additional help from private donors, also enabled her to improve her professional skills through relevant courses. To our knowledge, this is the only such case in the country.

5. RESPECT THEIR DECISIONS OR PROTECT THEM FROM POTENTIAL DANGERS?

- 01** *The assessment of an unaccompanied child's best interests should take into account their individual situation, character, and experiences.*
- 02** *A dilemma arises between respecting the child's decision and protecting them from harm, particularly when assisting children found in the border forest. Many do not want to apply for international protection in Poland, as they plan to continue their journey. This poses a challenge for the adults involved in their care and legal representation within alternative care.*
- 03** *Both choices carry risks: continuing the journey exposes children to serious dangers, including human trafficking. Conversely, seeking protection in Poland risks pushback to Belarus and associated violence, as well as lengthy and uncertain legalisation procedures.*

In the introduction to this report, we mention the best interests of the child as a guiding principle for all individuals and institutions working with children, regardless of their background. However, neither international children's rights standards nor Polish law provide an exclusive or categorical definition of what constitutes the best interests or well-being of a child. This is intentional, as assessing the best interests of a child does not mean creating a fixed list of elements ranked by importance. Instead, it should be an assessment rooted in the child's specific situation, taking into account their characteristics – from demographic factors to personality traits – and their context. It must consider various significant values, which differ from child to child, and recognise the dynamic relationships between these factors.

The ideal situation would be one where a single solution meets all of the child's varied needs – from full protection to complete autonomy and respect for their views, from providing the best conditions for their development to supporting family life. While there are cases where these different values can be balanced, many situations involve conflicts between them, with no clear resolution.

NGO workers providing assistance to children without humanitarian aid in the border forest face uncertainties when assessing the welfare of these young people. Many of these children do not wish to apply for international protection in Poland.

Their plan is to continue their journey, during which they may face very serious threats – including becoming victims of human trafficking. NGO workers primarily reflect on the issue of recognizing the right of the young person to make independent decisions. There is uncertainty over whether respecting a child's autonomy should take precedence over including them in the protection and care system. This is especially troubling when a contextual assessment indicates that the system itself might be a source of neglect or even harm in the child's case.

As the interviewees point out, since autumn 2021, children's decisions have centred on choosing between seeking protection in Poland or attempting to continue their journey. Applying for protection carries the risk of being pushed back to Belarus, along with the associated repression during and after the process on the Belarusian side. Opting to continue the journey means facing the dangers of travelling with often strangers and exposure to human trafficking and other forms of violence. As noted in earlier sections of this report, field workers and volunteers, during their routine intervention activities, also try to ensure that minors and women feel safe within the groups they are travelling with, ultimately leaving the decision about the next steps to the individuals themselves.



I remember that at the very beginning of the crisis, there was a terrible dilemma, especially for many of us, particularly those used to working in NGOs where certain issues were addressed in a systemic way. I remember that we were confused, thinking, 'What do you do when you meet a single 16- or 17-year-old, or even in a group, but without a guardian? What do you do, do you just leave them?' It was hard for us to wrap our heads around that. So at the very beginning, we tried to start up some kind of mechanism, usually informally, through contacts – maybe with organisations dealing with human trafficking, or with people in services responsible for human trafficking – so that, before we decided to call the Border Guard, there would already be some groundwork laid to support the person. But I mostly remember that the tendency was to absolutely not allow a minor to be left in the forest, especially alone. And very often, they would say, 'No, no, leave me alone, just give me some food, some clothes, I have a plan, I'll manage.' Whether they were 20 or 16 years old. At first, it was really difficult, but when we had a number of cases where, regardless of whether the person was a minor or not, they were being pushed back, at least for me, my thinking shifted. I began to treat them more like adults. It was more about the idea that I was there to do what they asked me to do, and that it didn't matter to me whether the person was 17, 16, or 20 years old, but if they were considering applying for protection, I would do everything I could to secure that process, even though I couldn't give them any guarantees that it would succeed. And if, after receiving the most complete information about the situation – especially in practice – they decided they preferred to take a different risk than the one associated with applying for protection, I didn't have the right to convince them to do otherwise. In a situation where I can't guarantee them any safety, just a lottery. So, in a way, you just get used to these things. And on the scale of what's the bigger or smaller threat or evil, there's some balance there. We just don't know." (INT_NGO_FOREST_3)

In 2024, there was an increase in the number of people crossing the border and seeking protection compared to previous years. For adults from certain countries, Border Guard officers opted not to request detention but instead directed them to open centres. As a result, those seeking

protection faced the dilemma of whether to disclose that they were under 18. According to activists supporting them, deciding on the best course of action was far from straightforward.



It's kind of like a 'damned if you do, damned if you don't' situation, right? Is it better for such a kid, or does it even make a difference, whether they are treated as an adult and sent to an open center in Biała Podlaska, or whether they are treated as a child and sent to the retirement home for priests [...], right? I mean, in a situation where it's so systematically [...] I also don't have a very clear answer as to whether, within the system, minors really gain anything from being placed in the procedure reserved for minors, aside from some terrible procedural complications. This is also something that the system needs to work on quite intensively. (INT_NGO_FOREST_3)

Further changes are expected in 2025. At the time of writing this report (mid-April 2025), a regulation significantly limiting the ability to apply for international protection at the Polish-Belarusian border has been in effect for only three weeks – for some groups, it even excludes this possibility altogether. Although unaccompanied children should still retain the right to protection under this regulation, in practice they are also at risk of increased pushbacks and violence. As we mention in Part 1 of the report, conducting age assessments of children in the border forests is extremely difficult. This means many of them – especially those without documents – will be treated as adults. This threat, which has become a real phenomenon at the time of writing, makes the question of how to define the best interests particularly relevant. Does revealing the presence of an unaccompanied child on Polish territory really align with their best interests – in a situation where the State not only fails to guarantee safety and care but is actively involved in the use of violence?

Even at later stages of their stay in Poland, the best interest of children is not obvious and is not the same for everyone. For those who want to stay and build their future in Poland, it is relatively easier to determine. From their perspective, the most important thing is obtaining documents confirming their legal stay, and, in the longer term, also concluding the international protection procedure, or obtaining another form of long-term legalization of stay (e.g., a residence permit for humanitarian reasons).



I think the basic thing is that for everyone, not just minors, but everyone asks, 'When will I get legal residence here in Poland and be able to get documents in the form of a residence permit?' That's the thing that matters most to them. I think that's it. It makes them feel safer, more confident. (INT_LG_4)



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That means, first and foremost, these kids need a green card¹⁸³ from the beginning. [...] A SIM card and a green card." (INT_CG_2)

Legalization of stay is not solely a value in itself. For an unaccompanied child, it is the foundation for broader access to rights and social services in Poland and the entire European Union.



You need to have papers to start [or] continue studies, and then work, learn the language, work. But without that, if the old procedure isn't finished, you're never really mentally prepared for it, because you're always thinking about the documents, always someone asking you to be at an interview for five hours, and so on. (INT_CL_1)

However, not all unaccompanied children want to stay in Poland – as we detail in Part 3. In such cases, the adults involved in the child's care and legal representation face the dilemma of whether the child's best interests lie in fully respecting their wishes – and, consequently, turning a blind eye and not interfering even with plans that may expose them to danger. Or perhaps protection and inclusion in the Polish system should take precedence – even

if that means limiting their freedom and enforcing solutions the adults consider to be better.

One of the legal guardians criticises the approach where some lawyers try to keep the wards in the procedure at all costs. For her, the child's will is what matters most.



Because sometimes the lawyer has a completely different approach than the foreigner, the minor, who doesn't really want to stay here. And the lawyer says, 'No, no, no, I have you in my care, please stay here, you have no rights, nothing,' and so on. So here, well, of course, knowledge, really knowledge of the law, because without it, sometimes the opposite effect happens, and things end up happening the opposite of how they should. (INT_LG_1)

Respect for children's decisions does not, however, mean turning a blind eye to the risks that may await them on their further journey. The interviewee understands her responsibility as providing honest information to the young person about potential risks – not attempting to stop them at all costs. She also adds that in a place other than Poland, the young person might be better off, for example, due to the social networks or opportunities available there.



They – well, if they have family there, have support, have a plan, if they had one, that's why they didn't see themselves here. Certainly, these minors didn't see themselves here. Because, for example, the whole family was killed, and the only family they had left was somewhere far away, let's say in Germany or France. (INT_LG_1)

Two other interviewees – legal guardians – emphasize that the potential further journey could be dangerously risky – primarily exposing individuals to the risk of becoming victims of human trafficking. They perceive securing the young person's situation in Poland as the primary value, utilizing legal pathways for residency regulation or family reunification.

¹⁸³ The term is used by migrants to refer to identity documents that allow legal stay in a given country, even temporarily, for the duration of the procedure.

And this should be the concern of the Office for Foreigners, to ensure that refugee children do not run away or disappear (...). We don't know if they are running away or if someone is simply taking them, and it's unclear whether they might end up in the hands of criminals. (INT_LG_4)

One of them points out that the children's decisions may not necessarily be autonomous – they may already be victims of human trafficking.

It's worth noting that their statements of intent shouldn't always be taken completely at face value, as some of them might have been involved in human trafficking or something like that. (INT_LG_2)

What emerges consistently, regardless of the perspective taken, is – bordering on determinism in some statements – the belief that in many cases, escapes are inevitable. If a child has a clear plan, the escape will happen one way or another. A particularly revealing comment comes from one of the guardians, who recalls how, during his first case, he was struck by the scale of young people disappearing from institutional alternative care and the often unavoidable nature of it:

I was really arrogant when I became a legal guardian of the first four [boys], because I called the Office for Foreigners and said that I was their guardian and that I wanted to arrange all the activities related to filing the application, the interviews, and that I would like it to happen quickly. And I got the response, "But you know that they all run away, right?" And I said, "But these ones won't run away. These ones won't run away." Four boys. And the next day, the first one ran away. That's when I realised that I was overestimating my role and believing too much in what they were saying. Imagine, the first one ran away on the first day. (INT_LG_4)

The responsibility resting on adults to determine the best interests of the child must consider not only the current legal or administrative situation as seen from the perspective of a given institution, but above all the full, complex migratory experience the child carries within them. This experience – often invisible or misunderstood by institutions – shapes the decisions made by unaccompanied minors. Their choices do not stem from momentary impulses or thoughtless reactions, but are a response to multifaceted, often very difficult or even traumatic experiences.

In the case of children crossing the Polish-Belarusian border, these experiences may include, for example: surviving a pushback and the risk of further pushbacks, encountering restricted access to Polish territory, harm caused by violent behavior from border authorities on both sides of the border, being confronted with incomprehensible legal procedures while lacking a single "guardian" who would act as a guide for the child, and the absence of information tailored to children's needs – especially when it comes to children from non-European cultural backgrounds. Furthermore, unaccompanied children may experience pressure or even threats from individuals who facilitated the child's migration – helped them cross the border irregularly, paid for the journey, or intend to exploit the child in some way.

Therefore, any attempt to assess their decision to continue the journey must be placed in a broader context: it should take into account the hardships they have endured and the lack of stable, safe points of reference. Only then can a system be created that not only protects children but also truly understands them – providing them with a chance of real safety and the future they deserve.

LIST OF DEFINITIONS

ANNEX

LIST OF DEFINITIONS

A. INSTITUTIONS AND ORGANISATIONS:

| | |
|---------------|--|
| ECtHR | The European Court of Human Rights |
| HFHR | Helsinki Foundation for Human Rights |
| CMV | Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families |
| CRC | Committee on the Rights of the Child |
| NGO | non-governmental organisation |
| UN | United Nations |
| CJEU | Court of Justice of the European Union |
| EU | European Union |
| UNHCR | United Nations High Commissioner for Refugees |
| UNICEF | United Nations International Children's Emergency Fund |
| WAM | We Are Monitoring Association |

B. LEGAL ACTS - POLISH LAW:

| | |
|---|--|
| CPC | Act of 17 November 1964 – Code of Civil Procedure (consolidated text: Journal of Laws of 2024, item 1568, as amended) |
| FGC | Act of 25 February 1964 – Family and Guardianship Code (consolidated text: Journal of Laws of 2023, item 2809, as amended) |
| Constitution of Poland | Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. (t.j. Dz.U. z 1997 r. nr 78 poz. 483 z późn. zm.) |
| Act on Granting Protection to Foreigners | The Constitution of the Republic of Poland of 2 April 1997 (consolidated text: Journal of Laws of 1997, No. 78, item 483, as amended). |
| Act on Foreigners | Act of 12 December 2013 on Foreigners (consolidated text: Journal of Laws of 2024, item 769, as amended) |
| Act on Family Support | Act of 9 June 2011 on family support and foster care (consolidated text: Journal of Laws of 2025, item 49) |
| Act on Education Law | Act of 14 December 2016 on Education Law (consolidated text: Journal of Laws of 2024, item 737, as amended) |

C. LEGAL ACTS - EUROPEAN AND INTERNATIONAL LAW:

| | |
|--|---|
| Qualification Directive | Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) |
| Procedures Directive | 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) |
| Reception Conditions Directive | Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) |
| ECHR | Convention for the Protection of Human Rights and Fundamental Freedoms, drawn up in Rome on 4 November 1950 (i.e. Journal of Laws of 1993, No. 61, item 284, as amended) |
| Geneva Convention | Convention relating to the Status of Refugees, drawn up in Geneva on 28 July 1951 (i.e. Journal of Laws of 1991, No. 119, item 515) |
| Convention on the Rights of the Child | Convention on the Rights of the Child, adopted by the General Assembly of the United Nations on 20 November 1989 (i.e. Journal of Laws of 1991, No. 120, item 526) |
| CFR | Charter of Fundamental Rights of the European Union, signed in Nice on 7 December 2000 (i.e. OJ C 326 of 26.10.2012) |
| Pact on Migration and Asylum | Pact on Migration and Asylum a set of new legal acts adopted by the Council of the European Union on 14 May 2024 in the field of migration and asylum |
| The Dublin III Regulation | Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 on establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) |

CITATION STYLE FOR RESEARCH MATERIALS:

| | | | |
|---------------|--------------------------------------|-------------------|---|
| ED_WAM | existing data from We Are Monitoring | NGO_FOREST | employee or volunteer of a non-governmental organisation providing humanitarian aid in the forest |
| INT | interview | | |
| CL | care leaver | NGO_AC | employee or volunteer of a non-governmental organisation providing assistance in alternative care |
| | | CG | caregiver |
| | | LG | legal guardian |

ANNEX

ANNEX 1. AIM OF THE STUDY AND RESEARCH QUESTIONS

The aim of the study was to explore and provide a comprehensive description of the situation of unaccompanied children crossing the Polish-Belarusian border in 2024. The study focused on presenting data on the three main stages of the journey of children who arrived in Poland: 1) crossing the Polish-Belarusian border; 2) the first days of their stay in Poland – between the Border Guard post and the alternative care facility; 3) stay in alternative care and possible further journey.

In the study, we sought to answer the following research questions:

1. When crossing the Belarusian-Polish border irregularly:

a. How many unaccompanied children crossed the Polish-Belarusian border in 2024? What are the demographic data for this group: gender, age, countries of origin?

b. How do unaccompanied children cross the Polish-Belarusian border?

c. Do unaccompanied children experience violence at the Polish-Belarusian border, including pushbacks? What forms of violence? What are the risk factors?

d. What legal provisions apply to people subjected to pushbacks at the border, in particular unaccompanied children?

2. From Border Guard post to alternative care facility:

a. How often are age assessments carried out on unaccompanied children? What methods are used? What problems are associated with age assessment? What standards are recommended for determining the age of an individual?

b. What does the process of finding alternative care by the Border Guard look like? What are the challenges? How can they be overcome?

c. What does the process of searching for candidates for legal guardians (legal guardians) for unaccompanied children look like? Who are these guardians? What are the challenges?

d. How do legal guardians define their role? How is the role of legal guardians defined by the law? What are the standards recommended by the law and EU institutions?

e. What is the legal framework for the initial period of an unaccompanied child's stay in Poland? What role does the law assign to specific institutional actors (Border Guard, institutional care facility, family court, Office for Foreigners)? How do these institutions interact and cooperate in practice?

3. In an alternative care facility or elsewhere:

a. What type of alternative care facilities do unaccompanied children in Poland end up in?

b. How are these facilities prepared (in terms of skills, premises, language) to take in unaccompanied children?

c. Is access to education provided for unaccompanied children in such facilities, and if so, how? What are the challenges?

d. Is psychological assistance provided to unaccompanied children in such facilities, and if so, how? What are the challenges? What relationships do unaccompanied children form with their peers, especially within alternative care? What are the potential benefits and challenges of these relationships? What are their relationships with Polish children like?

e. What factors may influence an unaccompanied child's decision to stay in Poland or to leave?

stay in Poland or to leave?

We sought answers to these questions in quantitative and qualitative data, with particular emphasis on the latter. The qualitative methods we used mainly included in-depth interviews with people who have contact with unaccompanied children in Poland, including staff and volunteers from NGOs who support them, their guardians or legal representatives, and foster carers. We also spoke with adults who migrated to Poland without their parents or guardians when they were children. We also analysed notes taken by employees and volunteers of humanitarian organisations immediately after interventions in the border area. We obtained quantitative data by submitting requests for access to public information to public institutions and by analysing the materials collected by WAM on humanitarian aid at the border. A separate part of the study was a legal analysis.

A detailed description of the methods we used is provided in Annex 2. Research methodology. Annex 3 addresses issues related to research ethics, while Annex 4 presents our research limitations. Annex 5 is a list of legal acts.

ANNEX 2. RESEARCH METHODOLOGY

The research was mostly exploratory, which is why we stuck to the research questions and mainly used qualitative methods. Statistical data was used to describe the scale of the issue and identify basic demographic trends. The analysis involved not only interpreting the data, but also critically evaluating the relationships between them, especially inconsistencies and gaps.

It was also an applied research. Our starting point was that the conclusions drawn from it would be used to improve the design and planning of activities aimed at unaccompanied foreign children and to address their needs more effectively. This assumption influenced the research questions and objectives.

The study, conducted by three Polish non-governmental organisations working with refugees and migrants on a daily basis: the Association for Legal Intervention, the Polish Migration Forum Foundation and The We Are Monitoring Association, was financed and carried out in cooperation with the Polish branch of the international organisation Save the Children.

The study was conducted between December 1, 2024 and March 3, 2025. It consisted of several stages, based primarily on qualitative methods: semi-structured interviews, legal analysis, and analysis of existing data collected by The We Are Monitoring Association. The latter was also used in the quantitative part of the study. In addition, statistical and demographic data on children crossing the Polish-Belarusian border in 2024 were collected through requests for access to public information.

A. INTERVIEWS WITH KEY INFORMANTS

Semi-structured interviews with social actors relevant to the topic were the main research tool. During these interviews, we addressed issues related to the research questions. Most of the interviews were recorded and transcribed verbatim. In the case of three interviews, participants did not consent to being recorded. Notetaking was used during these interviews, and the notes were subsequently digitised.

In total, 23 interviews were conducted with the following groups of respondents:

- former foreign wards of institutional care (care leavers) [3 interviews];
- employees of alternative care institutions and district family support centres [6 interviews];
- individuals representing unaccompanied minors in legal proceedings, primarily guardians in proceedings for international protection [5 interviews];
- employees and volunteers of non-governmental organisations supporting migrants at the Polish-Belarusian border [6 interviews] and in alternative care institutions [3 interviews].

A separate interview scenario was prepared for each group of interviewees, tailored to their experience with unaccompanied children crossing the Polish-Belarusian border.

Interviews with Border Guard officials were also planned, but did not take place. Of the three official letters sent to the Border Guard posts requesting permission to conduct interviews, two were not answered (the Border Guard Headquarters and the Podlasie Border Guard Post), and in one case, the commander of the Bieszczady Border Guard Post refused to allow an officer to participate in the study. Efforts made using the snowball method and the network of contacts also proved unsuccessful.

Due to the objectives and context of the study, the sample selection strategy for the interviews combined purposive sampling (used in all groups of interviewees except those who had experience of being in alternative care) and snowball sampling (primarily people who had experience of being in alternative care). The second strategy involved, among other things, using the networks of the first participants in the study (caregivers and staff at alternative care facilities, employees and volunteers of NGOs), as well as the participants of the research team, to invite adults who had been in alternative care to participate in the study.

Due to the specific nature of non-governmental organisations and grassroots initiatives working with migrants in Poland, as well as the experiences of the organisations involved in the study, some of the interviewees had already been known to the interviewers. This was particularly true for people recruited from among employees and volunteers of non-governmental organisations.

Below we describe the characteristics of each group of interviewees in more detail:

• ***Former foreign wards of institutional care***

Adults who crossed the Polish-Belarusian border as minors and were subsequently placed in alternative care in Poland were invited to participate in the study.

The recruitment process was carried out with the support of alternative care workers, non-governmental organisations and activists. The interviews focused on the interviewees' broadly understood experiences of their stay in alternative care, the support they received, access to education and their peer relationships.

- ***Employees of alternative care institutions (including carers) and employees of district family support centres***

The interviews with employees of alternative care institutions focused primarily on the facilities' preparedness to take in and care for foreign children, including accommodation conditions, language access, educational and psychological skills, as well as the children's adaptation to life in a new environment, their peer relationships and the issue of leaving alternative care. Interviews were also conducted with employees of district family support centres to better understand the relationships and dependencies between them, alternative care institutions and the Border Guard, their role and impact on the situation of foreign children in alternative care. Four interviewees work in the Podlaskie Voivodeship, and the remaining two work in the Warmian-Masurian and Łódź Voivodeships.

- ***Individuals representing unaccompanied minors in legal proceedings against them, mainly guardians ad litem in international protection proceedings***

Individuals appointed to represent unaccompanied children in international protection proceedings conducted by the Office for Foreigners and in return procedures. The group included individuals with a legal background, some of whom were practising lawyers or legal advisors. Due to the difficulties in reaching and persuading court-appointed guardians from the Regional Bar Council or Warsaw Bar Association to participate in the study, all interviewees from this group were people involved in grassroots initiatives and non-governmental organisations supporting people crossing the Polish-Belarusian border. The interviews primarily focused on how they perceive their role as legal guardians, as well as on procedural issues (proceedings for the appointment of a guardian, international protection proceedings) and relational issues (contact with the children, openness to their questions).

- ***Employees and volunteers of non-governmental organisations supporting migrants at the Polish-Belarusian border and in alternative care institutions***

We also interviewed volunteers and employees of non-governmental organisations supporting people

crossing the Polish-Belarusian border, including unaccompanied minors. They provide support either immediately after migrants cross the border or in alternative care institutions. For some of them, the interviews focused on their activities in the forest, pushbacks (if relevant) and being at a Border Guard post. For others, the interviews focused on the migrants' arrival and stay at an alternative care facility and the factors that motivated them either to continue their journey or to stay in Poland.

B. STATISTICAL AND DEMOGRAPHIC DATA

As part of our research, we submitted requests for access to public information to the Office for Foreigners, a few Border Guard posts (Border Guard Headquarters, Podlasie Border Guard Post, Nadbużański Border Guard Post, Nadwiślański Border Guard Post) and to district courts with jurisdiction over areas neighbouring the Polish-Belarusian border (9), as well as to the District Court in Grójec, which handles requests concerning individuals placed in the detention centre in Lesznówola.

In all cases, the questions concerned general issues, such as the number of unaccompanied minors with whom the institutions had come into contact in the course of their operations and proceedings, broken down by age, gender and country of origin.

The request to the Office for Foreigners included detailed questions about the international protection procedure for unaccompanied foreign minors. The questions also concerned family reunification and the responsibility of the Social Assistance Department of the Office for Foreigners for the stay of minors in alternative care institutions.

In our requests to the Border Guard Headquarters and the Nadwiślański Border Guard post, apart from questions about proceedings involving unaccompanied children (applications for international protection, return proceedings), we also included questions about the situation of unaccompanied teenagers staying in detention centres for foreigners. In turn, our requests to the Podlasie and Nadbużański Border Guard posts also included questions about decisions to leave the territory of Poland and return to the border, which were issued to individuals under the age of 18.

Requests to district courts concerned proceedings for the appointment of a legal guardian (legal representative) for unaccompanied foreign children in Poland and their placement in alternative care.

C. ANALYSIS OF EXISTING DATA COLLECTED BY THE WE ARE MONITORING ASSOCIATION IN 2024

The study was also based on notes taken by NGO staff members and volunteers immediately after their interventions in the border area. These notes are structured and kept (as much as possible) in a consistent manner by all employees, volunteers and all organisations. They are a source of qualitative data (on the conditions during the migrants' journey, their experiences en route, injuries and medical condition) and quantitative data (on the demographics of migrants). We also used quantitative data collected and processed ongoingly based on migrants' assistance requests at the border (information provided by migrants who contacted us is later verified based on the above-mentioned field notes prepared after the intervention). During the project, the data was properly aggregated and processed with regard to the situation of minors and unaccompanied minors.

The project team also analysed individual in-depth interviews with migrants, which had been conducted earlier by the WAM team in 2024. The interviews have been conducted regularly for the past two years. The starting point was a questionnaire provided by The Border Violence Monitoring Network, which was expanded over time to include questions necessary for litigation in cooperation with the Helsinki Foundation for Human Rights. The questions concern, among other things: the situation of migrants on the Belarusian side, before crossing the border; crossing the border; staying in the forest on the Polish side of the border; encounters with Polish authorities; and violence and pushbacks experienced at the border. As a rule, interviews were conducted with adults, but in 2024, several interviews with individuals under the age of 18 were also recorded.

D. LEGAL ANALYSIS

National laws regulating the system of legal representation and care for unaccompanied foreign minors were subject to legal analysis. National provisions were compared with EU standards (e.g. recommendations of the European Asylum Agency) and Council of Europe standards (in particular the case law of the European Court of Human Rights) as well as international standards (in particular the case law and recommendations of the CRC, as well as UNHCR and UNICEF guidelines). The procedure for determining the age of unaccompanied foreign minors was also analysed in detail, based on the

above regulations and standards. The main principles concerning the representation and age assessment of unaccompanied minors included in the Pact on Migration and Asylum were also taken into account.

The legality of pushbacks at the Polish-Belarusian border was analyzed under international refugee law, including the Geneva Convention, as well as European standards, particularly EU law and the ECHR. Particular emphasis was placed on the standards of treatment of unaccompanied foreign minors, as set out in the Convention on the Rights of the Child.

ANNEX 3. RESEARCH ETHICS – WITH PARTICULAR EMPHASIS ON IN-DEPTH INTERVIEWS

The research concept and the tools used were approved by the Save The Children ethical review team (January 7, 2025).

A. INFORMED CONSENT

Some of our interviewees felt a strong need to remain anonymous. This was particularly true for people who had been in alternative care, due to their experiences as refugees and the legal proceedings they were facing. Therefore, we decided to obtain verbal consent in the form of an audio recording, without collecting any personal data from the interviewees during the consent process.

The consent procedure followed the same basic steps:

1. Obtaining initial interest in participating in the study based on a general description.
2. Sending detailed information about the study, including contact details of the people responsible for ethical conduct, to be reviewed prior to the interview and to prepare additional questions.
3. Starting the interview by reminding the interviewee of the basic information about the study and answering any questions or concerns they may have.
4. Getting the interviewee's consent to participate in the study.

Consent to record the interview was optional. In three cases, individuals who agreed to participate in the study did not consent to being recorded. These interviews were documented in the form of notes.

B. ANONYMISATION OF INTERVIEWS

Transcriptions of interviews were made within a maximum of one month after the interview was conducted. The transcription process also included anonymisation of data that could lead to the identification of the interviewee or third parties mentioned during the conversation.

The biggest challenge was anonymising interviews with young people who had left alternative care. Due to their small number in Poland and the specificity of their stories, it was impossible to completely eliminate the risk of some people reading the report, who are part of a small community of people and organisations working with migrants in Poland, recognising our interviewees based on quotes, despite the high standard of anonymisation. Increased anonymisation could, in turn, lead to some of the most interesting details from the research perspective being removed from the study. For this reason, interviewees who had experienced alternative care were informed of the risk of being identified by a specific, small group of readers before deciding to participate in the study.

C. SAFEGUARDING PROCEDURES

Members of the research team who conducted the interviews took part in a safeguarding training. In addition, the information about the study provided to interviewees included information about the risks and contact details of people to whom concerns and complaints about the interviewer's behaviour could be addressed.

ANNEX 4. RESEARCH LIMITATIONS

Our research approach was participatory. This means that from the very beginning, it was clear to the authors of the report that the most important value we wanted to highlight was the best interests of unaccompanied children arriving in Poland, as well as meeting their rights and needs. This assumption undoubtedly influenced the conclusions and recommendations, as well as the structure of the research and the report itself.

The organisations implementing the project have been involved in activities aimed at supporting migrants for many years. This includes those who cross the Polish-Belarusian border and unaccompanied children. The researchers did not start from scratch, but already had, on the one hand, an understanding of the subject and, on the other, certain preconceptions and an established set of values in which the protection of the rights of all migrants plays an important role.

Our study focuses primarily on unaccompanied foreign

children in Poland who crossed the Polish-Belarusian border and wished to apply for international protection. Therefore, it does not cover the situation of all children and teenagers arriving in Poland in the same legal situation, although some of our findings can be applied in a broader context. For example, in interviews with alternative care workers, we primarily focused on institutions located near the Polish-Belarusian border. Only two of our interviewees worked in care institutions located in other parts of Poland. Therefore, some of the conclusions in our report may not apply, for example, to institutions located in Poland's largest cities.

A similar limitation applies to the time frame. This is particularly important given that, at the time of finalising this report (mid-April 2025), a law suspending the right to apply for international protection and a corresponding Regulation of the Council of Ministers are already in force. Although we know the content of both legal acts, it's too early to say anything about how they'll be applied in practice. This limitation applies especially to the parts of the report that deal with the situation on the Polish-Belarusian border, until the formal procedures start.

Due to the predominantly qualitative nature of our research, it does not present an exhaustive list of all possible perspectives on the subject. For ethical reasons (uncertainty of the situation, risk of victimisation, problems with obtaining consent from legal guardians), we have decided not to conduct additional interviews with children under the age of 18 who are still in alternative care. This does not apply to interviews that were conducted earlier and were part of WAM's existing data, in accordance with the ethical and legal standards adopted by the organisation. In the case of another important group, Border Guard officers, it was impossible to take their perspective into account due to their refusal to participate in the study, despite the team's efforts. Furthermore, we did not interview the management or staff of the retirement home for priests described in section 2, chapter 5. Reaching them proved challenging, partly because the facility is not formally part of the alternative care system but is run by a regional branch of Caritas.

ANNEX 5. LIST OF LEGAL ACTS OF THE PACT ON MIGRATION AND ASYLUM

- 1.** Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013;
- 2.** Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU;
- 3.** Regulation (EU) 2024/1349 of the European Parliament and of the Council of 14 May 2024 establishing a return border procedure, and amending Regulation (EU) 2021/1148;
- 4.** Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14 May 2024 addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147;
- 5.** Regulation (EU) 2024/1358 of the European Parliament and of the Council of 14 May 2024 on the establishment of 'Eurodac' for the comparison of biometric data in order to effectively apply Regulations (EU) 2024/1351 and (EU) 2024/1350 of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify illegally staying third-country nationals and stateless persons and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, amending Regulations (EU) 2018/1240 and (EU) 2019/818 of the European Parliament and of the Council and repealing Regulation (EU) No 603/2013 of the European Parliament and of the Council;
- 6.** Regulation (EU) 2024/1356 of the European Parliament and of the Council of 14 May 2024 introducing the screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817;
- 7.** Regulation (EU) 2024/1347 of the European Parliament and of the Council of 14 May 2024 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council;
- 8.** Directive (EU) 2024/1346 of the European Parliament and of the Council of 14 May 2024 laying down standards for the reception of applicants for international protection;
- 9.** Regulation (EU) 2024/1350 of the European Parliament and of the Council of 14 May 2024 establishing a Union Resettlement and Humanitarian Admission Framework, and amending Regulation (EU) 2021/1147;
- 10.** Regulation (EU) 2024/1352 of the European Parliament and of the Council of 14 May 2024 amending Regulations (EU) 2019/816 and (EU) 2019/818 for the purpose of introducing the screening of third-country nationals at the external borders.



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