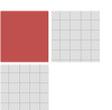




The organisation of asylum and migration policies in Poland

Prepared by: Polish National Contact Point to the European Migration Network

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Executive Summary

This report provides an overview of Polish migratory system which belongs, in large part, to state department of the interior. The Minister of Interior and Administration is responsible for the general coordination of activities of the State with regard to migration and asylum policy. Other major actors include the Head of the Office for Foreigners and the Border Guards (both supervised by the Minister of Interior and Administration), the Ministry of Labour and Social Policy, the Ministry of Foreign Affairs, the interministerial Committee for Migration – advisory organ to the Prime Minister, the Refugee Board (II instance in refugee proceedings), local authorities (voivods) and administrative courts. Non-governmental organisations and research institutes may, to certain extent, have an impact on national legal arrangements concerning migration and asylum, however their role is rather limited – mainly to advisory activities.

The current Polish migratory/asylum legal framework has been in large part influenced by the *acquis communautaire* of the European Communities¹ and the *acquis* Schengen². In addition, Poland has strived to develop its individual approach to migration in areas not covered by the Community law (i.e. especially economic migration of non-EEA citizens and policy towards Polish Diaspora) – these attempts have been continued and recently intensified.

In general, the entry (border crossing) phase of migration to Poland is controlled by the Border Guards, both in asylum and migration contexts. In order to be admitted on Polish territory, third-country nationals need to be in possession of a valid visa, issued, as a general principle, by Polish consuls abroad. Asylum applications are examined by the Head of the Office for Foreigners – as the I instance and the Refugee Board as the II instance. Applications for legal residence of foreigners in Poland, as well as conditions for issuing a work permit (when necessary) to a foreigner, are examined by the local authorities (voivods). As for the returns, several institutions might be involved, depending on the type of return (voluntary – Border Guards, Head of the Office for Foreigners, IOM –International Organization for Migration – Warsaw Bureau; obligatory – Border Guards, Police; expulsion decisions– primarily voivod and the Head of the Office for Foreigners).

The system adopted in Poland is interrelated, both in the legislative and institutional spheres, with other policies, above all those related to: labour market policy, integration policy, education policy, demographic policy as well as internal security and public order. The interministerial Committee for Migration plays an important role in coordination of activities undertaken by ministers in the field of migration policy.

¹ Poland joined the European Union on 1 May 2004

² Polish accession to the Schengen zone was finalised on 30 March 2008, when the border controls at the air borders were lifted (the controls at land borders and maritime borders were lifted already on 21 December 2007)

Global migration processes appeared in Poland for the first time in 1989. As a result of liberalization of the rules related to foreigners' entry and residence, in a short period of time Poland became both a transit country and a country of destination. The new situation brought about the need for developing legislative, systemic and organisational solutions from the very beginning. The solutions adopted in the initial period were influenced by the experience of the the countries of destination or international organisations (IOM, UNHCR, and Council of Europe). The launch of the accession negotiations in 1997 started the process of introducing in the subsequent years a number of legislative changes implementing the EC acquis in the area of migration as well as the organizational and institutional changes resulting thereof. The present system is a consequence of the process initiated at that time.

1. INTRODUCTION: PURPOSE AND METHODOLOGY FOLLOWED

The report was prepared by Polish National Contact Point (NCP) to the European Migration Network (EMN), in the framework of activities resulting from membership to the EMN. Currently, Polish NCP is composed of representatives of the Ministry of Interior and Administration (National Coordinator), the Office for Foreigners, the Ministry of Labour and Social Policy, the Border Guards and the Central Statistical Office. The main contribution to the report comes from the Migration Policy Department of the Ministry of Interior and Administration, statutorily responsible for spreading the knowledge on the issues concerning Polish migration policy. Section 4.1.5 'Returns' was elaborated in cooperation with the Bureau for Strategic Analysis of the Border Guards Headquarters. The report is based exclusively on desk research method. The main sources of information were quality databases (reports and statistics) of public administration bodies described in the report, as well as most important legislative acts covering the issues of migration and asylum in Poland.

The main purpose of the report is to present the general organisation of asylum and migration system and law in Poland. The information provided includes the overview of the institutional context, basic laws and regulations with regard to immigrants and asylum seekers in Poland; the development of Polish migration system; the insight into Polish migration and asylum procedures and interactions between relevant institutions and, last but not least, analysis of the system, general conclusions and recommendations for the future. As such, the report provides Polish input to the EMN Synthesis Report on the subject, which brings together the main findings from all National Reports and places them within a European context.

The idea behind both the National Report and the Synthesis Report is to keep them as up to date as possible, therefore regular updates of both documents are foreseen in order to

ensure the accuracy of the data. Information provided in Polish National Report refers to Polish legal framework as of February 2009 and includes the wording of the Act of 13 June on Foreigners as amended by the Act of 24 October 2008³, which entered into force on 1 January 2009, and of the Act on promotion of employment and labour market institutions as amended by the Act of 19 December 2008, which entered into force on 1 February 2009⁴.

The information provided in the framework of this study focuses primarily on policy arrangements relevant for non-EU nationals⁵ - EU nationals and their family members, as well as other parties benefiting from the EU fundamental right to the free movement of workers are, in principle, excluded from the analysis.

National Contact Points to the European Migration Network, the European Commission, the policy-makers both at national and European levels, national executive immigration bodies and the wider public – NGOs, research institutions and all other stakeholders and interested parties – provide for the target audience for this study. The report offers readily accessible, structured, ‘one-stop-shop’ data to anyone seeking information on ‘who does what’ in Polish migration and asylum system and which rules apply. In the same time, however, for the clarity sake and in result of accepted limitations concerning the volume of the report, certain legal and/or procedural nuances were left out.

As a general comment to the report: in the process of joining the European Union (1 May 2004), Poland adjusted its legal system in the field of migration and asylum in line with the relevant wording of the EU *acquis communautaire* (and further, of the *acquis Schengen*). Institutional framework was also adapted to new challenges resulting from Polish EU membership. Nevertheless, in the areas not covered by the general policy of the EU, Poland is still in the process of development of its particular approach to migration – especially with regard to issues of economic immigration and policy on Polish Diaspora. At this stage, one might speak about migration and asylum ‘regulations’ in Poland, rather than the policy as such. Currently, intensified discussions are taking place at the inter-ministerial level, accompanied by the efforts in progress leading to elaboration of core fundamentals of migration policy of the state in these areas. Identification of all entities which have, or might have an impact on the shape of Polish migration policy in the future, together with the vital analysis of their competences and scopes of activities and the character of mutual relations and links, constitutes exactly the basis for all the aforementioned works. In the meantime, the current state of affairs is presented below.

2. OVERVIEW OF ORGANISATION OF POLITICAL, LEGISLATIVE AND

³ Act of 24 October 2008 amending the Act on Foreigners and certain other acts, Journal of Laws 2008, No 216, item 1367;

⁴ Act of 19 December 2008 amending the Act on promotion of employment and labour market institutions and certain other acts, Journal of Laws 2009, No 6, Item 33;

⁵ According to art.2 of the Act of 13 June 2003 on Foreigners, any person who does not have Polish citizenship shall be regarded as a foreigner, however in case of citizens covered by the Community freedom of movement of people principle, other regulations of their residence on the territory of Poland apply.

INSTITUTIONAL FRAMEWORK IN POLAND

This section provides a general and very brief overview of the political, legislative and institutional framework in Poland in order to create the context in which to place the detailed procedural descriptions provided in the following sections.

2.1. Polish migration policy - Political framework:

Sejm and Senat (lower and upper chambers of the Parliament) constitute the legislative power in Poland, also in the case of adopting acts concerning the migration issues. The members of Parliament (elected to Sejm), Senators, the President of the Republic of Poland and the Council of Ministers as well as the group of at least 100,000 citizens with right to vote in elections to Sejm are eligible to motion the legislative initiative.

In the area related to migrations the President of the Republic of Poland grants the Polish citizenship and expresses his consent to renounce thereof.

In the context of executive power, the migration policies are implemented both at the central as well as regional level and belong to the competence of the Council of Minister and appropriate Ministries (Ministers issue i.a. the executive acts to legislation regulating the migration issues), specialized institutions and services. Migration policies constitute an important area of work of the local and self-governance administration⁶. The distribution of competence is multilevel and constitutes the basis for a coherent national migration system.

2.2 Polish migration policy - Institutional Framework (key players):

The following actors constitute the ‘core’ of the institutional framework with regard to migration and asylum in Poland: the Ministry of Interior and Administration with two authorities supervised by the Minister of Interior and Administration: the Head of the Office for Foreigners and the Border Guards; the Ministry of Labour and Social Policy; the National Labour Inspectorate; the Ministry of Foreign Affairs supervising Polish diplomatic and consular posts; the Refugee Board; 16 voivods’ (local administration) office and administrative courts (16 Voivodship Administrative Courts and the Supreme Administrative Court). Important role is also played by the interministerial Committee for Migration, set up as the advisory body to the Prime Minister.

Ministry of Interior and Administration (www.mswia.gov.pl): Minister of Interior and

⁶ In the scope of e.g. shaping regional policies, creating conditions for repatriation and re-emigration, legalisation of the residence and employment of foreigners as well as integration of foreigners;

Administration managing the ‘interior’ section is the minister competent i.a. with respect to⁷:

- protection of state borders,
- supervision of the border traffic and foreigners,
- coordination of all activities related to the state migration policy
- issues of citizenship and issues of repatriation⁸.

As a consequence the Minister of Interior and Administration supervises the activities of:

- Border Guards (described below);
- Head of the Office for Foreigners (described below);
- Police and the National Centre for Criminal Information⁹.

The issues related to the coordination of activities within the state migration policy belonging to the competence of the Minister of Interior and Administration (including development and presentation of the guidelines of the state migration policy to the Council of Ministers; gathering information and analysing the migration situation in the country; initiating, analysing and issuing opinions on the normative acts as well as other documents related to the migration policy of the state; coordination of the domestic and international cooperation in the area of migration policy etc.) are carried out by the MIA’s Migration Policy Department.

Moreover, the Ministry of Interior and Administration is responsible for implementing the policy for counteracting trafficking in human beings. The Undersecretary of State in the Ministry of Interior and Administration is the Chair of the interministerial Committee for Combating and Preventing Trafficking in Human Beings composed of the representatives of the state administration institutions as well as the invited non-governmental organizations. The Committee is an advisory and consultative body to the Prime Minister. The Committee assesses the implementation of the documents constituting the schedules of actions undertaken by the designated institutions. Monitoring of the works related to the implementation of tasks defined in these documents and their development for the years to come is within the competence of the Unit for Trafficking in Human Beings of the MIA’s

⁷ According to art. Art. 29. para 1. point 2 and para 4 of the act of 4 September 1997 on the governmental administration division (Journal of Laws 1999, No 82, item 928, with amendments);

⁸ According to Polish legal framework the term “repatriation” means return on special conditions of the persons of Polish origin who remained in the East, in particular in the Asian part of the former Soviet Union and who due to deportations, exile and other forms of national or political persecutions were never allowed to settle down in Poland;

⁹ The Police controls e.g. the legality of the foreigner’s residence on the territory of the Republic of Poland, submit the motions to issue the decision on expulsion, on withdrawal of the decision on settlement, on long-term residence of the EC resident, issue decisions imposing on the foreigner the obligation to leave the territory of the Republic of Poland (see section ‘Return’)

Migration Policy Department. The issues related to Polish naturalisation policy as well as policy towards repatriation of foreigners of Polish origin belong to the MIA's Department for Citizenship and Repatriation.

The organs supervised by the Minister of Interior and Administration:

a) **Office for Foreigners – UdSC** (www.udsc.gov.pl): The Head of the Office for Foreigners (hereinafter referred to as the Head of the Office) is the central governmental authority competent with regard to, *inter alia*:

- Admission, transit, residence and departure of foreigners from the territory of Poland. The Head of the Office coordinates, as a higher instance organ, the activities related to residence of foreigners carried out by the **voivods** (governors of 16 provinces, the I instance in residence and expulsion proceedings, see annex 4). In case of the appeals against the decisions of voivods issued in these fields, the Head of the Office acts as the II instance authority (key unit within the Office: Department for Legalization of Stay and Foreigner's Register);
- Granting and withdrawing refugee and subsidiary protection status, tolerated stay status (national protection measure) and national asylum status. All determination procedures are carried out in the Office [I instance]), including cooperation under Dublin II Regulation¹⁰ (key unit: Department for Refugee and Asylum Proceedings);
- Organization and management of reception centres for asylum seekers (key unit: Bureau for Organization of Centres for Foreigners Applying for the Refugee Status);
- Management of the central information system on foreigners 'POBYT' ['Residence'], which contains data on procedures undertaken in relation to foreigners, with regard to: refugee proceedings; residence proceedings (including the register of foreigners whose residence on the territory of the Republic of Poland is undesirable – further called the 'Register' (see ANNEX 1), and return / expulsions proceedings in Poland. On this basis, the Head of the Office serves also as a Central Visa Authority in the framework of the Schengen cooperation (key unit: IT and Foreigners Registers Bureau and Department for Legalization of Stay and Foreigners' Register in relation CVA activity).

b) **Border Guards** (www.strazgraniczna.pl – Headquarters and 12 regional divisions) has very broad competences in the area of migration and asylum procedures in Poland. In particular with regard to migration phases in question, these competences refer to:

¹⁰Council Regulation 343/2003/EC of 18 February 2003 establishing the criteria and mechanisms for determining the member state responsible for examining an asylum application lodged in one of the member states by a third-country national (Official Journal L 50 of 25 February 2003);

Entry / Admission: Control of the legality of entry at the borders and issuing appropriate decisions (refusal of entry, defining the stay period, issuing visas in specific cases, annulment of visa, etc.), in the international protection procedures - receiving and initial checking of the refugee status applications (more: sections ‘Entry Procedures’ and ‘Admission Conditions’);

Residence: Carrying out control over legality of the foreigners’ stay in the whole territory of the Republic of Poland and counteracting illegal migration – in cooperation with the Police, Customs Offices, the Office for Foreigners, voivods and non-governmental organizations (see section ‘Legal Residence’) as well as the control over legality of the foreigners’ employment within the territory of Poland – in cooperation with the National Labour Inspectorate (www.pip.gov.pl);

Return: Initiating proceedings and/or enforcing decisions related to the foreigner’s return, expulsion of foreigners (including conveying tasks), issuing decisions imposing on the foreigner the obligation to leave the territory of Poland (see section ‘Return’)¹¹.

Ministry of Labour and Social Policy – MPiPS (www.mpips.gov.pl) has its statutory competency in the field of labour, family and social security. Respectively, MPiPS covers the field of labour migration to Poland and access of foreign workers to Polish labour market, including co-creation of strategies and policies to attract foreign labour force. Moreover, the Minister of Labour and Social Policy acts as the second instance authority in procedures related to issuing work permits for foreigners (with voivods – local authorities – as the first instance). In addition, the Ministry is responsible for the integration of foreigners in Poland, including coordination of assistance provided within the framework of annual integration programmes (implemented as a social security task) targeting recognised refugees and persons granted subsidiary protection. The aforementioned tasks are carried out by 4 departments of the MPiPS: Department for Migration; Department for Social Assistance and Integration; Department for International Cooperation and Department for Labour Market.

National Labour Inspectorate – PIP (www.pip.gov.pl) - is an authority established to execute supervision and inspection of the labour law observance. It is subordinate to Sejm (lower chamber of the Parliament). National Labour Inspectorate’s supervision and inspection covers all employers and entrepreneurs, who are not employers, but who have natural persons perform work for their benefit, irrespective of the grounds of performing such work. From 1st July 2007 National Labour Inspectorate’s supervision also covers

¹¹ The issues in the competence of the Commander – in – Chief of the Border Guards, resulting from international agreements and community law of the UE in the area of migration/asylum policy are implemented by the Board for Foreigners of the Border Guards Headquarters; migration and asylum analysis are carried out by the Strategic Analysis Office of the Border Guards Headquarters;

persons conducting economic activity on their own account (the so-called self-employed). By virtue of the Act of 13 April 2007, the scope of National Labour Inspectorate's activity was extended by issues related to inspection of employment legality and performance of work by foreigners.

Ministry of Foreign Affairs - MFA (www.msz.gov.pl): the Minister of Foreign Affairs supervises the work of Polish diplomatic and consular posts, i.a. in the area of issuing visa and implementing visa policy¹². Consuls are also competent with respect to accepting applications for granting the residence permit for a fixed period submitted by foreigners residing outside the territory of the Republic of Poland and transmitting then to proper voivods for examination (see section 'Admission Conditions'). While processing the visa application the consul is obliged to verify the foreigner's data in the national and international information systems (SIS), and in cases when it is obligatory or necessary in the consul's opinion, conducts so called visa consultations (in the country and abroad)¹³. MFA runs a database of the visa applications submitted to the Polish consular offices, decisions issued on them as well as visas granted – which constitutes the Central Consular Visa Registry in Poland. The Minister of Foreign Affairs also carries out, through consuls, activities for strengthening the ties between Polonia abroad and Poland, including tasks originating from the Act of 7 September 2007 on the Card of the Pole¹⁴.

Refugee Board (<http://www.rada-ds-uchodzcow.gov.pl>) functions as the second instance authority in the refugee status proceedings. The Board examines the appeals from decisions and complaints against the rulings rendered by the Head of the Office and is a competent organ for reopening the proceedings, reversal, change or declaring invalidity of the decisions or rulings issued by the head of the Office. The Board is composed of 12 members appointed by the Prime Minister for a five-year term of office from amongst people with outstanding knowledge and/or practical experience in the refugee-related issues¹⁵. The administrative and

¹² Including: preparation (in coordination with other Ministries) of bilateral agreements on the exemption from the visa obligation for holders of the diplomatic and service passports as well as establishing the amount of consular fees, including visa fees. When Poland acceded to the Schengen zone and started to apply all provisions of the Schengen acquis these competences in relation to uniform visa were limited by the EU decisions which specify uniform fee for issuing uniform visa ('Schengen visa'), that all EU Member States should apply.

¹³ In Poland the tasks of the Central Visa Authority carrying out international and national visa consultations are fulfilled by the Head of the Office for Foreigners.

¹⁴Journal of Laws 2007, No 180, item 1280, with amendments (Dz.U.08.216.1367). Holding the Card of the Pole – the document confirming belonging to the Polish Nation – authorises to:

- granting long-term residence visa free of charge, authorising to crossing the borders of the Republic of Poland;
- undertaking employment on the territory of Republic of Poland without work permit obligations;
- benefiting from the education system free of charge;
- carrying out economic activity in Poland on the same conditions as Polish citizens;
- benefiting from free medical services in emergencies;
- exemption from payments for visiting state museums;
- priority treatment in applying for financial means from the state budget or from the local government budgets allocated for supporting the Poles abroad.

¹⁵ The Prime Minister appoints to the Board 4 persons from among candidates presented by the minister

office service of the Board is provided by the Chancellery of the Prime Minister. The Councils' decisions may be complaint against to the appropriate Voivodship Administrative Court and the revocation complaint against the judgement of the Voivodship Administrative Court may be lodged to the Supreme Administrative Court (www.nsa.gov.pl) (see section 'Admission Conditions');

The **Voivods** are the first instance authority in the administrative proceedings related to foreigners as far as legalisation of their stay and work permits are concerned. Additionally, the voivods carry out the tasks related to the procedures related to the Polish citizenship, if they were not reserved for other organs – first of all for the President of the Republic of Poland. The voivod competent with respect to the place of residence of the foreigner or the place of disclosure of the appropriate fact or event¹⁶ also issues the decision on the expulsion of the foreigner from the territory of the Republic of Poland. The voivod also issues decisions on imposing penalty on the carrier who brought into the territory of the Republic of Poland the foreigners who do not comply with the entry conditions.

The **interministerial Committee for Migration** acts as a subsidiary organ (consultative and advisory) to the Prime Minister¹⁷. The committee is chaired by the Minister of Interior and Administration. The results of the works of the Committee are notified to the Prime Minister who may decide on presenting them to the Council of Ministers. The tasks of the Committee for Migration Policy include:

- initiating the directions of the legislative and institutional changes in migration-related issues and recommending them to the Council of Ministers in order to adopt the Council's position;
- development of proposals related to modification of the competences in the area of migration;
- issuing opinions on multiannual and annual national programmes of the European Fund for the Integration of Third Countries Nationals;
- proposing the directions of activities in the area of the foreigners integration in Poland;
- exchange of information as well as monitoring of works conducted in the EU in the area of migration;
- cooperation with state and self-government administration organs as well as non-governmental organisations in the field of migration.

competent with respect to foreign affairs and the Minister of Justice – each of ministers presents 8 candidates (in justified cases the composition of the Board may be broadened). The Board takes decisions in 3-member composition, apart from the manifestly unfounded applications (1-member composition);

¹⁶ *Ex officio* or on the motion from the Minister of National Defense, Head of the Internal Security Agency, Head of the Foreign Intelligence Agency, Commander-in-Chief of the Border Guards, Commander-in-Chief of the Police, Commander of the Border Guards division, Voivodship Commander of the Police, Commander of the Border Guards division or the Customs Service organ;

¹⁷ Another advisory organ to the Prime Minister - Governmental Population Council – is also important in migration context due to its tasks related to demography and population policy, including forecasting the demographic development of the country;

The Committee is composed of the Secretaries or Undersecretaries of State representing the Ministry of Interior and Administration, Ministry of Labour and Social Policy, Ministry of Foreign Affairs, Ministry of Economy, Ministry of Finance, Ministry of Culture and National Heritage, Ministry of National Education, Ministry of Regional Development, Ministry of Health as well as the President of the Central Statistical Office¹⁸, Head of the Office for Foreigners, Chief of the Internal Security Agency, Chief Commanders of: the Police and Border Guards as well as the representatives of the Chancellery of the Prime Minister on the level of Secretary of Undersecretary of State and the Secretary of the European Integration Committee. Additionally, the representatives of the non-governmental organizations or academic circles may be invited to the sessions of the Committee. The substantive and technical service to the Committee is provided by the Migration Policy Department of the Ministry of Interior and Administration¹⁹.

Other actors (non-governmental organizations, research institutes, etc.)

It is important to add that both non-governmental organizations as well as research centres working on the subject of migrations and asylum are numerous in Poland and the set of institutions provided below constitutes only for a small (selected) percentage of existing and influential actors.

Key advocacy, non-governmental and lobby organizations and institutions:

a) International bodies country offices in Poland:

- International Organisation for Migration, IOM Poland (www.iom.pl), plays important role in the field of cooperation with Border Guards and the Office for Foreigners in carrying out the voluntary returns programmes (see section 'Return');
- The Office of the United Nations High Commissioner for Refugees (UNHCR) (www.unhcr-budapest.org/poland/index.php), provides broad-spectrum assistance to refugees;
- Caritas Poland – Centre of Assistance to Migrants and Refugees in Poland (www.migranci.caritas.pl), provides broad support (material, legal, psychological etc.) to migrants and refugees;

¹⁸ **Central Statistical Office** (Department of Demographic Studies, Migration Studies Division) gathers and analyses statistics in the area of migration both internal mobility within the country and international migration, i.e. the departures of the Polish citizens from Poland as well as entries of the foreigners into Poland – acts as one of the official national data provider to EUROSTAT (www.stat.gov.pl);

¹⁹ The following working groups operate within the Committee:

- Working group on economic immigration
- Working group on economic migration from Poland
- Working group on combating illegal immigration
- Working group on integration of foreigners
- Working group on gathering and exchange of statistical data
- Working group on re-emigration
- Working group on resettlement
- Working group on delegating workers – third countries nationals in the framework of transborder services
- Working group on elaboration of Polish Migration Strategy

- Polish Red Cross (www.pck.org.pl), provides humanitarian and material assistance to foreigners;
- Helsinki Foundation for Human Rights in Poland – Legal Assistance (www.hfhrpol.waw.pl) – provides legal assistance and integration support to foreigners;
- b) National organisations:
 - The Halina Nieć Legal Aid Centre (www.pomocprawna.org); Association for Integration and Protection of Foreigners ‘Proxenia’ (www.proxenia.org.pl); Human Rights Centre of the Jagiellonian University (www.opc.uj.edu.pl), The Students’ Law Advice Centre of the Warsaw University (www.klinika.wpia.uw.edu.pl) The Association for Legal Intervention (www.interwencjaprawna.pl) – provides legal aid and assistance in foreigners integration;
 - Polish Humanitarian Organisation (www.pah.org.pl) – with the scope of humanitarian and in-kind assistance to foreigners
- c) Other institutions:
 - Employers organisations, professional corporations and trade unions, for example Polish Confederation of Private Employers Lewiatan (www.pkpplewiatan.pl) – play important role in negotiating the foreigners employment policy in Poland, assessing the demand for experts in particular fields and qualifications as well as protection of rights of the foreigners employed in Poland;
 - Immigrants organizations and associations²⁰;
 - Commissioner for Civil Rights Protection (www.rpo.gov.pl) – competent with respect to control the observance of foreigners rights in Poland as well as counteracting discrimination of foreigners.

Key research institutes and scientific community players:

- The Polish Institute of International Affairs (www.pism.pl) - governmental;
- Centre for Migration Research of the Institute for Social Studies of the Warsaw University (www.migracje.uw.edu.pl);
- Central European Forum for Migration and Population Research of the Polish Academy of Sciences (www.cefmr.pan.pl)
- Institute of Sociology of the Jagiellonian University UJ (www.socjologia.uj.edu.pl)
- Centre for Eastern Studies (www.osw.waw.pl);
- Centre for International Relations (www.csm.org.pl);
- The Institute of Public Affairs (www.isp.org.pl);
- The Institute of Labour and Social Studies (www.ipiss.com.pl)

²⁰ For example: Armenian Foundation ‘Armenian Culture Interest Club’, Association ‘Caucasian House in Poland’, Association of Refugees in the Republic of Poland, Social and Cultural Association of the Vietnamese in Poland, Association ‘Solidarity and Friendship’ (Vietnamese), Muslim Association Ahmadiyya, Polish-Somali Cooperation Centre, International Kurdish Culture Centre and others.

2.3 Legislative framework

The main legal acts regulating migration and asylum matters in Poland are:

- Polish Constitution of 2 April 1997²¹ [<http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>]
- Act of 13 June 2003 on foreigners²² (entry, admission, residence, return and registers of foreigners);
- Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland²³ (granting international and national protection statuses);

And also:

- Act of 9 November 2000 on Repatriation²⁴;
- Act of 7 September 2007 on Card of the Pole²⁵;
- Act of 15 February 1962 on Citizenship²⁶;
- Acts on particular sectors (labour, economic activity, education, etc.)
- Binding international instruments and *acquis communautaire*²⁷

3. DEVELOPMENT OF ASYLUM AND MIGRATION SYSTEMS

The development of Polish migration and asylum system in its current shape dates back to 1989, i.e. launching date of the systemic transition. With regard to asylum matters, in 1990, Poland registered first cases of readmissions of asylum seekers–migrants in irregular situation to its territory²⁸ – they were at first assisted by Polish Red Cross in provisional reception centres. Not having signed the Geneva Convention related to the Status of Refugees yet and in order to respond to the new circumstances, the Presidium of the Council of Ministers launched cooperation with the UNHCR²⁹ to determine, which of the readmitted foreigners fall under the scope of art. 1A of the Geneva Convention (refugee status). Later that year, the Prime Minister appointed the Inter-ministerial Commission on Refugees and established the Office of the Plenipotentiary for Refugees of the Minister of Interior. In 1991,

²¹ Journal of Laws 1997, No 78, item 483, with further amendments (OJ dated 2006.200.1471);

²² Journal of Laws 2006, No 234, item 1694, with further amendments (Dz.U.2007.120.818, Dz.U.2007.165.1170, Dz.U.2008.70.416, Dz.U.2008.180.1112, Dz.U.2008.216.1367);

²³ Journal of Laws 2006, No 234, item. 1695, with further amendments (Dz.U.2007.120.818, Dz.U.2008.70.416, Dz.U.2008.216.1367);

²⁴ Journal of Laws 2004, No 53, item 532, with further amendments (Dz.U.2005.94.788, Dz.U.2006.249.1828, Dz.U.2007.120.818, Dz.U.2008.70.416, Dz.U.2008.216.1367);

²⁵ Journal of Laws 2007, No 180, item 1280, with further amendment (Dz.U.2008.216.1367);

The Card of the Pole is a document stating adherence to the Polish Nation. The granting of the Card of the Pole does not entitle to automatic acquisition of the Polish citizenship, obtaining legal right to settle-down on the territory of the Republic of Poland or crossing the Polish border without a valid visa.

²⁶ Journal of Laws 2000, No 28 item 353, with further amendment (Dz.U.2007.120.818);

²⁷ See: N-Lex portal – a common gateway to national law – <http://eur-lex.europa.eu/n-lex/pays.html?lang=en> ;

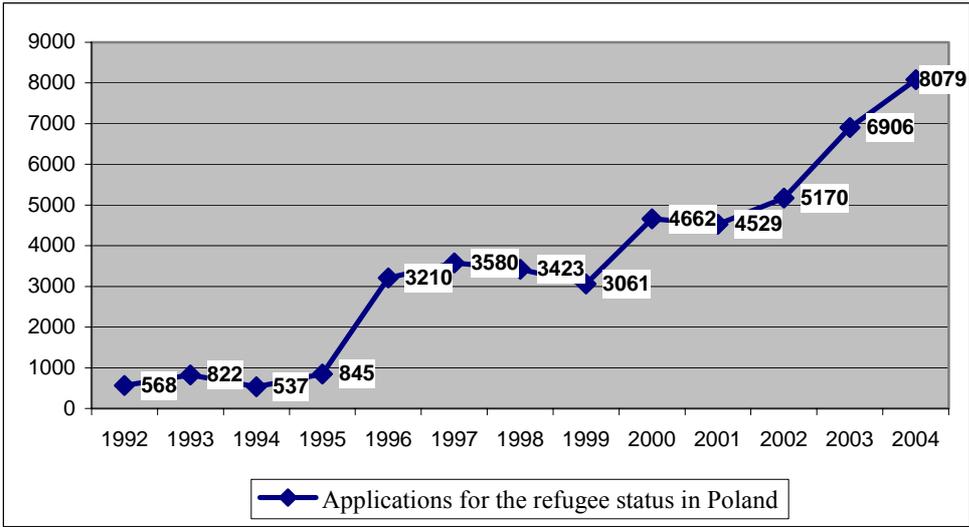
²⁸ First readmission was effectuated by Sweden in 1990, when around 300 foreigners from Lebanon, Angola, Ethiopia and Palestine, in possession of Polish visas, were sent back to Poland by ferry;

²⁹ The UNHCR *liaison* office was created in Warsaw on 25 October 1992;

the Office took over the management of the ‘ad hoc’ reception centres for refugees from the Polish Red Cross. In 1992, the first governmental centre³⁰ was created in Podkowa Leśna-Dębak³¹. Currently, the Dębak centre, located within the structure of the Office for Foreigners, provides for the Central Reception Centre for Persons Applying for the Refugee Status or Asylum in the network of 21³² centres for asylum seekers in Poland.

In 1991, Poland signed the Geneva Convention of 28 July 1951 and the New York Protocol of 31 January 1967 related to the Status of Refugees³³. This led, in 1991, to important amendments to the Act on Foreigners of 1963 (Art. 10) and to Polish Constitution of 1952 (art. 88 on the right to asylum). The amendment to the Act on foreigners introduced to Polish legal system the institution of a ‘refugee’ as defined by the aforementioned documents and provided the basis for granting the refugee status in Poland³⁴.

DIAGRAM 1: APPLICATIONS FOR THE REFUGEE STATUS SUBMITTED IN POLAND BETWEEN 1992-2004



Source: Office for Foreigners

(*See also diagram 4 : Number of foreigners applying for the refugee status in Poland and number of positive decisions on different types of protection (2001-2008)

With regard to migration matters, it is necessary to underline that, after 1989, Poland, as a transit country between the ‘East’ and ‘West’ of Europe, registered intensified migratory

³⁰ Organisational unit of the state department of interior and administration;
³¹ Central Poland, Warsaw area;
³² As of January 2009
³³ Journal of Laws 1991 No 119, item 515 and 517; the Convention entered into force in relation to Poland on 26 December 1991;
³⁴ In result of all aforementioned legislative and infrastructural changes, in October 1992 Poland was able to admit a group of approximately 900 refugees – victims of the armed conflict in Bosnia;

movements, fostered additionally by the relatively liberal migration regulations (e.g. citizens of the Commonwealth of Independent States were entitled to enter Poland without a visa). The main flow was happening on the route CIS – Germany (and further). In result, Poland faced a strong pressure from the western (mostly EU states), to ‘tighten reins’ on, often irregular, migrations.

By signing the Europe Agreement on 16 December 1991³⁵ Poland established an association with the European Communities and their member states and committed itself to gradual harmonisation of its law (including migration and asylum) with the *acquis communautaire* (official application of Poland for the EU membership was submitted on 4 April 1994). In addition, in 1991, Poland signed a readmission agreement with the Schengen countries, followed by a special bilateral agreement with Germany (1993) – the latter resulted in a significant financial assistance from Germany, which contributed to development of the border management infrastructure in Poland.

In 1993, the Office of the Plenipotentiary for Refugees of the Ministry of Interior transformed into the Bureau for Migration and Refugees within the structure of the Ministry of Interior (this entity was changed to Department for Migration and Refugees from 1995). One year later, a new law was passed – Act of 14 December 1994 on employment and prevention of unemployment³⁶ – equating the rights of the recognised refugees with those of Polish citizens with regard to labour market access. In 1995, the first teleinformatic system (I stage), registering the residence of foreigners and asylum procedures was launched (former “Obcy” (Alien) system – in 2000 the system was renamed to “Pobyt” (Residence) system – currently fully operational).

In the meantime, certain activities were undertaken with regard to integration of the refugees. The amendment of 1996 to the Act of 29 November 1990 on Social Assistance³⁷ recognized integration of refugees as a social security task and transferred the responsibility for coordination of related activities to local governmental authorities (voivods). On 17 April 1998, the Secretaries of State of the Ministry of Labour and Social Policy and the Ministry of Interior and Administration (since 1997) signed the agreement on the overall coordination by the Ministry of Labour and Social Policy of activities aiming at integration of refugees

³⁵ Entered into force on 1 February 1994;

³⁶ Journal of Laws 2001, No 6, item 56, with further amendments. The Act was replaced by the Act of 20 April 2004 on promotion of employment and labour market institutions, Journal of Laws 2008, No 69, item 415, with further amendments (Dz.U.2008.70.416; Dz.U.2007.192.1378; Dz.U.2008.171.1056; Dz.U.2008.216.1367; Dz.U.2008.237.1654; Dz.U.2009.6.33);

³⁷ Journal of Laws 1998, No 64, item 414. The Act was replaced by the Act of 12 March 2004 on Social Assistance; Journal of Laws 2008, No 115, item 728, with further amendments (Dz.U.2008.171.1056; Dz.U.2008.216.1367; Dz.U.2008.223.1458; Dz.U.2009.6.33);

(currently, via Department for Social Assistance and Integration in this Ministry).

On 2 April 1997, new (currently in force) Constitution of the Republic of Poland³⁸ was enacted. Its provisions related to migration and asylum reflected the earlier respective developments, i.e. the possibility of granting the refugee status in Poland (art.56 sec.2) in accordance with binding international agreements (Geneva Convention of 1951 and New York Protocol of 1967). In addition, Art. 56 sec.1 maintained the possibility to apply for the national asylum (national protection measure).

On 25 June 1997, new Act on Foreigners³⁹ was passed. The Act specified the rules and conditions of entry to, transit through, residence on and departure of foreigners from the territory of the Republic of Poland and the competence of governmental organs in these matters. Two new types of residence permits were introduced: a permit to settle (replacing the old permit for permanent residence) and a residence permit for a fixed period. With regard to asylum, the relevant procedures and the conditions for providing social assistance to asylum seekers were regulated. As a complete novelty, the Act introduced the notion of the 'safe third country'⁴⁰, 'safe country of origin'⁴¹ and the rule of carriers responsibility⁴². In general, the Act of 1997 is perceived as the first stage of incorporating the EU legal framework on migration and asylum into Polish legal system. As far as institutional changes are concerned, the Act foreseen the establishment of the Refugee Board - an independent appeal body in the refugee cases (II instance). The Board began to operate in 1999.

In 2000, the Act on Repatriation, directed to Polish Diaspora remaining on the East (in the eastern part of the ex-Soviet Union) was passed⁴³. For the first time, the issue of repatriation began to be regulated by the separate act. In line with its wording, a person who proved Polish origin and obtained the repatriation visa automatically gains Polish citizenship while crossing the border on the basis of this visa. In the same context it is worth to mention

³⁸ See: footnote 22;

³⁹ Journal of Laws 2001, No 127, item 1400. The Act entered into force on 27 December 1997 - currently replaced by the Act on Foreigners of 13 June 2003;

⁴⁰ A safe third country is considered to be any other country, not being the country of origin, in which an asylum seeker has found or might have found protection. The notion of safe country (protection elsewhere/first asylum principle) is often used as a criterion of admissibility to the refugee determination procedure (UNHCR Refugee Thesaurus)

⁴¹ A country of origin of asylum seekers is considered to be safe if it does not, or not generally, produce refugees. Receiving countries may use the concept of safe country of origin as a basis for rejecting summarily (without examination of the merits) particular groups or categories of asylum seekers (UNHCR Refugee Thesaurus)

⁴² This rule referred to a responsibility of a carrier (sea or air) who transported to Poland a foreigner who did not meet conditions of entry on Polish territory; such carrier was obliged to take a foreigner back and in some cases could be liable to pay a financial sanction.

⁴³ See also footnotes 9 and 25. When applying, persons eligible for repatriation visa need to be the citizens of Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan or Asian part of the Russian Federation. With an adequate ordinance, the Council of Ministers may add other states to this set of countries.

that in 2007 the Act on Card of the Pole⁴⁴ was passed, aiming at maintaining ties with Polish Diaspora on the East. The Act introduced various facilitations for persons declaring Polish origins, with regard to, *inter alia*, entry procedures and labour market access.

The Act on Foreigners of 1997 was further amended by the Act of 11 April 2001 on amendment to the Act on Foreigners and certain other acts⁴⁵. Concerning institutional structures, the central authority – the President of the Office for Repatriation and Foreigners – was created (2001) within the state department of Interior, taking over the ministerial competencies previously performed within the Department for Migration and Refugees and Department for Citizenship of the Ministry of Interior and Administration. Also, the President of the Office became responsible for management of the reception centre for refugees in Dębak.

Between the years of 2002 and 2003, in the process of adjusting the Polish law to the EU requirements, the legal system on foreigners came to be divided into three main areas: the EU citizens (Act of 27 July 2002 on rules and conditions of entry and residence of the citizens of the EU member states and their family members⁴⁶); third country (non-EU/EEA) nationals (the new Act of 13 June 2003 on foreigners – currently in force, yet with many further amendments⁴⁷) and asylum seekers (Act of 13 June 2003 on granting protection to foreigners on the territory of the Republic of Poland – currently in force, yet again, with many further amendments⁴⁸). On 1 May 2004 Poland joined the EU. The amendments to the two aforementioned acts of 2003, currently regulating the issues of migration and asylum in Poland, resulted mainly from transposing the relevant EU law (e.g. 2005 – adding the status of long-term EU resident, etc.).

In 2005, the EU agency for external border management (Frontex), launched its operations in Warsaw. Further, between 2006 and 2007, certain institutional reorganisations took place regarding Polish migratory system. In 2006, Department for Migration Policy was

⁴⁴ See: footnote 26 the act refers to persons who, on the day of applying for the Card were the citizens of: Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Lithuania, Latvia, Moldova, Russian Federation, Tajikistan, Turkmenistan, Ukraine or Uzbekistan.

⁴⁵ Journal of Laws 2001, No 42, item 475. The Act entered into force on 1 July 2001 and was repealed by the Act on Foreigners of 13 June 2003;

⁴⁶ Journal of Laws 2002; Nr 141; item 1180 – the act was replaced by the Act of 14 July 2006 on entry on the territory of the Republic of Poland, residence on and exit from that territory of the citizens of the member states of the European Union and their family members [Journal of Laws 2006, Nr 144, item 1043] due to entry into force (2004) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the member states (Official Journal L 158 of 30.04.2004, page 77–123, Polish special edition: Chapter 05 Tom 05 P. 46 - 61);

⁴⁷ See footnote 23; 2 amendments in 2004, 4 in 2005, 7 in 2006, 2 in 2007, 2 in 2008, 1 in 2009;

⁴⁸ See footnote 24; 3 amendments in 2004, 2 in 2005, 3 in 2006, 1 in 2007, 1 in 2008 and 1 in 2009;

created within the Ministry of Interior and Administration, with the main task of coordination of activities related to Polish migration policy. One year later, the Department for Citizenship and Repatriation was again established within the above-mentioned Ministry, and the President of the Office for Repatriation and Foreigners was transformed to the Head of the Office for Foreigners. In addition, in 2006 Department for Migration was created within the Ministry of Labour and Social Policy, with the main task of elaborating and pursuing Polish policy on international economic migration.

On 14 August 2007 an Act on participation of Poland in Schengen Information System and Visa Information System entered into force. In result, the border control on internal EU land and maritime borders (21 December 2007) and on air borders (30 March 2008) was lifted, making Poland a full member of the Schengen zone.

4. ORGANISATION OF POLICY

This section provides an insight into organisation of migration and asylum policies in Poland. Subsection 4.1 presents the main actors involved in every stage of migration/asylum procedures (Entry Procedures, Admission Conditions, Legal Residence, Access to the Labour Market, Return) and relevant interactions between them. Subsection 4.2 draws a link between mutual influence of migration/asylum policies and other policy areas in Poland.

4.1 Asylum and Migration

4.1.1 Entry Procedure(s)

4.1.1.1 Asylum/refugee status

A foreigner may be granted protection on the territory of the Republic of Poland through:

- 1) refugee status (granted accordingly to the wording of Geneva Convention of 28 July 1951 and the New York Protocol of 31 January 1967 related to the Status of Refugees).

In the decision refusing the refugee status the Head of the Office (or the Refugee Board in the second instance) may take a decision on granting:

- 2) subsidiary protection – in case when the foreigner does not fulfil the conditions

necessary for granting the refugee status, however the return to his/her country of origin might constitute a real threat or a serious harm through sentencing to death penalty or the execution; torture, inhuman or degrading treatment or punishment; serious and individualized threat to life or health resulting from a widespread use of violence against civilians in the situation of the international or internal armed conflict⁴⁹;

- 3) tolerated stay status – i.e. the national protection status granted in the situation when the expulsion of the foreigner might take place only to the country where his/her right to life, freedom and personal security would be jeopardised, where he/she would become a victim of torture or inhuman or degrading treatment or punishment or where he/she would be forced to work or denied the right to fair trial or be punished without legal grounds in the light of the wording of the European Convention for the Protection of Human Rights and Fundamental Freedoms done at Rome on 4 November 1950; when the expulsion would breach the right to family life in the wording of the European Convention for the Protection of Human Rights and Fundamental Freedoms or would constitute a breach to the rights of a child specified in the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20 November 1989 to a degree seriously endangering its psychological and physical development; as well as when the expulsion cannot be executed due to reasons beyond the powers of the organ taking decision on the expulsion or of the foreigner.

This status may be also granted to a foreigner who could be expelled only to a country where the extradition is inadmissible on the basis of the court's judgement or the decision of the Minister of Justice on refusing to extradite this foreigner.

Other forms of the protection granted to foreigners in the Republic of Poland are:

- 4) Granting asylum – i.e. the national protection status specified in the Polish Constitution granted in the situation when it is necessary to safeguard the protection of the foreigner and when it is in the vital interest of the Republic of Poland;
- 5) Granting temporary protection – in case of foreigners arriving to the Republic of Poland on a mass scale, who left their country of origin or a specific geographic area in result of foreign invasion, war, civil war, ethnic conflicts or grave human rights violations. The temporary protection is granted on the basis and in the scope specified by the decision of the Council of the European Union for a period

⁴⁹ Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted - OJ L 304 of 30.9.2004, page 2-12;

specified individually for each decision⁵⁰. So far, there were no cases of granting this form of protection neither in Poland, nor in the EU.

Poland applies uniform asylum procedure which means that each application from a foreigner for granting protection (excluding the case of temporary protection - see section 'Admission Conditions') is examined as an application for granting the refugee status (unless the foreigner clearly applies for asylum or the request for protection originates from the court ruling on the inadmissibility of the foreigner's expulsion or from the decision of the Minister of Justice on the refusal of his/her readmission) and if this status cannot be granted, the authority carrying out proceedings examines *ex officio* whether a foreigner meets conditions for other types of protection. The procedure is completed with a decision on granting type of protection or on obligation to leave the territory of the Republic of Poland.

The application for granting the refugee status shall be submitted in person (in some cases the application can cover also other persons than the applicant)⁵¹ to the **Head of the Office for Foreigners** through **the Commanding Officer of the Border Guards checkpoint** (so called 'organ receiving application') during the border control. The foreigner staying on the territory of the Republic of Poland shall submit the application through the Commanding Officer of the Border Guards division whose area of territorial competence includes Warsaw Capital City. The foreigner applying for asylum (national protection status) may also submit the application through the consul and if the applicant stays in Poland – directly to the Head of the Office for Foreigners.

The foreigner covered by the temporary protection shall enter Poland on the basis of a visa with the purpose of exercising the right to temporary protection, issued by the consul (see section 'Admission Conditions').

The Commanding Officer of the Border Guards checkpoint while receiving the application for granting the refugee status:

- verifies whether the application has been filled in correctly and determines: the identity of the applicant and persons he represents, information on his/her/their country of origin, data on visas or residence permits issued by the authorities of other countries, route of travel to the border and the place of border crossing, the fact of submitting an application for refugee status in another country by the applicant or his/her family member⁵², data of an

⁵⁰ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof – OJ L 212/2 of 7.8.2001

⁵¹ It applies to the underage children accompanying the applicant provided that they are not married and are financially dependent on the applicant – the proceedings cover also the applicant's child born in the period between the start of the procedure and its completion with a final decision; to the spouse of applicant accompanying him/her and financially dependent on the applicant and/or accompanying underage unmarried children of the spouse on the written consent of the spouse;

⁵² 'Family members' are considered according to art. 2 letter i of the Council Regulation (EC) No 343/2003 of

applicant's family member(s) who reside(s) on the territory of another EU member state, whether a foreigner and a person s/he represents are in possession of documents enabling him/her/them to enter the territory of the Republic of Poland⁵³; whether the circumstances referred to in art. 1 sec. F of the Geneva Convention have arisen;

- takes photographs and fingerprints (in case of persons above the age of 14) of the foreigner and the person s/he represents (the fingerprints are checked in / input to the EURODAC⁵⁴ system)⁵⁵.

- provides for the performance of medical examinations and necessary sanitary treatments of body and clothes of an applicant and person(s) s/he represents;
- informs an applicant in the language s/he understands about the asylum procedure in Poland, rights and obligations of the applicant, a possibility to inform the UNHCR representative about the proceedings and a possibility to grant the UNHCR access to case documents, about other organisations statutorily dealing with refugee matters etc.⁵⁶.

Having performed these actions the organ accepting an application transfers it for examination to the **Head of the Office for Foreigners**. The travel document held by the applicant shall be deposited with the Head of the Office, through the organ accepting the application. For the period of the proceedings the foreigner may be offered – on his/her request – assistance in the form of placement in the centre for the asylum seekers or out of the centres due to organisational considerations or if it is indispensable for: providing security of the foreigner, in particular taking into account the situation of single women; protection of public order; protection and maintenance of family ties; preparing the foreigner to independent life out of the centre, upon receiving of the decision on granting refugee status or decision on the refusal to grant the refugee status by which the subsidiary protection or tolerated stay were granted. If the circumstances require so⁵⁷, the foreigner is placed - on the

18 February 2003 establishing the criteria and mechanisms for determining the member state responsible for examining an asylum application lodged in one of the member states by a third-country national (OJ L 50 of 25.2.2003, pages 1—10; Polish special edition: Chapter 19 Vol. 06 p. 109 – 118);

⁵³ Or whether s/he has legally stayed therein, in case of persons submitting applications for the refugee status staying already on the territory of the Republic of Poland;

⁵⁴ The objective of this system is to facilitate the process of determining the member state responsible for examining an asylum application (according to the Dublin II Regulation) by means of comparison of fingerprints taken from asylum seekers and illegal immigrants;

⁵⁵ In case of foreigners submitting their applications while staying on the territory of Poland or the applications for asylum (national protection status), or foreigners covered by temporary protection, such proceedings (taking photographs and fingerprints) are performed by the Commanding Officer of the Border Guards division whose area of territorial competence includes Warsaw Capital City;

⁵⁶ In order to prevent the possibility of a crime or an offence or in order to determine the identity of a foreigner the organ receiving the application may carry out personal search of the applicant, the person represented by the applicant as well as their luggage;

⁵⁷ E.g. there is a need to determine the identity of the applicants or to prevent the abuse of the refugee status proceedings or to prevent any threat to safety, health, life or property of other persons; when the behaviour of the

basis of the court ruling - in a guarded centre; or in the arrest for the purpose of expulsion – when there are circumstances with regard to the state defence or security and public order. The unaccompanied minor or the foreigner whose psychological and physical state suggests that he/she is a victim of violence or is disabled shall not be placed in the guarded centre or in the arrest for expulsion⁵⁸.

The organ accepting the application for refugee status submitted by an unaccompanied minor⁵⁹ immediately approaches the guardianship (custody) court⁶⁰ competent with respect to the place of stay of the minor with a motion to appoint a guardian to represent the minor in the proceedings for granting the refugee status⁶¹, and to place the minor in the care and educational centre where the minor is transported and stays until the guardianship court makes its ruling in the case (the costs of stay are covered by the state budget).

applicants poses a threat to safety, health or life of other foreigners residing in the centre for asylum seekers or the centre staff; when the applicants crossed the border illegally or attempted to cross the border / entered / stay on the territory of Poland without a permit) unless they arrived directly from the territory where there are circumstances justifying their fear of persecution or serious damage on condition that the refugee status application is submitted immediately and reliable reasons for the illegal entry or stay are presented);

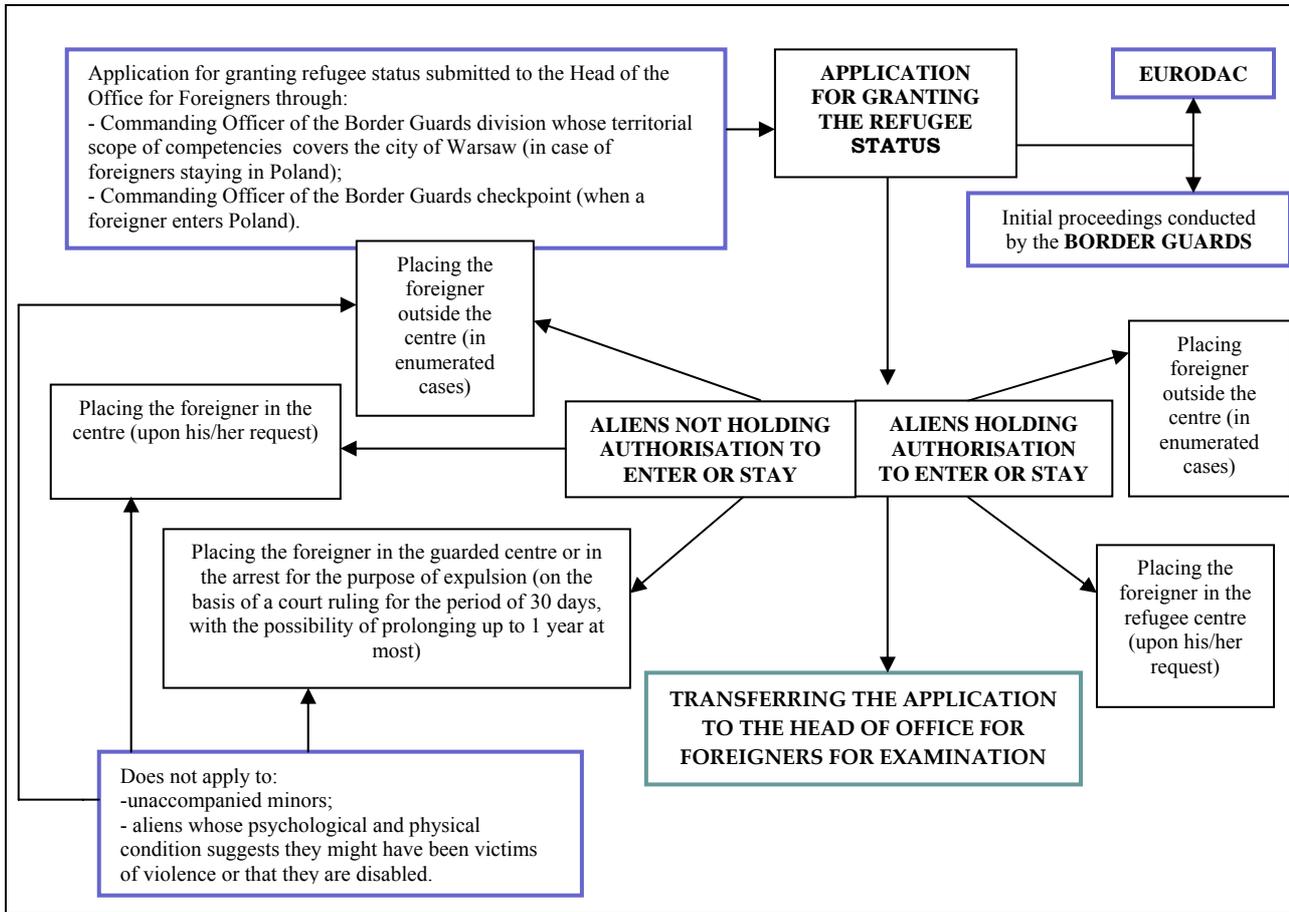
⁵⁸ Unless the behaviour of the foreigner poses a threat to the security, health or life of other foreigners residing in the centre for the persons seeking the refugee status or to the centre staff ;

⁵⁹ The foreigner claiming to be a minor, in case of doubt as to his/her age arising at the moment of lodging the application may be, upon his/her own consent or the consent of the statutory representative, subject to appropriate medical examinations. In case of lack of consent, the foreigner shall be considered an adult. The abovementioned medical examinations may be provided by the Head of the Office for Foreigners in the further stage of the refugee procedure;

⁶⁰ sąd opiekuńczy (in Polish)

⁶¹ In case when the applicant is an unaccompanied minor the execution of the abovementioned entitlements of the United Nations High Representative for Refugees representative does not require the consent of the Guardian appointed to represent the minor in the proceedings;

DIAGRAM 2: INITIAL ASYLUM PROCEEDINGS



Source: Migration Analysis Division, Migration Policy Department of the Ministry of Interior and Administration

4.1.1.2 Migration

As a general rule, if the relevant acts do not state otherwise, a foreigner who intends to enter the territory of the Republic of Poland needs to be in possession of:

- a travel document and a valid visa if requested (national (long term) or uniform (short term)⁶² – see section ‘Admission Conditions’⁶³, issued for different purposes (tourist, labour, family reunification, medical treatment etc. (see annex 2) or a residence card enabling him/her, together with a valid travel documents to enter and reside on the territory of the Republic of Poland (see section ‘Legal Residence’). The foreigners who are the crew members of the sea vessels crossing the border in order to disembark

⁶² As a general rule the national visa (long term) is valid only on the territory of the state by which it was issued; the uniform visa (short term, up to 3 months) is valid on the territory of all Schengen states

⁶³ Cases where the entry visa is required are specified in the Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, OJ L 81 z 21.3.2001, pages 1—7;

and stay within the limits of the Polish harbour city, holding valid travel document and a pass issued by the Commanding Officer of the Border Guards checkpoint, are released from the obligation of possessing visa;

- sufficient means of subsistence for the period of the planned stay as well as for the return to the country of origin or for transit or a document confirming the possibility of obtaining such means legally (e.g. invitation);⁶⁴
- the permit of entry to another country or permit to reside in another country, if such permits are required in case of transit;
- in case of entry on the basis of a national visa: document confirming the possession of health insurance in the meaning of the provisions on the health services financed from the public resources or confirming covering the costs of treatment on the territory of the Republic of Poland by the insurance company for the period of the intended stay on this territory.

The control of the abovementioned documents is carried out by the **Border Guards officer** when the foreigner crosses the border. The entry of the foreigner may depend on the payment of the fee related to the entry on the territory of Poland, if it is required by the reciprocity rules in relation with other countries⁶⁵.

While carrying out the border control the Border Guards officer may also decide to refuse the entry of the foreigner on the territory of Poland (decision on entry refusal).

Unless the provisions of the act do not state otherwise, the foreigner may be refused to enter the territory of the Republic of Poland, if:

- he/she did not present the required documents or presented forged/altered documents (the Commanding Officer of the Border Guards checkpoint may also issue on the entry of the foreigner on the territory of the Republic of Poland a decision on

⁶⁴ The following categories of foreigners are released from presenting the abovementioned financial means and documents:

1) crossing the border on the basis of:

- a) international treaties and agreements providing for exemption of the foreigner from the obligation to possess such means or the obligation that the costs of his/her stay shall be borne by the Polish state organs or by public institutions,
- b) local border traffic agreements or agreements specifying the conditions of border crossing in the crossing – points on the tourist routes passing through the border,
- c) entry visa,
- d) residence visa with the purpose of employment,
- e) residence visa with the purpose of temporary protection,
- f) residence visa with the purpose of taking part in the proceedings of granting asylum,
- g) residence card;

2) crossing the border with the purpose of providing humanitarian assistance;

3) participants of rescue operations.

A person authorised to issue an invitation is defined in art. 16.1 of the Act on foreigners of 13 June 2003. The invitation becomes valid with the moment of its entry into the register of invitations which is made/refused (or cancelled) by the **voivod** competent with respect to the place of residence or the seat of the inviting person;

⁶⁵ List of countries to which this provision applies is decided by the Council of Ministers within an appropriate regulation;

cancelling the presented visa⁶⁶ – in this case the decision of the Commanding Officer of the Border Guards checkpoint can be appealed to the Commander –in – Chief of the Border Guards);

- has stayed on the territory of the Schengen states for permissible period of 3 months in the period of 6 months calculated from the date of the first entry unless the international agreements state otherwise;
- the foreigner's data are present in the registry of foreigners whose stay on the territory of Poland is undesirable (called further 'the registry' - see annex 1); or in Schengen Information System, referred to in art. 92 of the Convention implementing the Schengen Agreement, for the purpose of entry denial;
- the foreigner's entry or stay on the territory of the Republic of Poland may pose a threat to public health⁶⁷; state defence or security, protection of public safety and order or international relations of the Republic of Poland and another member state of the European Union⁶⁸.

The decisions of the refusal of entry are issued, according to art. 13 sec. 2 of the Schengen Borders Code⁶⁹, by the **Commanding Officer of the Border Guards checkpoint**. The decisions are provided with an order of immediate enforceability. The decision on the refusal of entry issued by the second instance organ may be complaint against to the Voivodship Administrative Court. In relation to the judgement rendered by the Voivodship Administrative Court revocation complaint may be lodged to the Supreme Administrative

⁶⁶ The National visa is cancelled, if:

- 1) The foreigner's data have been entered to the registry (see annex 1);
- 2) There is a suspicion that the stay of foreigner could pose a threat to the state defence or security or protection of public safety and order or is contrary to the interest of the Republic of Poland;
- 3) The period of the foreigner's travel document is shorter than 3 months from the moment when he/she has to leave the territory of Poland on the basis of this visa;
- 4) The foreigner gave false statement in the proceedings or concealed the truth or presented forged/altered document;

Visa may be cancelled also if the foreigner did not present sufficient documents confirming the intended purpose and circumstances of the planned stay;

⁶⁷ The Minister competent with respect to health defines in a regulation the list of illnesses which may pose a threat to public health or criteria of recognising or suspecting such illnesses, taking into account only the epidemics specified by the World Health Organisation and other highly contagious and particularly dangerous illnesses that are to be combated in case of Polish citizens on the basis of the provisions of the Act of 6 September 2001 on contagious diseases and infections (O.J. No 126, item 1384, with further changes), as well as taking into account the humane treatment of foreigners and counteracting threats to public health in the area of the border crossing point;

⁶⁸ The foreigner who does not fulfil the conditions of entry specified in the Act or in art. 5 of the Schengen Border Code, might be allowed by the commander of the Border Guards post upon consent from the Commander-in-Chief of the Border Guards to enter the territory of the Republic of Poland for a period not longer than 15 days, if it is necessary due to humanitarian reasons or required by the international obligations. The Commander-in-Chief of the Border Guards informs the Head of the Office for Foreigners about the issue of permit, if the foreigner's data have been entered in the Schengen Information System for the purpose of the refusal of entry, as well as the competent organ of the other state of the Schengen zone that made this entry in SIS.

⁶⁹ i.e. the Regulation (EC) No 562/2006 of the European Parliament and Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (Official Journal L 105 of 13.04.2006)

Court.

In case when:

- the foreigner was refused to enter the territory of the Republic of Poland;
- the foreigner travelling through the territory of Poland in transit was refused entry by the destination state or a state bordering the Republic of Poland or the carrier supposed to take him/her to this country refused to do so,

the carrier who brought the foreigner to the border by air, sea or land, is obliged to return him/her immediately to the country from which it brought him/her, and if this is not possible – to the country where the foreigner was issued the travel document on the basis of which he/she was travelling or to any other country which declares that it shall receive him/her. Should the circumstances prevent the execution of the abovementioned obligation, the carrier is obliged to provide on its own cost other means of transportation in order to remove the foreigner immediately from the territory of the Republic of Poland. In exceptional cases when the behaviour of the foreigner who is refused to enter the territory of the Republic of Poland justifies the suspicion that he may pose a threat to the security of the international land, air or sea traffic, the commander of the appropriate Border Guards post provides with a convoy on the request of the authorised representative of the carrier and on its cost.

According to the act of 13 June 2003 on foreigners, the foreigners residing in the border zone of a neighbouring state and crossing the border on the basis of a valid local border traffic permit (decision in this matter is issued by the consul competent with respect to the place of the permanent residence of the foreigner) – on the terms specified in the agreement on local border traffic concluded between the Republic of Poland and this state – shall be exempted from the obligation to possess a visa. The agreement with Ukraine has been already concluded and is in the process of ratification. The works are in progress for the conclusion of such agreement with Belarus.

4.1.2 Admission Conditions

4.1.2.1 Asylum

Decision process with regard to admission of asylum seeker on Polish territory begins with determination whether the Republic of Poland is the state responsible for examination of the application for the **refugee status** (Dublin II Regulation⁷⁰). If this is the case, the

⁷⁰ If there are circumstances justifying the transfer of the applicant or the person on behalf of which the applicant acts to another member state, the Head of the Office decides on their transfer and discontinues the case. The persons who are subject to such transfer may be transported to the border of the state to which they are to be transferred or to the airport or sea harbour of his state. The obligation to transport is executed on the request of the Head of the Office by:

- the commander of the Border Guards division competent with the respect to the place of stay of the applicant – to the border;

application is assessed by the **Head of the Office for Foreigners** (I instance). The applicant is obliged to appear for interview on date indicated by the Head of the Office in order to submit testimonies and explanations, make available all evidence to prove the circumstances that justify granting the refugee status, inform about each change of his/her place of residence and stay on the territory of the Republic of Poland until the day of delivery of the final decision. The applicant is interviewed by a representative of the Office and upon demand provided with an authorized copy of a record of such a hearing. During the hearing the organ conducting the proceedings provides free of charge assistance of the interpreter of the language understandable to the applicant.

An unaccompanied minor applying for the refugee status is interviewed in the presence of: a custodian, alternatively an adult person indicated by him/her (if this does not complicate the proceedings) as well as a psychologist or pedagogue who prepared an opinion on the psychological and physical condition of the minor. The actions within the proceedings in the refugee status case of an unaccompanied minor may be carried out by a person who fulfils at least one of the following conditions:

- completed studies for a master degree in law and has at least 2 years of work experience in the institutions involved in the child care;
- completed studies for a master degree or vocational studies and has 2 years of work experience in public administration and was trained in conducting the proceedings in the refugee status cases of the minors;
- completed studies for a master degree in the following specialisations: pedagogy, psychology or sociology and has 2 years of experience in public administration.

The foreigner who informs the organ conducting the proceedings that he/she was subjected to violence or is disabled or whose psychological and physical condition indicates that he/she was a victim of violence, shall undergo medical or psychological examinations in order to confirm these circumstances. If the examination confirms this information the actions within the refugee status proceedings as well as related to the assistance in the centre for asylum-seekers may be carried out by a person (of the gender indicated by the foreigner) who was trained and prepared to work with persons who were victims of a crime, violence or disabled persons.

Throughout the procedure, a foreigner applying for the refugee status may contact freely a representative of the United Nations High Commissioner for Refugees as well as any organizations dealing statutorily with the refugee matters.

If the organ conducting the proceedings intends to grant the refugee status to the

-
- the Commander-in-Chief of the Border Guards or the commander of the Border Guards division competent with respect to the place where the applicant or the person on behalf of which the applicant acts crossed the border – from the border to the airport or the sea harbour of the state to which the transfer is executed;

foreigner or to grant subsidiary protection or a consent for a tolerated stay, it should turn to the Chief of the Internal Security Agency and if need be to other organs, with a request to provide information whether there are any circumstances in relation to the applicant or the person on behalf of which the applicant acts, that may prevent issuing of the positive decision⁷¹.

The Head of the Office should issue the decision on the refugee status within the time limit of 6 months⁷² from the date of the submission of the application or, in case of manifestly unfounded application, within the time limit of 30 days from the date of submission of the application. The refusal to grant the refugee status may be followed by a positive decision on **subsidiary protection** or **tolerated stay** status⁷³.

The decisions of the Head of the Office concerning refugee status (or subsidiary protection or tolerated stay status) may be appealed against to the **Refugee Board** (II instance). The Refugee Board's decision should be issued within one month from the submission of the appeal. In its decision The Refugee Board can uphold the I instance decision, overrule the decision in whole or in its part and in this scope decide as to the merits of the case, or in case of overruling the decision – discontinue the first instance proceedings or discontinue the appeal procedure. The Board may overrule the appealed decision in whole and return it to the first instance organ for the re-examination of the case, if the conclusion of the case requires conducting prior clarification procedure in whole or in its significant part. If returning the case, the organ may specify the circumstances that should be taken into account during the re-examination of the case.

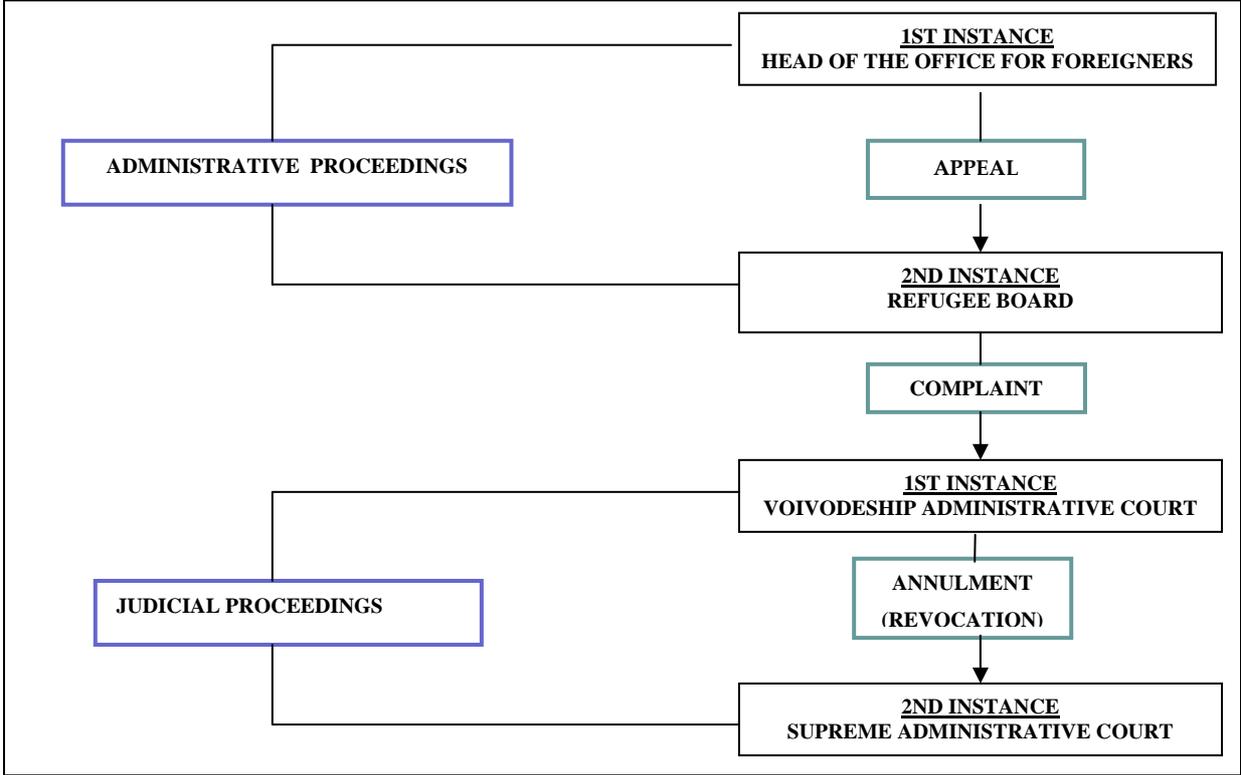
⁷¹ i.e. there are serious grounds to suspect that the foreigner committed a crime against peace/ war crime or crime against humanity in the meaning of the international law / is guilty of acts contrary to the goals and principles of the United Nations specified in the Preamble and art. 1 and 2 of the United Nations Charter / committed a crime of a different than political nature outside of the territory of the Republic of Poland before submitting the application for the refugee status; committed a crime on the territory of the Republic of Poland or committed outside of this territory an act that is a crime according to the Polish law; constitutes a threat to the security of the state or public; before arriving to the territory of the Republic of Poland committed other act that is a crime according to the Polish law punishable with the imprisonment, if the foreigner left the country of origin exclusively in order to avoid the punishment – or incited to or in any other way participated in committing such crimes or acts; as well as if the further stay of the foreigner on the territory of the Republic of Poland constitutes a threat to the state defence or security or to the public safety and order. The abovementioned organs shall provide the appropriate information within the period of 30 days from the date of receiving the request to provide them. If the organs do not provide the information within the period of 30 days it is assumed that the requirement of obtaining information is fulfilled. In particularly justified cases the period for the provision of information may be extended to 3 months.

⁷² If after 6 months from the date of submitting application the decision in the first instance was not issued and the reason for that is not on the side of the applicant, the Head of the Office, on the request from the applicant, shall issue a certificate, which together with the temporary certificate of the foreigner's identity constitutes the basis for the applicant and his/her spouse, on behalf of whose the applicant acts, to work on the territory of the Republic of Poland on the conditions and in the course specified in the Act of 20 April 2004 on the promotion of employment and labour market institutions (J. L. of 2008, No 69,item 415);

⁷³ Only recognized refugees and persons granted subsidiary protection are eligible for a one-year long integration programmes, offering certain range of benefits – not applicable in cases of holders of the tolerated stay statuses;

The Board is also an appropriate organ for re-opening of the proceedings, reversing, changing or deciding on the invalidity of the decisions or rulings issued by the Head of the Office. The decision of the Refugee Board may be complained against by the foreigner to the Voivodship Administrative Court (VAC). The judgement of the Voivodship Administrative Court (VAC) may be a subject of the revocation plaint to the Supreme Administrative Court..

DIAGRAM 3 : INSTANCES IN ASYLUM PROCEEDINGS

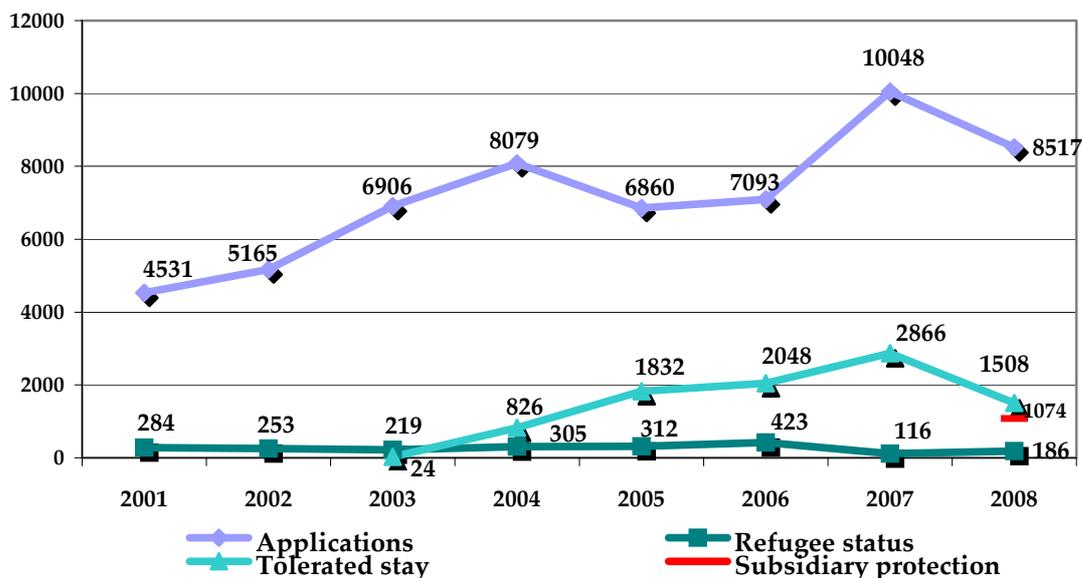


In case of **asylum** (national protection status)⁷⁴, the decision is taken by the Head of the Office for Foreigners, after the consent of the Minister of Foreign Affairs. The foreigner who received the asylum (national protection status) is also granted the permit to settle and is issued the residence card by the Head of the Office. The foreigner may submit application for asylum when he/she stays within the country but also from abroad – through the appropriate consul who transmits the application to the Head of the Office for Foreigners. For the purpose of entry on the territory of Poland the applicant is issued a special visa (visa for taking part in asylum proceedings). In case of refusal the foreigner may address the Head of the Office with the request to re-examine the case. The decision of the Head of the Office issued on the basis of the re-examination may be complained against to the Voivodship Administrative Court.

⁷⁴ See footnote 49

The judgement of the Voivodship Administrative Court may be a subject of the revocation plaint to the Supreme Administrative Court.

DIAGRAM 4: NUMBER OF FOREIGNERS APPLYING FOR THE REFUGEE STATUS IN POLAND AND NUMBER OF POSITIVE DECISIONS ON DIFFERENT TYPES OF PROTECTION (2001-2008)



Source: Migration Analysis Division, Migration Policy Department of the Ministry of Interior and Administration

As far as the **temporary protection** of the foreigners is concerned, it is granted on the basis and within the limits specified in the decision of the Council of the European Union⁷⁵ and specified each time in an appropriate ordinance of the **Council of Ministers**⁷⁶. Temporary protection shall be granted until the return of the foreigners to the former place of residence is possible, however not longer than for one year. If after this time the obstacles to the safe return of the foreigners are not removed, the Council of Ministers shall prolong the period of temporary protection for further 6 months, however not more than twice. If it is necessary for the entry on the territory of the Republic of Poland, the consul issues to the foreigner a visa with the purpose of benefiting from temporary protection. Upon the foreigner's arrival the Head of the Office provides medical care and offers assistance through accommodation and board, and if necessary issues Polish travel document. On the completion of the temporary protection period, the Head of the Office shall undertake actions enabling the return of the

⁷⁵ On the basis of the Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between member states in receiving such persons and bearing the consequences thereof (OJ L 212, 7.8.2001, p. 12–23; Special edition in Polish Chapter 19 Volume 04 P. 162 – 171);

⁷⁶ In the ordinance the Council of Ministers may also grant temporary protection to the foreigners not covered by the decision of the Council of the European Union;

foreigners to the country of origin or to the place from which they arrived. So far, the temporary protection mechanism has not been used within the EU.

For an unaccompanied minor benefiting from temporary protection the court competent with respect to the place of stay of the minor shall establish custody (guardianship) on the request of the Head of the Office. Until establishment of custody the minor is placed in a child care centre. The Head of the Office also undertakes activities aimed at family reunification on the territory of Poland or other EU member state, if close relatives of the foreigner stay outside the territory of the Republic of Poland⁷⁷.

The Council of Ministers, through an ordinance, may commission to the non-governmental organisations the implementation of tasks undertaken within the temporary protection on conditions guaranteeing appropriate protection to the foreigner.

4.1.2.2 Migration

The foreigner may cross the border and stay on the territory of Poland if he/she is a holder of a valid travel document and a valid visa, unless the provisions of the Act on foreigners state otherwise⁷⁸.

The foreigner may enter the territory of Poland on the basis of visa issued with the purpose to make use of the residence permit for a fixed period, permit to settle or the long-term resident's EC residence permit. If the foreigner is already a holder of one of the abovementioned permits and has been issued the residence card, he/she is entitled to multiple border crossings without the need to obtain a visa⁷⁹, provided that he/she is in possession of the valid travel document and the residence card.

In case of transit to another state the foreigner may be required to present the entry permit or residence permit in this state⁸⁰.

The foreigner may be issued a uniform (residence or transit) or national visa.

The uniform residence visa authorizes to a single or multiple entries on condition that the length of continuous stay or the length of consecutive stays on the territory of the Schengen zone states does not exceed 3 months in each 6-month period, calculated from the

⁷⁷ If the reunification of the family takes place on the territory of the Republic of Poland, the Head of the Office grants the residence permit for a fixed period to the relatives (see section 4.1.3 'Legal Residence') for an appropriate period of time. If the minor benefiting from temporary protection is transferred (on his/her consent) to another EU State, the Head of the Office submits an appropriate motion to a given state, informing the European Commission and the UN High Representative for Refugees;

⁷⁸ Visa issues are described in chapter 3 of the Act of 13 June 2003 on foreigners.

⁷⁹ According to art. 72 sec. 2 of the Act on foreigners the residence card in its validity period certifies the identity of the foreigner during his/her stay on the territory of the Republic of Poland and authorizes, together with travel documents, to multiple border crossings without the need to obtain a visa.

⁸⁰ Art. 13 of the Act of 13 June 2003 on foreigners.

date of the first entry to this territory. The uniform transit visa authorizes the stay in the transit zone of the international airport and to the passage through the territory of Poland or other Schengen states on the way to another state not belonging to the Schengen zone in the period not exceeding 5 days.

The national visa authorises to the entry and continuous stay on the territory of Poland or several consecutive stays, lasting together over 3 months and not exceeding a total of one year in the period of visa validity.

The uniform visa is valid on the territory of all states belonging to the Schengen zone. However, in specified cases, the uniform visa of limited validity may be issued e.g. in the situation when the travel document of the foreigner is recognized only on the territory of some states of the Schengen zone.

The visa, upon an application of the foreigner⁸¹ is issued or refused by the **consul**. The visa with the purpose of employment is issued or refused by the consul competent with respect to the state of the foreigner's permanent residence⁸². In justified cases the uniform visa may be issued by the commander of the Border Guards post on the terms specified in the Council Regulation (EC) No 415/2003 of 27 February 2003 on the issue of visas at the border, including the issue of such visas to seamen in transit⁸³.

Issuing of the uniform visa, in cases specified by the Council of the European Union on the basis of art. 17 paragraph 2 of the **Convention** implementing the **Schengen** Agreement requires the consent of the **Head of the Office for Foreigners**, acting as a central visa authority⁸⁴. In other cases, before issuing the uniform or national visa, the consul may submit

⁸¹ In the case of the application for issuing the uniform stay visa the foreigner is obliged to submit e.g. the confirmation of the insurance of the medical treatment costs on the territory of the states of the Schengen zone in the amount of at least 30,000 Euro during the period of the intended stay on this territory. In case of the application for national visa the foreigner is obliged to submit the documents certifying the possession of the health insurance in the meaning of the provisions of the health care services financed from the public resources or the cover by the insurance company of the medical treatment costs on the territory of the Republic of Poland through the period of the intended stay on this territory

⁸² If the foreigner stays legally on the territory of the European Union member states, the member states of the European Free Trade Association (EFTA) – the parties to the agreement on the European Economic Area or Confederation of Switzerland, the visa with the purpose of employment may be issued by other consul than the consul competent with respect to permanent residence of the foreigner;

⁸³ OJ L 64 of 07.03.2003, page 1; Polish special edition, chapter 19, vol. 6, page 119. Conditions: the person fulfills appropriate conditions provided by the Schengen Agreement; the person did not have a possibility of applying for the visa before; the person submits, if necessary, the supplementary documents justifying unforeseen and absolute reasons for entry and the return of such person to the country of origin or transit to the third country is secured;

⁸⁴ The Head of the Office for Foreigners consults the possibility of a consent for issuing the uniform visa:

- 1) in cases specified in attachment 5A to the Common Consular Instructions for the diplomatic missions and consular Office regarding visa; with Commander-in-Chief of the Border Guards, Commander-in-Chief of the Police; Chief of the Internal Security Agency; Chief of the Foreign Intelligence Agency, Minister of Foreign Affairs;
- 2) in cases specified in attachment 5B or 5C to the Common Consular Instructions with the central visa organs of other states of the Schengen zone.

to the Head of the Office for Foreigners a motion for providing information whether the foreigner's data are entered into the registry (see annex 1), whether the foreigner fulfils the entry conditions specified in appropriate provisions of the Schengen Borders Code⁸⁵ and whether there are no other grounds for the refusal of a visa.

The visa may be extended on the territory of Poland by means of a decision issued by the voivod, competent with respect to the place of stay of the foreigner, only in situations specified in the Act on Foreigners⁸⁶.

The foreigner shall be refused the national visa if:

- 1) his/her data are entered into the registry (see annex 1);
- 2) during the proceedings he/she did not justify the purpose of the planned stay; did not submit required documents or submitted documents containing false information; testified untruthfully or concealed the truth;
- 4) there is a concern that issuing the visa might constitute a threat to the defence or security of the state or the protection of public safety and order or breach the interests of the Republic of Poland;
- 5) the validity period of the travel document expires earlier than 3 months before the expiry of the requested visa;

The foreigner shall be refused the uniform stay visa if his/her data are entered into the registry (see annex 1), or in case if the foreigner does not fulfil entry conditions referred to in art. 5 paragraph 1 letter a, c, d and e of the Schengen Border Code⁸⁷.

As for the moment, no integration measures are necessary in order to be admitted on the territory of the Republic of Poland

The visa issued on the border by the commander of the Border Guards post does not require a consent from the Head of the Office for Foreigners. Attachments 5A, 5B and 5C of the Common Consular Instructions are under the limited access clause.

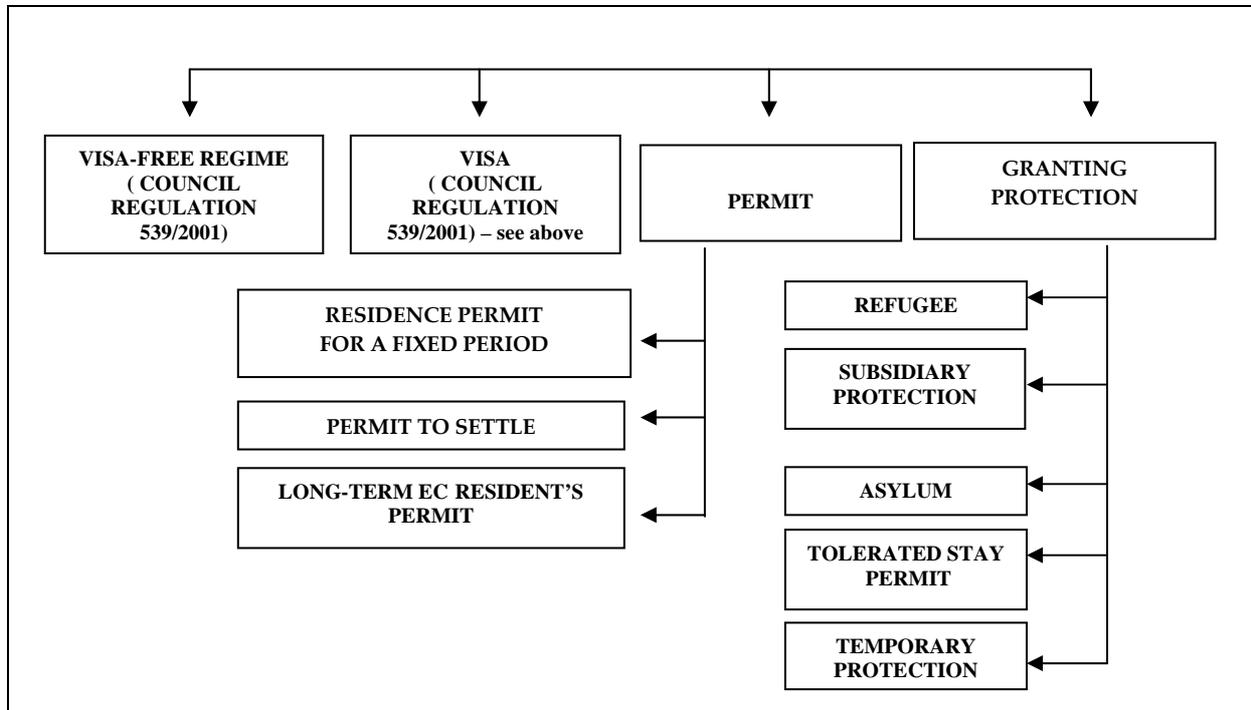
⁸⁵ See footnote 70

⁸⁶ Visa may be extended once, with the exception of the situations, when the state of health of the foreigner prevents his transfer or travel to another state;

⁸⁷ This provision does not apply to the uniform visa of limited territorial validity.

4.1.3 Legal Residence

DIAGRAM 5 : FOREIGNER’S LEGAL TITLE TO STAY ON THE TERRITORY OF THE REPUBLIC OF POLAND



Source: Migration Analysis Division, Migration Policy Department of the Ministry of Interior and Administration

4.1.3.1 Asylum

Holders of the refugee, subsidiary protection and tolerated stay statuses are entitled to legal residence in Poland on the basis of their respective protection statuses. In practical terms, holders of the aforementioned statuses benefit from the same rights as the foreigners issued residence permit for a fixed period (see section 4.1.3.2 ‘Legal residence’- ‘Migrations’). At first, refugees, persons with subsidiary protection and persons with tolerated stay status receive the residence card valid, depending on the status, respectively 3, 2 and 1 year. After that time, the Head of the Office automatically renews the card. Once the legal residence exceeds five years, the holder of a refugee / subsidiary protection status becomes eligible for a permit to settle (see below), granted for an undefined time (residence of ten years is required in case of holders of the tolerated stay status) – the residence card issued with regard to the permit to settle is valid for 10 years. In addition, if the legal residence exceeds five years (also in case of tolerated stay status holders) and the foreigner can demonstrate possession of a regular source of income and a health insurance, s/he becomes eligible for a long-term EC resident’s residence permit, granted also for an undefined time

(see below)⁸⁸ – residence card issued with regard to this permit is valid for 5 years.

In case of national asylum status⁸⁹, the Head of the Office for Foreigners issues positive decision on a permit to settle and also a residence card. In case of temporary protection, the Head of the Office for Foreigners issues the residence permit for a fixed period for 1 year as well as a residence card. If the period of the temporary protection was extended, the Head of Office grants *ex officio* next residence permit for a fixed period, for a period for which the temporary protection was extended, and issues an appropriate residence card. In case of withdrawal of national protection status, as a general rule, a decision on expulsion is issued (see section ‘Return’).

4.1.3.2 Migrations

The 1st instance decisions related to residence permits in Poland (as described below) are, in general, taken by a **voivod** relevant with regard to foreigner’s place of (future) residence. Voivods’ decisions, in case of all types of permits, may be appealed against to the Head of the Office for Foreigners and further complained against to Voivodship Administrative Court and Supreme Administrative Court. As an exemption from this rule, in cases of family members of repatriate, the permit to settle is issued by the Head of the Office for Foreigners.

Residence permit for a fixed period

The residence permit for a fixed period is granted to a foreigner who proves that there are circumstances that justify his/her residence in Poland for a period longer than 3 months.⁹⁰ The permit is granted each time for a period necessary for the realization of the purpose of the residence, however not longer than for two years (with certain exceptions). In case of continuation of the circumstances justifying the residence of the foreigner in Poland, he/she can apply for another residence permit for a fixed period.

The decisions on the residence permits for a fixed period as well as the residence card are issued, on application of the foreigner, by the **voivod** competent with respect to the place of stay of the applicant⁹¹ (or intended stay in case of a foreigner staying abroad who submits the application through the **consul**⁹²). The foreigner staying in Poland is obliged to submit the

⁸⁸ Holders of refugee, subsidiary protection, tolerated stay, asylum and temporary protection statuses are not entitled to apply for a long-term resident’s EC residence permit.

⁸⁹ see footnote 24;

⁹⁰ see Annex 3

⁹¹ The application for residence permit may also include the foreigner’s children or other persons under his/her guardianship;

⁹² In such a case the consul attaches to the application an information whether the entry and stay of the foreigner on the territory of the Republic of Poland constitutes a threat to the state defence or security or to the protection

application at least 45 days before the expiry of the residence period indicated in the visa held by him/her or before the expiry of the previous permit. For the period of the proceedings the voivod issues the national visa to the foreigner⁹³ and cancels it after issuing the final decision on the residence permit for a fixed period.

When submitting the application, the foreigner is obliged to present a valid travel document (or, in case of lack of it, another document confirming his/her identity) and attach other required documents. Additionally, the foreigner applying for a residence permit for a fixed period, unless the provisions of the Act state otherwise, is obliged to be in possession of:

- 1) health insurance in the meaning of the regulations on the health care services financed from the public resources or a proof of covering the costs of medical treatment on the territory of Poland by the insurance company;
- 2) a stable and regular source of income sufficient for covering the costs of living of the foreigner as well as the financially depended family members⁹⁴ or sufficient financial means to cover costs of the living (and studies, if the applicant resides in Poland due to his/her studies) and the return.

Before issuing the decision on granting the residence permit for a fixed period, the voivod submits a request to the commander of the Border Guards division, Voivodship Commander of the Police, Chief of the Internal Security Agency and, if needed, to the consul competent with respect to the last place of foreigner's residence abroad or to other organs⁹⁵, to provide information whether the entry and stay of the foreigner on the territory of the Republic of Poland constitutes a threat to the state defence or security or to the protection of public safety and order⁹⁶.

If the residence permit for a fixed period is granted within so called family reunification procedure, the application for the permit for a family member is submitted by the foreigner who resides in Poland and who fulfils the conditions specified by the law.⁹⁷

of public safety and order;

⁹³ If this period is not met the foreigner does not receive visa and is obliged to leave the territory of the Republic of Poland before the expiry of the period indicated in the visa or in the residence permit for a fixed period, in case the proceedings of granting the residence permit for a fixed period were not completed before the expiry of this period of stay.

⁹⁴ This condition is fulfilled also in case when the costs of living of the foreigner are covered by a family member obliged to cover his/her subsistence, who resides on the territory of the Republic of Poland. The abovementioned income, after deducting the costs of accommodation, on each financially depended family member of the foreigner, or the foreigner himself/herself if he/she is a single person, must be higher than the amount of income entitling to financial benefits from the social assistance on the basis of the act of 12 March 2004 on social assistance (J. L. No 64 item 593, with further amendments);

⁹⁵ E.g. in the case of a foreigner who intends to continue on the territory of the Republic of Poland the studies started on the territory of another European Union member state, the voivod may ask the competent organ of this state to provide information on the stay of this foreigner on its territory.

⁹⁶ These organs are obliged to provide the information within the period of 30 days from the date of receiving the request. If the abovementioned organs do not provide information within the agreed deadline it is assumed that the requirement of obtaining information has been fulfilled. In particularly justified cases this deadline may be prolonged to 3 months. The organ obliged to provide information informs the voivod about any prolongation.

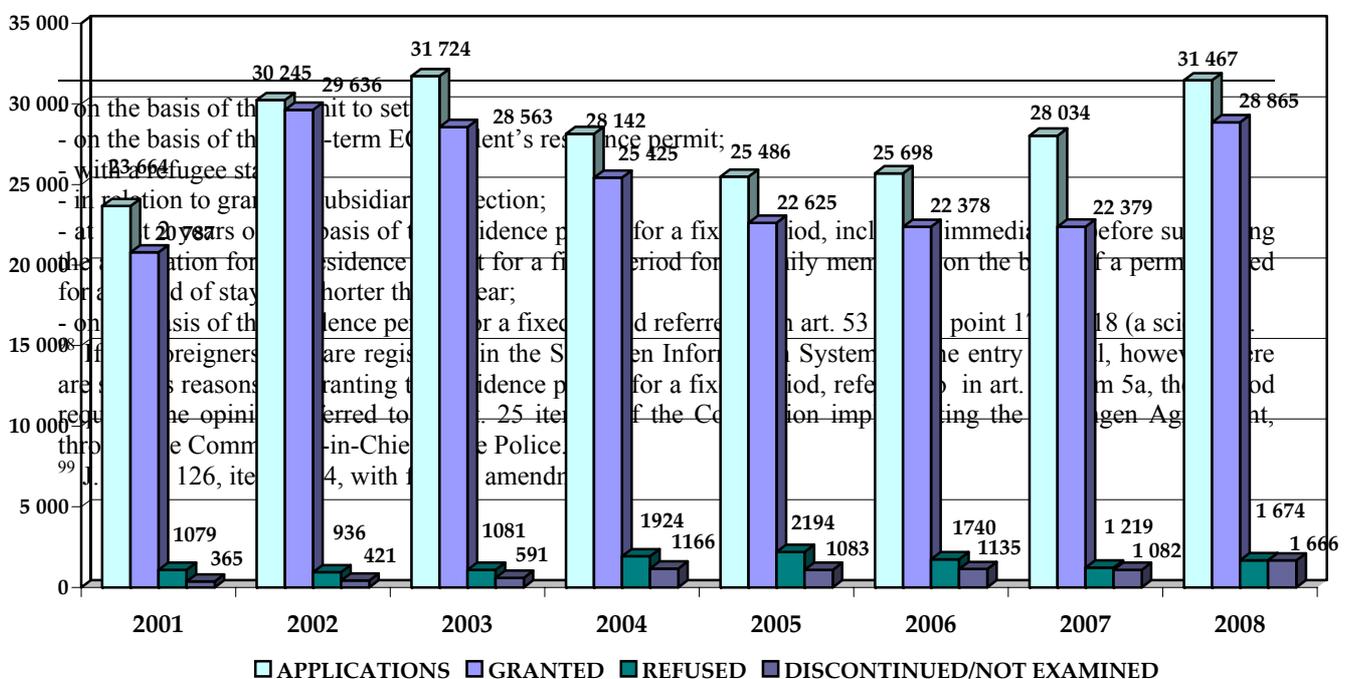
⁹⁷ This entitlement refers to the foreigner who resides in Poland:

If the provisions of the Act do not state otherwise, the foreigner shall be refused the residence permit for a fixed period, if he/she:

- a) does not fulfil the requirements related to granting the permit;
- b) his/her data are entered into the registry (see annex 1) or in the Schengen Information System for the entry denial⁹⁸;
- c) the circumstances of the case show that the purpose of the entry or stay on the territory of the Republic of Poland is or will be different than the declared one;
- d) the basis for the residence application is a marriage concluded solely for the purpose of abusing the appropriate regulations;
- e) it is required by the state defence or security concerns or the protection of public safety and order or the interests of the Republic of Poland;
- f) during the proceedings has submitted documents containing false information, has testified untruthfully or has concealed the truth;
- g) has been diagnosed with a disease or infection under the obligatory treatment on the basis of the Act of 6 September 2001 on contagious diseases and infections⁹⁹, or there is a suspicion of such a disease or infection, and the foreigner does not give consent for this treatment;
- h) does not comply with fiscal obligations towards the State Treasury;
- i) did not return the costs of expulsion covered from the state budget
- j) stays illegally on the territory of the Republic of Poland.

In case of any of the circumstances described above by the letters c-j, and also in the situation when the foreigner left the territory of Poland permanently or the purpose for which the permit was granted is no longer valid, the competent voivod shall withdraw the residence permit for a fixed period.

DIAGRAM 6: RESIDENCE PERMIT FOR A FIXED PERIOD IN POLAND 2001-2008



Source: Migration Analysis Division, Migration Policy Department of the Ministry of Interior and Administration

Permit to settle and the long-term resident's EC residence permit

The decision on granting the permit to settle or long-term resident's EC residence permit as well as an appropriate residence card are issued by the **voivod** competent with respect to the place of stay of the foreigner¹⁰⁰. Both types of permits are granted for an indefinite period of time. Similarly as in case of the residence permit for fixed period, before granting the permit to settle or the long-term resident's EC residence permit, the voivod submits a request to the Commanding Officer of the Border Guards division, the Voivodship Commander of the Police and the Chief of the Internal Security Agency and if the need be also to other organs to send the information on whether the entry and stay of the foreigner on the territory of Poland poses a threat to the state defence or security or to the protection of the public safety and order¹⁰¹.

The permit to settle is granted to a foreigner who:

¹⁰⁰ For the period of the proceedings, in case if the foreigner submitted the application during his/her authorised residence on the territory of the Republic of Poland (i.e. before the expiry of the validity of the hitherto permit/visa), and the proceedings regarding granting the permit to settle/the long-term resident's EC residence permit were not completed before the expiry of the residence period, the voivod issues a national visa to the foreigner and cancels it upon issuing final decision. If this period was not met, the foreigner is obliged to leave the territory of the Republic of Poland before the expiry on the residence period indicated in his/her visa or on the basis of the residence permit for a fixed period.

¹⁰¹ These organs are obliged to provide information within 30 days from the date of the receipt of the application on whether the entry and stay of the foreigner on the territory of Poland poses a threat to the state defence or security or to the protection of the public safety and order. In case these organs do not provide the information within the period of 30 days from the date of the receipt of the request, the requirement of obtaining information is considered to be fulfilled. In particularly justified cases the abovementioned period may be extended to 3 months, the organ obliged to pass the information notifies the voivod about this fact.

- 1) is an underage child of a foreigner who holds the permit to settle, born on the territory of the Republic of Poland;
- 2) is married with a Polish citizen for at least 3 years before submitting the application and immediately before submitting the application resided continuously on the territory of the Republic of Poland for at least 2 years on the basis of residence permit for a fixed period;
- 3) immediately before submitting the application resided continuously on the territory of Poland for a period not shorter than 10 years on the basis of the tolerated stay status or for a period of 5 years after being granted a refugee status or subsidiary protection status¹⁰²;
- 4) is a child of a Polish citizen and stays under his/her parental care.

The permit to settle expires by legal effect on the day on which the foreigner received the long-term resident's EC residence permit.

A long-term resident's EC residence permit shall be granted to a foreigner residing legally and continuously in the territory of the Republic of Poland for a period of at least 5 years directly prior to submitting the application, who possesses:

- 1) stable and regular source of income sufficient for covering the costs of living of the foreigner as well as the members of family financially dependent on him/her;
- 2) health insurance in the meaning of the appropriate provisions on the public health insurance or the confirmation of the coverage of the costs of medical treatment on the territory of the Republic of Poland by the insurance company.

The permit to settle or the long-term resident's EC residence permit is granted on the basis of the application submitted by the foreigner – the application may include the foreigner's children or other persons under his/her care. The foreigner is obliged to justify the application, present a valid travel document (or in case of lack of it other document confirming his/her identity) and attach to the application other documents required by the law.

The foreigner is refused the permit to settle, if:

- he/she does not fulfil the abovementioned requirements related to granting the permit;
- his/her data are in the registry (see annex 1) or in the Schengen Information System for the purpose of entry denial¹⁰³;

¹⁰² In case of the foreigner staying in the territory of the Republic of Poland on the basis of the refugee status, subsidiary protection status or tolerated stay status granted in relation to the examination of the refugee status application the period of stay during the proceedings, even if the foreigner was placed during this period in a guarded centre or in the arrest with the purpose of expulsion shall be included in "continuous residence" referred to in point 3. The stay on the territory of the Republic of Poland is considered to be continuous if none of the break was longer than 6 months and did not amount to 10 months in total, unless the break was caused by:

1. performing the work obligations or performing work out of the territory of the Republic of Poland on the basis of a contract concluded with an employer whose seat is located on the territory of the Republic of Poland;
2. accompanying the spouse who is performing the work obligations or performing work in the circumstances referred to in point 1;
3. foreigner's medical treatment.

¹⁰³ If the foreigners data are in the Schengen Information System for the purpose of entry denial, and there are serious reasons for granting the permit to settle (particularly of humanitarian nature or resulting from international obligations taking into account the interests of the state which made the entry into the Schengen

- it is required by the state defence or security considerations or by the protection of the public safety and order or the interests of the Republic of Poland;
- the application is submitted on the fact of a marriage concluded solely for the purpose of abusing the relevant provisions;
- has submitted in the procedure documents containing false information or has testified untruthfully or has concealed the truth;
- does not fulfil his/her fiscal obligations towards the State Treasury;
- did not return the costs of expulsion financed from the state budget.

The foreigner is refused the long-term resident's EC residence permit, if:

- he/she does not fulfil the abovementioned requirements related to granting the permit;
- it is required by the state defence or security considerations or by the protection of the public safety and order.

The permit to settle shall be cancelled in case any of the abovementioned circumstances justifying the refusal of the permit happen/was discovered after the positive decision was issued or the foreigner was sentenced in Poland with a valid sentence for a wilful crime for at least 3 years of imprisonment or left the territory of the Republic of Poland permanently. Similarly, the long-term resident's EC residence permit is withdrawn – if its acquisition was unlawful; when the foreigner left the territory of the Republic of Poland for a period exceeding 6 years or if the foreigner left the territory of the European Union for consecutive 12 months or if he obtained the long-term resident's EC residence permit on the territory of another member state of the European Union, and also when the foreigner poses a real and serious threat to the state defence or security or to the protection of the public safety and order.

The decision on withdrawal of the permit to settle or the long-term resident's EC residence permit is issued by the voivod competent with respect to the place of stay of the foreigner, *ex officio* or on the request of the Minister of National Defence, Chief of the Internal Security Agency, Commanding Officer of the Border Guards division or the Voivodship Commander of the Police.

In case when the foreigner's permit to settle is withdrawn, because:

- it is required by the by the state defence or security considerations or by the protection of the public safety and order or the interest of the Republic of Poland,
- the application for this permit or the documents attached to it contained false personal data or false information,
- in the procedure of granting the permit to settle the foreigner has testified untruthfully or has concealed the truth, or in order to present as authentic, has forged or altered a document or

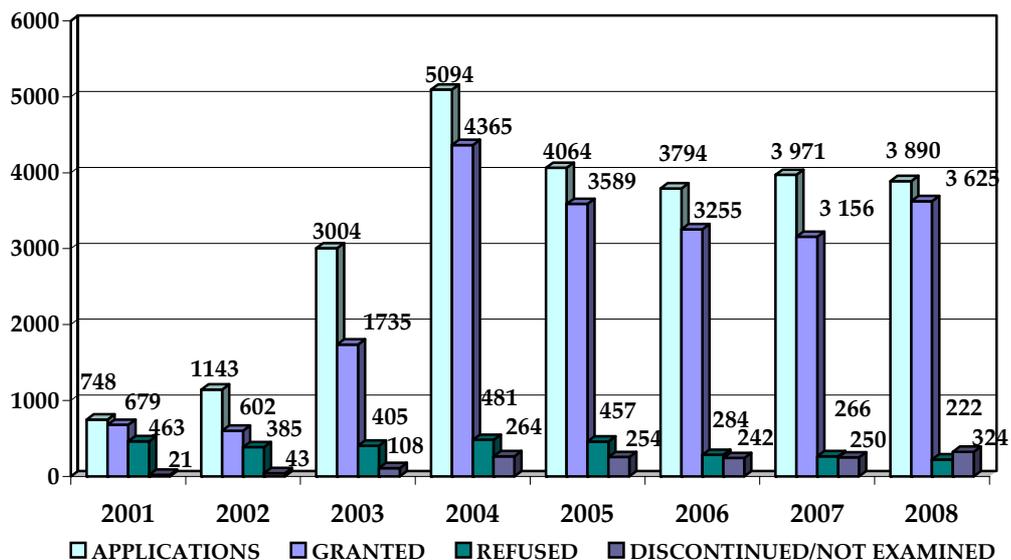
Information) before issuing the long-term resident's EC residence permit the voivod requests the opinion referred to in art. 25 paragraph 1 of the Convention implementing the Schengen Agreement through Commander-in-Chief of the Police.

used such a document as an authentic one,

- was sentenced in Poland with a valid sentence for a wilful crime for at least 3 years of imprisonment,

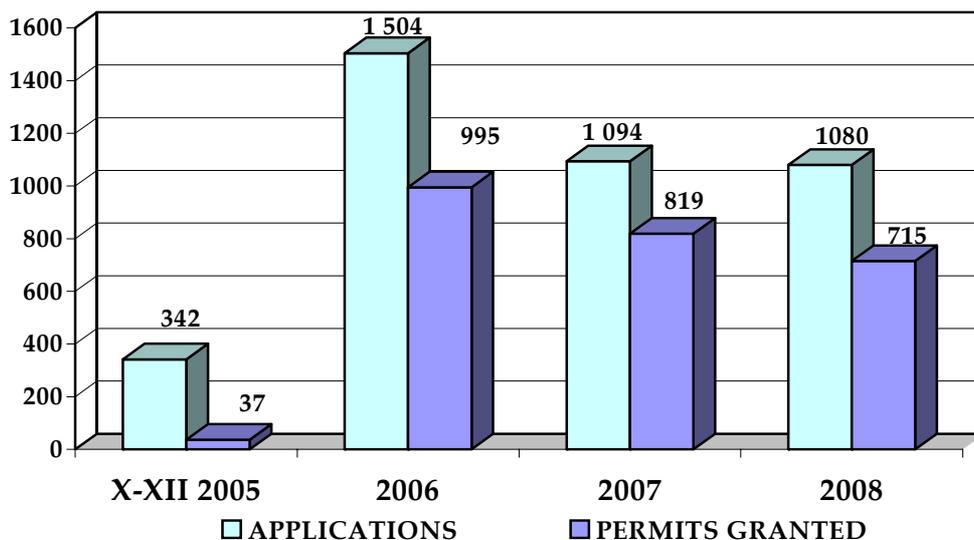
the decision on the withdrawal of the permit to settle orders also the expulsion of the foreigner.

DIAGRAM 7: PERMITS TO SETTLE IN POLAND 2001-2008



Source: Migration Analysis Division, Migration Policy Department of the Ministry of Interior and Administration

DIAGRAM 8: LONG-TERM RESIDENT'S EC RESIDENCE PERMIT IN POLAND 2005 – 2008



Source: Migration Analysis Division, Migration Policy Department of the Ministry of Interior and Administration

Citizenship

According to the provisions of the Act on Polish citizenship of 15 February 1962 Polish citizenship may be acquired through:

- **birth** – by virtue of law a child acquires Polish citizenship where:
 - both his/her parents are Polish citizens, or
 - one of the parents is a Polish citizen, and the other parent is unknown, or his/her citizenship is not specified, or he/she does not have any citizenship,
 - was born or found in Poland and both parents are unknown or their citizenship is not specified, or they do not have any citizenship,
 - one of the parents is a Polish citizen, and the other parent is a citizen of another country, and the parents have not chosen for him/her to bear the citizenship of the country of the other parent is a citizen;
- **granting** – at the request of a foreigner the President of the Republic of Poland may grant Polish citizenship to a foreigner who has lived in the territory of the Republic of Poland for at least 5 years on the basis of a permit to settle, the long-term resident's EC residence permit, or who has had the right of residence; the granting of Polish citizenship to one of the parents in specified cases also covers children; where the children are over 16 years old, their consent is required;

Polish citizenship is granted by the President of the Republic of Poland.

- **recognition as a Polish citizen** – at the request of a foreigner whose citizenship is not specified or who does not hold any citizenship, if he/she has lived in Poland for at least 5 years on the basis of permit of settle, or the long-term resident's EC residence permit;

Decision on the recognition as a Polish citizen is issued by the voivod.

- **acquisition (declaration)** – a possibility to acquire Polish citizenship by a foreigner who has been married for at least 3 years to a person holding Polish citizenship, if he/she lives in the territory of Poland on the basis of a permit to settle, the long-term resident's EC residence permit or has the right of residence, and in a specified time submits a declaration of will in respect of the acquisition of Polish citizenship in front of a competent voivode or consul, and the authority issues a decision on the accepting the declaration.

In case of citizens of another state, granting Polish citizenship may depend on a submission of a proof of loss or waiver of citizenship of that state. No other integration conditions are required.

Additionally to the above, a foreigner who enters Poland on the basis of repatriation visa¹⁰⁴ automatically gains Polish citizenship at the moment of crossing the Polish state

¹⁰⁴ i.e. visa granted in cases of persons with the status of repatriate (see annex 2). In case of Poland, repatriation

border.

4.1.4. Access to the Labour Market

4.1.4.1 Asylum

Refugees, persons with subsidiary and temporary protection statuses and persons with tolerated stay status (and their family members) benefit from the free access to the labour market. Also, and in line with the Act of 2 July 2004 on freedom to economic activity¹⁰⁵, holders of the refugee status, subsidiary protection status, tolerated stay status and temporary protection status are entitled to undertake and perform economic activity on the same basis as Polish citizens.

In case of persons seeking the refugee status, if after 6 months from the date of submission of the application for granting the refugee status, the first instance decision was not issued and the reason for that is not on the side of the applicant, the Head of the Office, on the applicant's request, shall issue a confirmation, which together with the temporary certificate of the foreigner's identity constitutes the basis for the applicant and his/her spouse on behalf of which the applicant acts, to perform work on the territory of the Republic of Poland on the conditions and in the course specified in the Act of 20 April 2004 on promotion of employment and labour market institutions.¹⁰⁶

4.1.4.2 Migration

As a general principle – a third country national may carry out work on the territory of the Republic of Poland if s/he was issued a work permit (on application of the employer) by the local authority (**voivod**), respective with regard to employer's business premise.

Holders of a permit to settle, a long-term EC resident's residence permit and Card of the Pole (and their family members) are exempted from that requirement and benefit from the free access to Polish labour market. Among various other exceptions from the necessity of holding a work permit by non-EEA nationals¹⁰⁷ (outlined especially in the Act of 20 April 2004 on promotion of employment and labour market institutions¹⁰⁸ and several ordinances of

means a return on special conditions of the persons of Polish origin, who remained in the East, and in particular in the Asian part of the former Soviet Union and who in result of deportations, exiles and other nationality-based or political persecutions could never settle in Poland;

¹⁰⁵ Journal of Laws 2007, no 155, item 1095, with further amendments (Dz.U.2007.127.880; Dz.U.2007.180.1280; Dz.U.2008.70.416; Dz.U.2008.116.732; Dz.U.2008.141.888; Dz.U.2008.216.1367);

¹⁰⁶ Journal of Laws 2008, No 69, item 415 (unified text)

¹⁰⁷ These relate *inter alia* to certain cases of holders of a residence permit for a fixed period obtained in family reunification / creation procedures; to certain professional categories; to holders of long-term EC resident's residence permit issued by another state who intend to continue their studies or undertake employment in Poland etc. Non-EEA nationals who are not required to possess a work permit, must still however be in possession of a valid visa for the purpose of work, issued by the Polish consulate.

¹⁰⁸ Journal of Laws 2004, no 99, item 1001; with further amendments (Dz.U.2008.70.416; Dz.U.2007.192.1378;

the Minister of Labour and Social Policy), one particular exemption concerns the citizens of neighbouring states (Ukraine, Belarus, Russian Federation) and Moldova (mobility partnership) – they are entitled to work in Poland without a permit for 6 months within the period of 12 months.

If the work permit is required, it may be obtained in a following two-stage procedure:

Stage 1.

- Employer undertakes a necessary attempt to fill the vacancy with Polish national or other person who does not require work permit (via placing a vacancy announcement of in labour agencies, press, internet, EURES - the European Employment Services network, etc.). The permit may be granted when there is no alternative for the employer but to hire a non-EEA national;
- **Employer** applies for a work permit to **voivod** (local authority);
- Voivod examines the application taking into account the local labour market situation or the economic needs and if no objections arise, the voivod issues a work permit to a foreigner.

Stage 2.

- Employer sends a permit to a foreigner, who applies for a visa for the purpose of work in the Polish **consulate** at foreigner's place of residence (the work permit should be enclosed to a visa application);
- After the arrival, if the foreigner intends to stay in Poland for longer period then the validity of a visa, s/he is obliged to obtain a residence permit for a fixed period at the voivod's office;
- Employer signs a work contract with a foreigner.

The work permit is issued for a fixed period, not longer than 3 years, and may be extended¹⁰⁹.

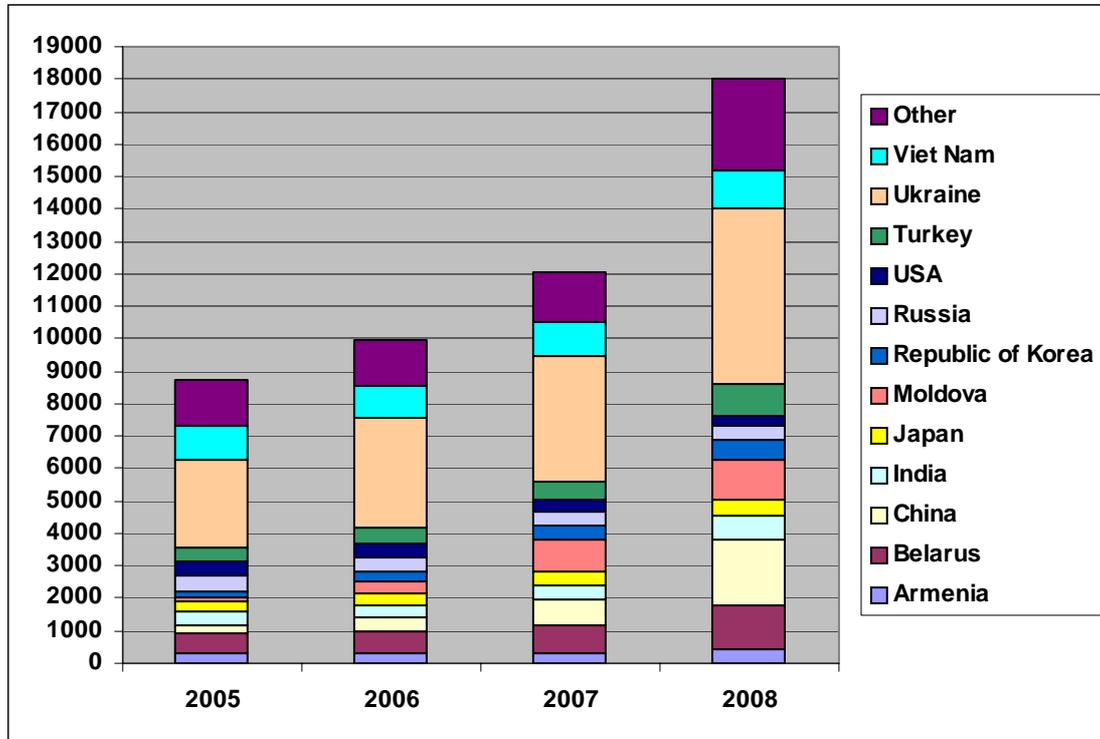
If the work permit is not required, the future employer registers his/her declaration of a will to employ a foreigner at the local Labour Office and then passes the relevant certificate to

Dz.U.2008.171.1056; Dz.U.2008.216.1367; Dz.U.2008.237.1654; Dz.U.2009.6.33);

¹⁰⁹ In case when the foreigner plays a function in the management board of the legal person, who on the time of submission of the application employs more than 25 persons, the voivod may issue the work permit for the period no longer than 5 years. In case of delegating the foreigner by the foreign employer in order to provide an export service, the voivod shall issue the work permit for the period of delegation.

his/her future employee¹¹⁰. On this basis, the foreigner applies for a visa with a right to work at the consulate or for a residence permit for a fixed period.

DIAGRAM 9: WORK PERMITS GRANTED IN POLAND 2005-2008
(by nationality)



Source: Migration Analysis Division, Migration Policy Department of the Ministry of Interior and Administration

The control of legality of foreigner employment is conducted mainly by the National Labour Inspection (www.pip.gov.pl) in cooperation with the Border Guards.

According to the act of 20 April 2004 on promotion of employment and labour market institutions the following fines are foreseen for the offences against the provisions of the act in relation to performing of work by the foreigners:

- for illegal employment of the foreigner – a fine not lower than 3,000 PLN.
- for a foreigner who performs work illegally – a fine not lower than 1,000 PLN.
- for a person who by misleading the foreigner, use of mistake, abuse of the professional dependency or inability to properly understand the actions taken, makes the foreigner to perform work illegally – a fine up to 10,000 PLN.

The foreigner who performed work in a breach of the act of 20 April 2004 on promotion of employment and the labour market institutions or undertook economic activity in the

¹¹⁰ The requirement of registration of a declaration refers to employment of citizens of Ukraine, Belarus, Russian Federation and Moldova for period not exceeding 6 months within 12 months. In other cases the declaration from employer needn't be register, but it should be attached to visa application.

breach of the regulations in force in this respect in the Republic of Poland, shall be issued a decision on expulsion from the territory of the Republic of Poland or the foreigner may be obliged to leave the territory of the Republic of Poland within the period of 7 days, if the circumstances of the case indicate that he/she will comply with this obligation voluntarily. The foreigners data are entered into the registry of the foreigners whose stay on the territory of the Republic of Poland is undesirable, respectively for the period of 3 years (decision on expulsion from the territory of the Republic of Poland) or one year (obligation to leave the territory of the Republic of Poland). The costs of the foreigner's expulsion shall be incurred by the employer or the person who entrusted the foreigner with performing other gainful work or fulfilling the function.

According to the Act of 2 July 2004 on freedom to economic activity¹¹¹, holders of a permit to settle, long-term EC resident's residence permit or residence permit for a fixed period issued:

- in the framework of family creation / reunification or
- for a holder of the long-term EC resident's residence permit issued by another state if the person intends to perform work, undertake economic activity or undertake / continue stationary studies (MA or PhD) or professional training in Poland

or holders of the Card of Pole, or holders of a visa issued for the period of residence permit proceedings (if, before obtaining such visa, they had a right to perform economic activity) are entitled to undertake economic activity on the same basis as Polish citizens.

Other categories of foreigners have a right to undertake and conduct economic activity, exclusively in the form of a company: limited-partnership company, limited-partnership joint stock company, limited liability company and joint stock company, as well as to join such companies and obtaining or purchasing their shares or stocks, unless the international agreements do not state otherwise.

4.1.5 Return

4.1.5.1 Asylum

The foreigner is obliged to leave the territory of the Republic of Poland in the period of 30 days from the date of receiving the final decision on the refusal of the refugee status or in case if:

- the decision of the Head of the Office for Foreigners (1st instance) or the Refugee Board (2nd instance) contains the order of the expulsion¹¹² or

¹¹¹ see footnote 106

¹¹² In spite of the refusal of the refugee status the decision does not contain the order of the expulsion if the foreigner:

- the execution of the decision on expulsion was suspended for the period of the proceedings and the decision on refusal of the refugee status does not contain the resolution on granting the subsidiary protection or the consent for a tolerated stay.

In case the foreigner notifies in writing the Head of the Office on the intention to return voluntarily before the expiry of the abovementioned period, this period is extended to the day when the foreigner should leave the territory of the Republic of Poland in a way organized by the Head of the Office.

The voluntary returns programme is implemented in Poland since 2006 on the basis of the Cooperation Agreement of 12 July 2005 concluded between the Minister of Interior and Administration and the International Organisation for Migration (IOM). In practice, with the assistance of IOM, the voluntary returns are implemented (and financed) by:

- a) the Border Guards: in case of foreigners whose refugee status applications were not examined due to formal reasons or who obtained a decision on the refusal of the refugee status and the refusal to grant consent for a tolerated stay or who received the decision resulting in the obligation to leave the territory of the Republic of Poland;
- b) the Office for Foreigners: in case of foreigners who submitted the refugee status application and later on resigned from applying for this status or the foreigners applying for the asylum - national form of protection in the Republic of Poland, who received a negative decision.¹¹³

An unaccompanied minor, in relation to whom the decision on refusal of the refugee status contains the order of the expulsion, shall stay in the educational-care centre until his/her transfer to the organs or organizations of the country of origin whose statutory competences include the care for the minors. The costs of stay of the unaccompanied minor in the educational-care centre and the costs of the medical care are financed from the state budget in its part that is at the disposal of the minister competent with respect to internal affairs, from the means that are at the disposal of Commander-in-Chief of the Border Guards.

In case of circumstances referred to in art. 32 paragraph 1 or art. 33 paragraph 2 of the

-
- is a holder of the residence permit for a fixed period, permit to settle, the long-term resident's EC residence permit, right to stay or right to permanent stay, [according to the Act of 14 July 2006 on the entry, stay and exit from the territory of Poland of the citizens of the European Union member states and their family members (Dz. U. Nr 144, item 1043 and of 2007 No. 120, item 818)], or a consent for a tolerated stay;
 - is temporarily arrested, serves the term of imprisonment or is a subject of the preventative measures of the prohibition to leave the territory of the Republic of Poland;
 - is obliged to leave the territory of the Republic of Poland on the basis of the decision on the expulsion, the execution of which was suspended on the basis of art. 33 paragraph 1 point 3 or paragraph 4;
 - is a spouse of the Polish citizen or a spouse of a foreigner who is a holder of the permit to settle or a long-term resident's EC residence permit.

¹¹³ On the basis of the appropriate agreements it was additionally concluded that the foreigners who received the decision on expulsion and expresses the will to return voluntarily to their country of origin may be also covered with the voluntary returns programme (excluding decisions with the order of immediate enforceability).

Geneva Convention¹¹⁴, the decision on the expulsion of a foreigner who is a holder of the refugee status is issued by the Head of the Office *ex officio* or on the motion from the Head of the Central Anticorruption Bureau, Head of the Military Counterintelligence Service, Head of the Military Intelligence Service, Head of the Internal Security Agency, Head of the Foreign Intelligence Service, Commander-in-Chief of the Border Guards, Commander-in-Chief of the Police, commander of the Border Guards division, commander of the Border Guards post or the Voivodship Commander of the Police.

In case of the execution of decision refusing granting of one of the forms of protection and containing the order of the expulsion the general regulations on expulsions are applied (see the chapter below).

4.1.5.2 Migration

If the foreigner was arrested in the near border area immediately after crossing the border unintentionally and in breach of the regulations he/she may be immediately transferred to the border. The Border Guards organ which stopped the foreigner in relation to crossing the border in breach of the law, takes the fingerprints unless the foreigner was immediately transferred to the border.

As far as the foreigners' returns are concerned, there are:

- voluntary departures due to the expiry of the validity of the residence document;
- voluntary returns (as above – section 4.1.5.1 'Asylum');
- returns related to the obligation of the foreigner to leave the territory of the Republic of Poland in the decision to refuse/ withdraw the residence permit for a fixed period;

¹¹⁴ Convention relating to the status of the refugees, signed in Geneva on 28 July 1951 (Dz.U of 1991 No. 119, item 515 and 517)

'Art. 32 paragraph 1.

The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

Art. 33

1. No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.'

- returns related to the obligation of the foreigner to leave the territory of the Republic of Poland¹¹⁵ (within 7 days, if the circumstances of the case indicate that he/she will fulfil this obligation voluntarily), when the foreigner:
 - a) stays on the territory of the Republic of Poland without a valid visa, if it is required, or other valid document authorising the entry and stay on this territory;
 - b) did not leave the territory of the Republic of Poland after exhausting the admissible period of stay on the territory of the Schengen states for 3 months in the period of 6 months calculated from the date of the first entry;
 - c) performed work in breach of the Act of 20 April 2004 on promotion of employment and labour market institutions¹¹⁶ or undertook the economic activity in breach of regulation in this respect in force in the Republic of Poland;
 - d) does not have the financial means necessary to cover the costs of his/her stay on the territory of the Republic of Poland and cannot point at credible sources allowing him/her to obtain such means;
 - e) crossed or attempted to cross the border contrary to the law;
 - f) stays outside of the border zone in which he/she may stay on the basis of the permit to cross the border within the local border traffic;
 - g) stays on the territory of the Republic of Poland after the expiry of the period of stay to which he/she was entitled on the basis of the permit to cross the border within the local border traffic.

¹¹⁵ Decision on the obligation of the foreigner to leave the territory of the Republic of Poland is not issued to the foreigner:

- who is a spouse of a Polish citizen or a foreigner who is a holder of a permit to settle or the long-term resident's EC residence permit;
- staying on the territory of the Republic of Poland on the basis of an uniform residence visa authorising only to the entry on the territory of the Republic of Poland due to humanitarian reasons, due to the state's interests or international obligations; or on the basis of residence permit for a fixed period, granted to a foreigner who stays on the territory of the Republic of Poland illegally, if the Polish regulations require from the foreigner to present himself/herself in person in front of the organ of the state authority; an exceptional personal situation requires the presence of the foreigner on the territory of the Republic of Poland; it is required so by the interest of the Republic of Poland; the organ competent with respect to conducting the proceedings in regard to combating trafficking in human beings states that the foreigner is likely to be a victim of trafficking in human beings in the meaning of the framework decision of the Council of 19 July 2002 on combating trafficking in human beings;
- temporarily delegated to provide services on the territory of the Republic of Poland by an employer with a seat on the territory of an European Union member state, member state of the European Free Trade Agreement (EFTA) – Party to the agreement on the European Economic Area or the Swiss Confederation, authorised to stay and be employed on the territory of this state – if he/she stays on this territory without a valid visa, if it is required, or other valid document authorising the entry and stay on this territory or crossed or attempted to cross the border in an irregular way.

The decision imposing on the foreigner the obligation to leave the territory of the Republic of Poland is under the order of immediate enforceability. The decision results by the power of law with the annulment of visa, annulment of the permit to cross the border within the local border traffic, withdrawal of the residence permit for a fixed period and the withdrawal of the work permit.

¹¹⁶ Dz.U. of 2008 No. 69, item 415. (unified text)

- returns related to the expulsion of foreigners¹¹⁷

The decision to oblige the foreigner to leave the territory of Poland is issued by the Voivodship Commander of the Police, poviata (municipal) commander of the Police, commander of the Border Guards division or the commander of the Border Guards post. This decision can be appealed to the voivod competent with respect to the seat of the organ which issued the decision. The second instance decision may be complaint to the Voivodship Administrative Court. The judgement of the Voivodship Administrative Court may be subject of a complaint to the Supreme Administrative Court (revocation complaint).

The foreigner may be issued a decision on expulsion when:

- he/she stays on this territory without a valid visa, if it is required, or other valid document authorising the entry and stay on this territory;
- did not leave the territory of the Republic of Poland after exhausting the admissible period of stay on the territory of the Schengen states for 3 months in the period of 6 months calculated from the date of the first entry;
- performed work in breach of the Act of 20 April 2004 on promotion of employment and labour market institutions¹¹⁸ or undertook the economic activity in breach of regulation in this respect in force in the Republic of Poland;
- does not have the financial means necessary to cover the costs of his/her stay on the territory of the Republic of Poland and cannot point at credible sources allowing him/her to obtain such means;
- his/her data are entered into the registry of the foreigners whose stay on the territory of the Republic of Poland is undesirable, if the entry of the foreigner on this territory takes place in the period of the validity of the entry into the registry;
- his/her data are present in the Schengen Information System for the purpose of the denial of entry;
- if the foreigner stays on the territory of the Republic of Poland on the basis of the uniform residence visa or in the non-visa regime;
- his/her further stay would pose a threat to the state defence or security or the protection of the public safety and order or would breach the interest of the Republic of Poland;
- crossed or attempted to cross the border contrary to the law;

¹¹⁷ To the foreigner who is a holder of the permit to settle or long-term resident's EC residence permit the decision on expulsion shall not be issued.

¹¹⁸ Dz.U. of 2008 No. 69, item 415. (unified text)

- did not leave the territory of the Republic of Poland voluntarily within the period specified in the decision:
 - a) on the obligation to leave this territory,
 - b) on the refusal to grant the residence permit for a fixed period,
 - c) on the withdrawal of the residence permit for a fixed period;
- does not comply with his/her fiscal obligations towards the State Treasury;
- completed serving the sentence of imprisonment issued in the Republic of Poland for a wilful crime or fiscal crime;
- was sentenced in the Republic of Poland with a valid sentence for imprisonment to be executed and there is basis for conducting the proceedings to transfer him abroad to serve the punishment to which he/she was sentenced;
- stays outside of the boarder zone in which he/she may stay on the basis of the permit to cross the border within the local border traffic;
- stays on the territory of the Republic of Poland after the expiry of the period of stay to which he/she was entitled on the basis of the permit to cross the border within the local border traffic.

The decision of the expulsion of the foreigner is issued *ex officio* or on the motion from the Minister of National Defence, Head of the Internal Security Agency, Head of the Foreign Intelligence Agency, Commander-in-Chief of the Border Guards, Commander-in-Chief of the Police, Commander of the Border Guards division, Voivodship Commander of the Police, commander of the Border Guards post or the Custom Service, by the competent voivod with respect to the place of stay of the foreigner or the place of disclosing the fact or event constituting the basis for submitting the motion for the expulsion of the foreigner.

The voivod decision can be appealed to the Head of the Office for Foreigners. The second instance decision may be complaint to the Voivodship Administrative Court. The judgement of the Voivodship Administrative Court may be subject of a complaint to the Supreme Administrative Court (revocation complaint).

If the circumstances justifying the decision on the expulsion from the territory of the Republic of Poland are met , or if the foreigner avoids the execution of the decision he/she may be arrested. The foreigner may be arrested for a period not longer than 48 hours and has to be released immediately when the reason for the arrest ceases to exist or on the Court's order. The arrest of the foreigner is executed by the Border Guards of the Police. The organ which arrested the foreigner should, depending on the circumstances, apply to the court with a motion to place the foreigner in the guarded centre or to place him/her under arrest with the purpose of expulsion. The foreigner shall be placed in a guarded centre, if:

- it is necessary for effective execution of the expulsion case or the case of withdrawal

of the permit to settle or the long-term resident's EC residence permit;

- there is a justified concern that he/she will avoid the execution of the decision on expulsion or the decision of withdrawal of the permit to settle or the long-term resident's EC residence permit;
- the foreigner crossed or attempted to cross the border contrary to the law, if he/she was not immediately transferred to the border.

The arrest with the purpose of expulsion shall be applied towards the foreigner, if any of the circumstances referred to the above takes place and there is a fear that the foreigner shall not comply with the terms of stay of the guarded centre.

The execution of the decision on expulsion of the foreigner from the territory of the Republic of Poland is possible, if the foreigner is a holder of a valid passport or his identity was confirmed by an appropriate diplomatic mission (through issuing a substitute travel document).

If the decision on expulsion was taken in case of the underage foreigner (to the country of origin or to another state), this decision shall be executed only if there is a guarantee that the minor will be there under the care of parents, other adult persons or care institutions. The minor shall be expelled only under the care of the statutory guardian.

Involuntary (forced) transfer of the foreigner to the border / airport/ sea harbour of the state to which the foreigner shall be expelled or to the Polish state border under the Border Guards convoy constitutes a particular case of execution of the decision on expulsion (execution of the expulsion procedure)¹¹⁹. This course of action is applied in the situation when:

- the foreigner stays in a guarded centre or in the arrest with the purpose of expulsion;
- the foreigner did not leave the Republic of Poland within the deadline specified in the decision on expulsion or decision containing the order of the expulsion;
- it is required by the concerns related to state defence or security or the protection of public safety and order or the interest of the Republic of Poland;
- the foreigner did not leave the territory of Poland voluntarily within the deadline specified in the decision imposing the obligation to leave this territory or on the refusal/withdrawal of the residence permit for a fixed period.

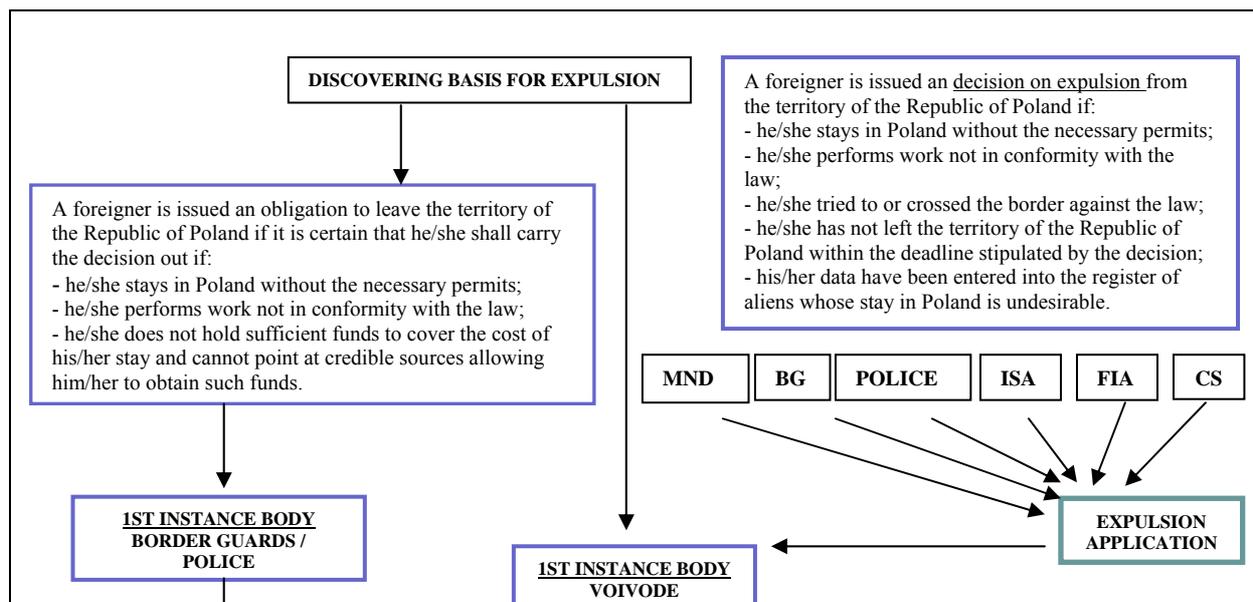
The decision on the expulsion of the foreigner shall not be issued or if issued - shall not be executed, if:

- there are indications that the consent for the tolerated stay will be granted;
- the foreigner is a spouse of the Polish citizen or the foreigner who is a holder of the permit to settle or the long-term resident's EC residence permit and his/her further stay

¹¹⁹ The responsibility of the Commander-in-Chief of the Border Guards or the commander of the Border Guards division with a territorial competence over the place where the foreigner crosses the border;

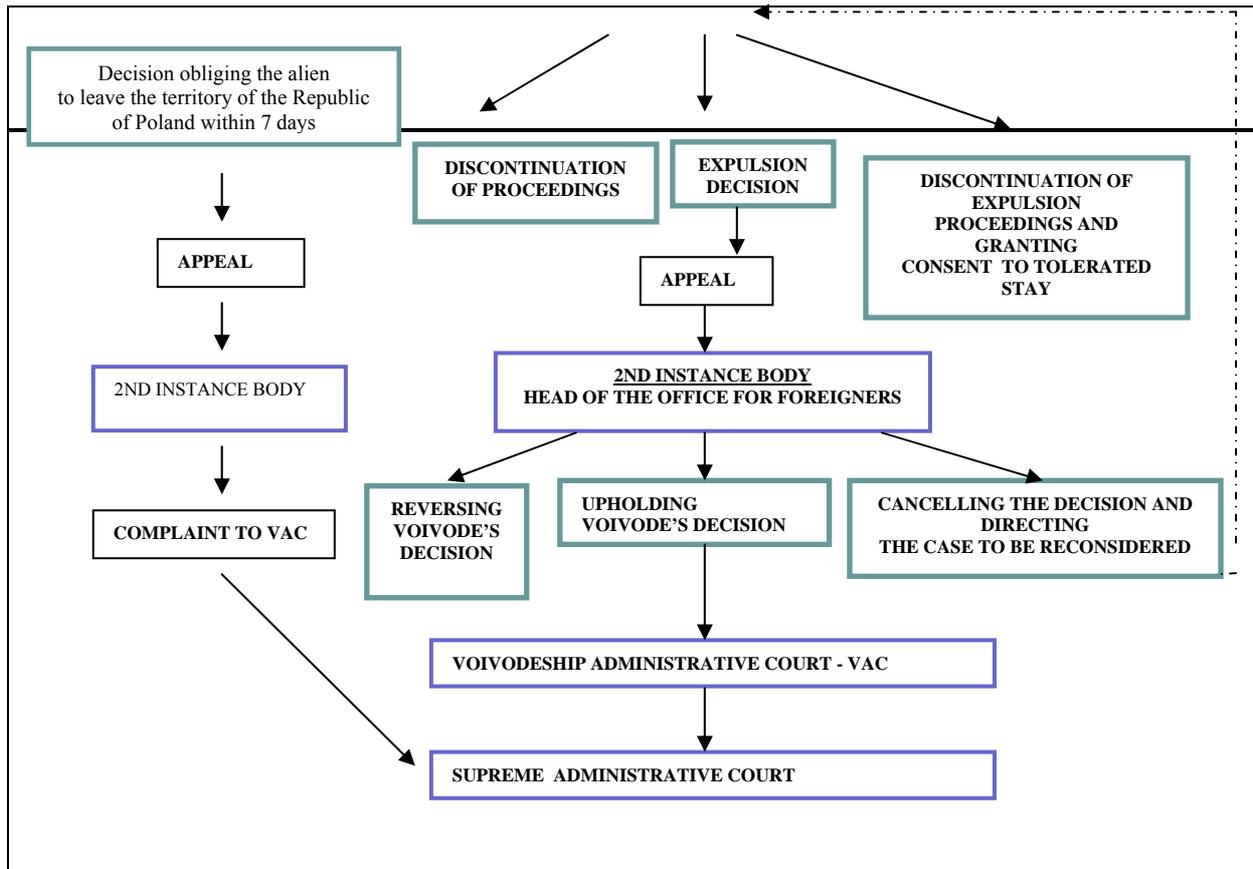
- does not pose a threat towards the state defence or security or the protection of public safety and order, unless the marriage was concluded in order to avoid the expulsion;
- foreigner stays on the territory of the Republic of Poland on the basis of a uniform residence visa authorising only to the entry on the territory of the Republic of Poland due to humanitarian reasons, due to the state's interests or international obligations; or on the basis of residence permit for a fixed period, granted in the case when the Polish regulations require from the foreigner to present himself/herself in person in front of the organ of the state authority; an exceptional personal situation requires the presence of the foreigner on the territory of the Republic of Poland; it is required so by the interest of the Republic of Poland; the organ competent with respect to conducting the proceedings with regard to combating trafficking in human beings states that the foreigner is likely to be a victim of trafficking in human beings in the meaning of the framework decision of the Council of 19 July 2002 on combating trafficking in human beings¹²⁰;
 - the decision on expulsion shall not be issued to a foreigner temporarily delegated to provide services on the territory of the Republic of Poland by an employer with a seat on the territory of an European Union member state, member state of the European Free Trade Agreement (EFTA) – Party to the agreement on the European Economic Area or the Swiss Confederation, authorised to stay and be employed on the territory of this state even in case he/she stays on the territory of the Republic of Poland without a valid visa or another valid document authorising the entry and stay on this territory or if he/she crossed or attempted to cross the border contrary to the law.

DIAGRAM 10: EXPULSION PROCEEDINGS¹²¹



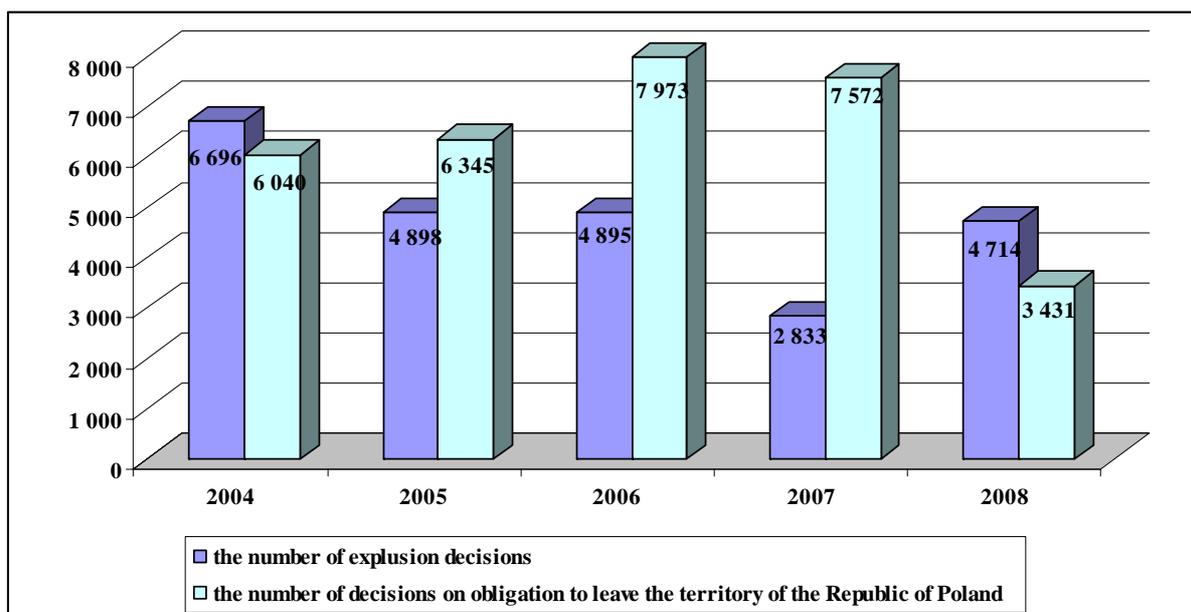
¹²⁰ OJ L 203 of 01.08.2002, page 1; Polish special edition: Chapter 19, vol. 6, page 52);

¹²¹ MND (Minister of National Defence); BG (Border Guards Commandant); ISA (Head of Internal Security Agency); FIA (Head of Foreign Intelligence Agency); CS (Head of Custom Service);



Source: Migration Analysis Division, Migration Policy Department of the Ministry of Interior and Administration

DIAGRAM 11: NUMBER OF EXPULSION DECISIONS AND ACTUAL EXPULSIONS FROM POLAND 2004-2007



Source: Migration Analysis Division, Migration Policy Department of the Ministry of Interior and Administration

In the foreigner's expulsion proceedings the voivod may grant the consent for a tolerated stay – *ex officio*, if he establishes that at least one of circumstances justifying such a status exists; in a decision of the expulsion refusal or in a separate decision, if such circumstances were discovered after the decision on expulsion was issued; or if the expulsion of the foreigner is not executable due to reasons that are beyond the control of the organ issuing the decision and of the foreigner. The voivod may also issue a consent for a tolerated stay on the motion from the organ competent with respect to the execution of the decision on the expulsion of the foreigner issued by an organ of another member state applying the Directive of the Council No. 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals¹²², when at least one of the circumstances justifying issuing such status specified in the act is present.

In the refugee proceedings the consent for a tolerated stay may be also granted by the Head of the Office, in case of the decision on the refusal to grant a refugee status or a subsidiary protection status – if there is any circumstance justifying granting a tolerated stay status; or on the request from the foreigner in relation to whom the court issued a decision on inadmissibility of foreigner's extradition or the Minister of Justice ordered a refusal of its issuing; or when the expulsion of the foreigner is not executable due to reasons that are beyond the control of the organ issuing the decision and of the foreigner. Additionally, the Head of the Office may grant the consent for a tolerated stay in a decision on withdrawing asylum (national form of protection).

¹²² (O.J. EC L 60 of 27.02.2004, page 55; O.J. EU Polish special edition, chapter 19, vol. 4, page 107)

The consent for a tolerated stay may be also granted by the Refugee Board when in result of the examination of the appeal from the decision on granting the refugee status it establishes that the expulsion of the foreigner:

- could only be executed to the country where his right to life, freedom and personal security would be at risk, in which he/she could be subjected to torture or inhuman or degrading treatment or punishment or be forced to labour or deprived of the right to a fair trial or be punished without legal grounds in the meaning of the Convention on Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950.

- would breach the right to family life in the meaning of the Convention on Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 or would breach the rights of the child specified in the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989 to the extent posing a risk to psychological and physical development of the child.

4.2 Links with other Policy Areas

Legislative and institutional solutions adopted in the area of migration are linked with other policy areas that to a larger or smaller extent take account of the influx and residence of the foreigner on the territory of Poland as well as the issues of economic migrations of the Poles. They are reflected both in the provisions of particular legal acts as well as in the organizational structures of the institutions responsible for the situation of the labour market, education, social assistance, state security etc. In this context a significant role of the interministerial Committee for Migration should be emphasised, the activity of which concentrates among other issues on the harmonization of the migration policy with other policy areas for which the processes related to the flow of foreigners are significant.

It is also worth noting that in February 2009 the Committee took a decision on appointing the Working Group for developing Migration Strategy of Poland. Its work shall result in development of the proposal that should include the description of the legal, factual and institutional situation in the area of migration, foundations of the state migration policy, short- and long-term activities as well as monitoring of this policy implementation. Defining the areas for which the migration policy is of particular importance as well as other policies that indirectly or directly influence the migration situation of Poland shall be an important direction of the Working Group and the Committee's work.

4.2.1. Labour market

As it was already referred to in this paper, in the period since May 2004, that is since Poland acceded to the EU, the influx of Polish economic migrants to some states of the Community increased. This situation was accompanied with a strong economic growth of our country, increasing the demand for the labour force. In effect the level of unemployment decreased. There were also indications from the employers about the shortages in indispensable employees to such sectors like agriculture or construction. This situation also led to starting discussions on broader opening of the Polish labour market to foreigners and on the necessity to change the policy in this area.

It is worth noting in this context the text of the resolution adopted by the interministerial Committee for Migration on 15 October 2007 according to which it was recommended to introduce gradual facilitations in the access to the Polish labour market to the citizens of such states as Ukraine, Belarus and Russia and further also other post-Soviet states, countries of Western Balkans and the EU associated states. This resolution was accompanied by legislative actions of the Ministry of Labour and Social Policy, which in August 2006 and in February 2009 introduced regulations entitling specified categories of the foreigners to perform work without the need to obtain the work permit. These regulations covered the citizens of the neighbouring states to Poland: Belarus, Russia, Ukraine and also Moldova (in the framework of partnership for mobility).

Introduction of such facilitations aims at promotion of legal channels of labour migration, prevent irregular migration and performing irregular work by citizens of the neighbouring countries in Poland. At the same time the above solution was introduced to improve the management of labour migration flows from the countries concerned, which are of temporary and circular nature. In accordance with mentioned regulation citizens of the entitled countries can stay and work in Poland up to 6 months within the period of 12 months.

According to the local labour offices since 20 July 2007, that is from the date of entry into force of the obligation to register the employees statements on the intention to employ the abovementioned foreigners, until the end of 2007 as many as 23,284 such statements were registered. Majority of such statements was related to the citizens of Ukraine – 21,682 (93% of all statements). A year later, in 2008 as many as 156,105 statements were registered, of which 142,960 were related to the citizens of Ukraine (91.5% of all statements). Majority of

employers recruited for work in agriculture and construction sector, industry but also in the sector of household services, transport and hotel services.

Adopted directions of changes are to a great extent in line with the programmes of partnership for mobility established by the UE and promote circular migrations. Their nature implies the necessity to strengthen the monitoring of the foreign economic migrants staying in Poland, both on the central as regional level, in cooperation with their countries of origin.

Global economic crisis, accompanied also in Poland by a growth of unemployment, limits the discussion on recruiting foreign labour force. However, according to the experts, due to the labour shortages in some sectors in Poland, Polish economy remains open for the influx of the economic migrants. Insufficient mechanism for prompt monitoring of the migration flows constitutes a problem but it shall be gradually strengthened.

4.2.2. Strengthening integration capacities

Forms of migration and foreigners' mobility determine their situation and different needs resulting from their stay on the territory of Poland. As far as the integration policy is concerned, for which the Ministry of Labour and Social Policy is responsible, it is undoubtedly shaped by the influx of refugees and persons seeking international protection.

The foreigner who was granted the refugee status shall be granted assistance in order to support the process of his/her integration. Additionally, since 29 May 2008, due to change of legislation, the abovementioned form of assistance is also granted to the foreigners covered by the subsidiary protection. The assistance is implemented within the framework of the Individual Integration Programme (IIP), agreed upon between the refugee (or the beneficiary of subsidiary protection) and a local (powiat) centre for family assistance (centre belonging to the social assistance system), specifying the level, scope and forms of assistance, depending on the individual life situation of the entitled person and his/her family. Within the IIP the recognised refugee (person granted subsidiary protection) and his/her family members are granted with the 12-month assistance in the form of pecuniary aid for living, covering costs related to learning of the Polish language, covering the health insurance contribution as well as specialist counselling. It is worth noting that in 2000- 2008 the integration assistance was granted to 5,290 persons, and in 2008 approx. 1 million Euro (4,466,436 PLN) was spent for this purpose. Every year the number of persons covered with the IIP grows significantly, similarly as the number of persons granted international protection in Poland. Hence in:

- 2000 the assistance was granted to 30 foreigners;

- 2001 to 339 foreigners;
- 2002 to 477 foreigners;
- 2003 to 415 foreigners;
- 2004 to 470 foreigners;
- 2005 to 486 foreigners;
- 2006 to 709 foreigners;
- 2007 to 640 foreigners;
- 2008 to 754 foreigners.

Within the funds from the EU earmarked for supporting the integration activities addressed to the foreigners applying for the refugee status, recognised refugees and holders of the tolerated stay status the following projects were implemented:

- projects financed from the EQUAL Community Initiative Programme – implemented e.g. by the Polish Red Cross, Polish Humanitarian Organisation, Intercultural Centre for Vocational Adaptation operating at the University of Warsaw (the value of the projects implemented from May 2004 to 2006 amounted to 8,239,258 Euro);
- projects financed from the European Refugee Fund – implemented e.g. by Caritas Poland, International Organisation for Migration (IOM), Caritas of the Warsaw Archdiocese, Office for Foreigners, Voivod of Mazowieckie Voivodship, Human Rights Centre of the Jagiellonian University (the value of the projects implemented from May 2004 to September 2007 amounted to 1,496,173 Euro).

Apart from the activities addressed to the persons benefiting from the international protection, there is an increased need of covering with integration programmes also other categories of foreigners staying on the territory of our country. The discussion on this issue is going on both in the non-governmental organisations environment as well as in the Working Groups of the interministerial Committee for Migration.

4.2.3. Education

Stay on the territory of Poland of the students from abroad constitutes an important issue in the context of the developing Polish migration policy, also in the area of the possibility of attracting highly qualified specialists, extremely precious for the country's

economy. The Act of 27 July 2005 – Law on Higher Education, enumerates the groups of foreigners entitled to undertake and carry out the studies on the same terms as Polish citizens.

These are:

- holders of the permit to settle in Poland;
- holders of a valid Card of the Pole;
- holders of the refugee status;
- benefiting from temporary and subsidiary protection;
- migrant workers from the EU member states and the EEA states and well as their family members;
- foreigners who have a right to permanent stay in Poland.

Other foreigners undertake, carry out the studies or other forms of education as well as participate in scientific research and development works in the Polish institutions of higher education on terms and conditions other than concerning the Polish citizens. Taking into account the financial conditions the foreigners may study in the Polish institutions of higher education:

- 1) as holders of Polish scholarships – they receive the scholarship covering the subsistence costs, granted by the minister competent with respect to the issues of higher education or the minister overseeing medical and artistic schools of higher education, if they study in the schools of higher education remaining in the competence of these ministers and they do not incur the costs of education. These costs are covered by the Ministry of Science and Higher Education and are transferred in the form of subsidy to the schools of higher education where the foreigners study;
- 2) without charge and without scholarships, if the students have own subsistence means and the Ministry of Science and Higher Education covers the costs of their studies, as in point 1;
- 3) charged – the foreigners do not receive any financial assistance from Poland (they study and live on their own financial means);
- 4) as holders of scholarships of the sending party, without charge for the studies.

Additionally, the foreigners undertake and carry out studies or participate in the research on the basis of:

- international agreements;

- agreements concluded by the schools of higher education with foreign institutions on the terms specified in these agreements;
- decision of the minister competent with respect to the issues of higher education or the minister overseeing medical and artistic schools of higher education;
- decision of the rector of the school of higher education.

Table 1. Number of foreigners receiving education in Polish schools of higher education in the academic year 2008/2009

foreigners of non-Polish origin studying in Poland	5,672
foreigners of Polish origin studying in Poland	4,579
In total	10,251

From the perspective of the migration policy, the increase of the number of foreigners studying in the Polish schools of higher education on the paid basis, while applying the means of disqualifying the foreigners who declaring educational aim of the residence, wish to enter the territory of Poland for purposes other than education (illegal migration) as well as creation of attractive conditions for the absorption of foreigners in the area of research and development should become the priorities in the area of education.

4.2.4. Demographic policy

It is estimated that the number of Polish citizens, which in 2006 amounted to 38.1 millions, will decrease by 2030 to 35.7 millions. Therefore, these unfavourable demographic tendencies in Poland require fundamental reconsideration of the state demographic policy. International migrations constitute an important element of this policy, both in the context of emigration from Poland as well as in the context of the opportunities arising from the influx of foreigners to our country. The relation between the migration management and shaping the demographic policy is a subject of analysis of research institutes as well as governmental organs. Inter-ministerial coordination of this issue as well as the monitoring of demographic situation of Poland is performed by the Governmental Population Council (GPC), an advisory organ to the President of the Council of Ministers. Moreover, on the basis of the demographic forecasts published by the Central Statistical Office, the GPC formulates conclusions related

to the social and economic policy that should counteract the unfavourable demographic tendencies in Poland, that is the decrease in births, radical changes in the family model, growing pace of the population ageing and a large-scale migration of the number of Poles migrating abroad. The information and analysis published annually in the reports on the demographic situation of Poland offer the basis for the formulation of recommendations addressed to the institutions responsible for shaping the directions and solutions in the state population policy by the GPC. Many of these recommendations are closely related to migrations that are considered to be one of the important factors influencing demographic situation. This is confirmed e.g. by the structure of the GPC reports in which the issues of international migration take as much place and attention as the issues related to births, mortality or the family structure.

4.2.5. Internal security and public order

The National Security Strategy of the Republic of Poland, approved on 13 November 2007 by the President of the Republic of Poland, contains references to the migration policy. In the situation of unfavourable demographic changes in Poland, decreasing level of generations replacement and a difficult situation on the labour market, the Strategy states e.g. that in the long-term perspective Poland will have to receive significant numbers of immigrants. This will force development of effective policies and activities for integration of the newcomers to the society with full respect of their different cultural and religious identity. Moreover, the Strategy univocally states that the illegal migration, in particular its organised forms, may pose a threat to Poland.

Poland participates in a number of multilateral initiatives related to combating and counteracting terrorist threats and organised crime, including those related to illegal money laundering, mass weapon proliferation etc. The Internal Security Agency together with the Police and the Border Guards play particular role in this respect.

The EU ‘Integrated Border Management Programme’ for 2007-2013 is implemented for provision of national security (Ministry of Interior and Administration).

Additionally, the ‘National Programme for Combating and Preventing Trafficking in Human Beings’ is implemented for 2006-2013 (Ministry of Interior and Administration).

Moreover, a working group for counteracting illegal migration was appointed within the framework of the Committee for Migration (an advisory body to the Prime Minister of the

Republic of Poland).

Due to accession of Poland to the Schengen zone it was necessary to adjust Polish legislation to the EU regulations in this area, which in many aspects are related to state security in broad terms. In the context of combating illegal migration it is necessary to emphasise that in result of amendments to the appropriate provisions, since January 2009 the Border Guards may conduct the controls of the legality of foreigners' employment on the whole territory of Poland. Nevertheless, the National Labour Inspection remains the main body coordinating the activities in this respect.

5. ANALYSIS OF ASYLUM AND MIGRATION SYSTEMS

For the first time since the 2nd World War Poland faced the global migration flows after 1989. In result of social and political changes in our country, processes related to liberalisation of the entry and stay of foreigners on the territory of the Republic of Poland and many countries of the Central and Eastern Europe, Poland has in short time become a transit and destination country for some categories of migrants and national groups. Beginning of the 1990s was marked in particular with the influx of the citizens of the former Soviet Union and Vietnam as well as the Romanian citizens of Roma origin. In this period migrant communities started to appear, of which the Armenian and the Vietnamese as well as Ukrainian and Belarusian are the most numerous at the moment. In 1990 the inflow of the refugees started. Some of them were returned from Sweden which considered Poland a safe country and capable of providing appropriate care. The remaining ones, the citizens of the former Soviet Union, which went through disintegration period, were seeking refuge from the effects of increasingly numerous conflicts of ethnic and national nature.

Poland was not prepared for this kind of phenomena. The basic regulations and procedures as well as knowledge on international standards in relation to the entry and stay of foreigners were lacking. Also the institutional and logistic system did not answer to the then challenges. The system of refugee care had to be developed from a scratch. Also the external situation of Poland was difficult. On one hand the mass influx of refugees and migrants was expected due to uncontrolled process of disintegration of our eastern neighbour (even the civil war variant was considered), on the other hand the poorly guarded Western border with Germany at that time constituted the corridor for illegal migration which was hard to manage. In this situation Poland had no time, nor the opportunity, to create and plan its own migration policy in a natural cycle, typical for these European states which have a many-years tradition in receiving migrants. Moreover, some of the patterns of operation developed in these

countries could not be adopted due to lack of financial resources, sufficient number of properly trained experts, appropriate infrastructure and many other problems related to the systemic transformation of the state. Due to this situation the legislation and migration management system was initially shaped in Poland under the influence of external partners (destination countries experience) or international organizations (IOM, UNHCR, Council of Europe). This was a period (in the years 1990-1996) when the accession of our country to the European Union was not yet decided and the adoption of the Community legislation in the area of migration and asylum seemed to be very difficult, even problematic. Summing up this phase, the signing by Poland in 1991 of the Geneva Convention of 1951 has to be noted as well as a number of amendments to the Act on foreigners regulating the issues of migration and refugee. Also a number of readmission agreements were signed, including with the Federal Republic of Germany and with Ukraine.

It has to be also noted that this was a period of 'learning' about migration, and the policy in this respect was limited to reacting on dynamically evolving phenomena, including illegal migration, both transit and destination. In face of insignificant public interest in the migration issue (also non-governmental organisations were not very numerous nor active) the solutions and decisions proposed by the competent state institutions were undertaken and implemented without public debates and political discussions. They aimed at stabilizing the migration situation of the country, creating the normative base, limiting illegal migration while guaranteeing the basic human rights of the foreigners and organising the organizational base (administrative structures organization, construction of the refugee centres, guarded centres for illegal migrants etc.). However, already at this stage the need for conducting more coordinated policy and activities in the field of migration as well as adjusting the internal solutions to the processes present in the European Union was noticed. This originated e.g. from art. 68 of the Association Agreement of 16 December 1991, according to which Poland took the obligation to guarantee the conformity of its legislation with the Community legislation.

The awareness of these needs initiated another phase of development of the migration situation in Poland, in which the European Union started to play growing role, as Poland started the accession negotiations in line with the decision of the European Council in Luxembourg in 1997. The need to speed up the process of adopting the Community legislation constituted the basis for adopting by the Parliament in June 1997 of the Law on foreigners which replaced the regulations of the previous law of 1963 which was amended many times. The new normative act introduced many solutions originating in the EU

legislation in the area of migration. Also a number of executive regulations was introduced, limiting the previous practice of applying ambiguous interpretations of statutory norms. Moreover, in 1997 the new Constitution of the Republic of Poland guaranteed the foreigners the right to receive refugee status, retaining the institution of asylum traditionally written down in Polish constitutions.

The negotiations with the EU in the area of migration in the chapter 'Justice and Home Affairs' started in 1998 with screenings that were aimed at assessing the starting point, exchange of information and opinions, identification of needs and agreeing on further activities, including in particular the activities related to the necessity of introducing legislative changes. From the perspective of Poland the negotiations conducted in 2000-2002 in the abovementioned chapter were an excellent lesson, not only as far as the acquaintance with the EU legislation and expectations in the area of migration are concerned but also a lesson in the principles of the European institutions functioning, reaching compromise in hard cases as well as implementing policies and lobbying. It is worth emphasizing that Poland closed this chapter without transition periods taking at the same time obligation to adopt the entire *acquis communautaire* in this area together with Schengen legislation, which gave enough time for a thorough preparation for accessing the Schengen zone in December 2007.

Closing the negotiations was conditioned by the Commission. As far as the migrations are concerned the conditions were related to full implementation of the Schengen Action Plan and provision of the means of its implementation by the state as well as introducing the executive provisions into the Act on foreigners, allowing for more effective combating of the illegal migration (including illegal economic migration).

Evaluating the negotiation period, it is worth noting that in this period further legislative changes were made, numerous twinning and horizontal programmes were continued and started and the border infrastructure was strengthened. All these activities required increased coordination and their implementation – more modern forms of management. Therefore, in 2001 the Office for Repatriation and Foreigners (Aliens) was established, servicing the President of the Office for Repatriation and Foreigners (Aliens), central organ of governmental administration with broad competences in the area of migration, asylum and citizenship. It is also worth noting the amendment on 11 April 2001 of the Act on foreigners taking account of arrangements made during screenings and programmes financed by the European Commission. Besides, some of the legislative provisions that were contrary to the will of the legislator and were abused by the foreigners were erased. Finally the process of adjusting Polish law to the EU legislation in the area of

migration and asylum was completed with passing of two new laws by the Polish Parliament on 13 June 2003 – on foreigners and on granting protection to foreigners on the territory of the Republic of Poland.

Both the negotiation itself as well as the activities undertaken in its result showed that from the EU perspective one of the most important tasks of Poland, a country with one of the longest external EU borders, is the protection of these borders and combating illegal migration. These tasks are valid also at present, the proof of it being further evolution of the law and development of infrastructure in this area.

Another important aspect related to accession is the transformation of methods and style of work of the Polish offices and officers to accommodate the standards of the EU member states. This process is also related to the need of securing interoperability and effective cooperation in solving migration problems of the whole Community. The period of accession negotiations as well as the accession itself had an extremely positive influence on all issues related to migration management in Poland. The enormous adjusting effort had however one disadvantage. It seems that there was not enough time, resources and opportunities for development of these areas that were not a part of the EU *acquis* and from the Community perspective were less significant. This refers e.g. to the activities aimed at the Diaspora and repatriation of our countrymen (nationals) staying in some of the CIS countries, the necessity to undertake the analytic and forecasting works by the administration to a larger extent, allowing for planned and more effective migration management as well as defining the directions of the state migration policy. There was also a need for regulating the solutions related to the access of foreigners to the Polish market in the perspective of new challenges as well as for the system of gathering statistical data on foreigners.

In the moment of the accession of Poland to the EU on the 1st of May 2004 the migration situation of Poland changed significantly. Taking advantage of the free movement of people principle within the community the economic migrations of the Polish citizens to the countries that experienced shortages of labour force, in particular to the United Kingdom and Ireland, increased. According to the Central Statistical Office at the end of 2007 the number of the Polish economic migrants in the EU states amounted to over 2 millions. From a country with one of the highest unemployment rates in Europe, Poland was transformed into a country which started to experience shortages in labour force in some sectors of the economy and for the first time in its modern history launched actions aimed at recruitment of foreigners to work on its territory. The legislative changes made in this area, facilitating the acquisition of labour force, were described in previous sub-chapter. It is however worth noting the

organizational changes which should be connected to the new migration situation of Poland. In 2006 the Department for Migration was established in the Ministry of Labour and Social Policy dealing with the issues of recruitment and employment of foreigners in Poland. Also in the Ministry of Interior and Administration the new department was created – Migration Policy Department, responsible among other issues for coordination on behalf of the Minister of the public administration activities in the area of migration, development of analyses and forecasts of migration as well as servicing the interministerial Committee for Trafficking in Human Beings as well as the interministerial Committee for Migration which in February 2009 commenced the works on the Migration Strategy of Poland. In 2008-2009 the regulations on the entry and stay of foreigners on the territory of the Republic of Poland and the issues related to the international protection were amended. In December 2007 Poland acceded the Schengen zone and then started the negotiations over so called local border traffic with Ukraine and Belarus. At present it is still hard to assess the results of the membership of our country in this zone, however from almost one and half year perspective of operation of new rules of entry to the territory of the Republic of Poland approximately 50% decrease in the foreigners entries through the external EU border with Belarus, Russia and Ukraine was noted. This is an unfavourable phenomenon, both from the economic as political perspective, as it limits the exchange of commodities, goods, ideas and people and results in perceiving by public opinion of some countries the new rules of entry to Poland as a discriminative barrier. One of the activities alleviating the decrease in entries on the territory of the Republic of Poland shall be the possibility of entry to Poland for the Ukrainian and Belarusian citizens on the basis of the agreements on so called local border traffic, allowing the entry and movement within the border area on the basis of special permit for people living within the 30 km distance from the border. The agreements with the abovementioned countries should enter into force still this year. Another mechanism resulting in the increase of visits to Poland by the economic migrants from Belarus, Moldova, Russia and Ukraine is the possibility of taking up employment within the simplified procedure (without the need to obtain work permit) described in the previous chapter. On the basis of these procedures in 2008 Polish consulates issued over 108,000 visas with the work permit. Majority of migrants accepted within this procedure were employed in the agriculture sector. The accession of Poland to the Schengen zone as well as the liberalisation of the regulations related to the economic migration of the foreigners and their effects constitute another, new experience for the administration dealing with these issues. As for today we may note positive results of their adoption, although the relatively short period of time from their introduction still requires some additional analysis

and assessment.

ANNEX 1 – The registry of foreigners whose stay on the territory of the Republic of Poland is undesirable

The issues related to the registry of foreigners whose stay on the territory of Poland is undesirable are regulated by chapter 11 of the Act of 13 June 2003 on foreigners.

Art. 128.

1. In the index there shall be stored the data of a foreigner with regard to whom any of the following circumstances has arisen:

- 1) there has been rendered the final decision on expulsion or the decision on withdrawal of the permit to settle on the basis of art. 68 sec. 1 p. 1 - 3; the decision on withdrawal of the long-term resident's EC resident permit on the basis of art. 69 sec. 1 p. 2 or the decision on refusal to grant the refugee status, including an order to leave the territory of the Republic of Poland, referred to in art. 16 sec. 1 p. 2 of the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland;
- 2) there has been rendered the final decision on obligation to leave the territory of the Republic of Poland, the decision in which the time limit for leaving the territory of the Republic of Poland has been specified, the decision on refusal of granting or on withdrawal of the resident permit for a fixed period;
- 3) a foreigner has been sentenced by a final sentence:
 - a) in the Republic of Poland for at least 3 years of imprisonment for committing an intentional crime or a tax offence.
 - b) abroad – for a crime which is regarded as a common crime also pursuant to the Polish law;
 - c) in a Schengen zone state for a crime punishable with an imprisonment for over one year;
- 4) a foreigner does not comply with fiscal obligations to the State Treasury;
- 5) entry and residence of a foreigner are undesirable for reasons of commitments stemming out from international treaties and agreements binding the Republic of Poland;
- 6) entry or residence of the foreigner may constitute a threat to the state security and defence as well as to the public security and policy or it would be in breach of the interests of the Republic of Poland.

1a. The following data of a foreigner shall not be entered to the index:

- 1) data on a spouse of the Polish citizen as well as data on a spouse of a foreigner possessing the permit to settle or the CE residence permit for long-term residents if this spouse resides on the territory of the Republic of Poland; however this limitation shall not apply if this spouse constitutes a threat to the state defence and security or public security and policy.
- 2) data on foreigner possessing the permit to settle or the CE residence permit for long-term residents.

1b. If the decision referred to in paragraph 1 point 1 and 2 is under the order of immediate enforceability, the foreigner's data may be entered into the register on the basis of the decision even if it is not final.

2. In the register the legal and factual basis shall be entered as well as the following data of an foreigner:

- 1) name (names) and family name (other names if used);
- 2) family name;
- 3) parents' names
- 4) date and place of birth;
- 5) sex;
- 6) citizenship;
- 7) place of residence.

3. The data of a foreigner shall be entered in the register for the following periods:

- 1) one year from the date of voluntary depart from the territory of the Republic of Poland within the time limit specified in the decision on obligation to leave the territory of the Republic of Poland, ordering to depart within a specified period, the decision on refusal of granting or withdrawal of the residence permit for a fixed period;
- 2) 3 years from the date of voluntary depart from the territory of the Republic of Poland within the time limit specified in the decision on refusal or withdrawal of the resident permit for a fixed period, ordering to depart within a specified period if the order to depart has been issued because of a threat to the state defence and security or public security and policy.
- 3) 3 years from the date of execution of the decision on expulsion or the decision on withdrawal of the permit to settle or of the long-term resident's EC resident permit or the decision on refusal to grant the refugee status;
- 4) 5 years from the date of execution of the decision on expulsion or the decision on withdrawal of the permit to settle or of the CE residence permit for long-term residents or the decision on refusal to grant the refugee status, if the costs of expulsion have been covered fully or partially by the State Treasury.
- 5) 5 years from the date at which the execution of the punishment served on the basis of the sentences referred to in sec. 1, p. 3 has been completed, provided the foreigner was sentenced for at least 3 years;;
- 5a) 3 years from the date at which the execution of the punishment served on the basis of the sentences referred to in sec. 1, p. 3 has been completed, if the foreigner was sentenced for imprisonment shorter than 3 years;
- 5b) 3 years from the date of validation of the sentence referred to in sec. 1, p. 3 if the foreigner was sentenced with a fine, if the fine is the only punishment for which the foreigner was sentenced and if it is paid, the data of the foreigner shall be erased from the register;
- 5c) conditional suspension of the imprisonment until the date of validation of the sentence referred to in sec. 1, p. 3, if the foreigner was sentenced for imprisonment with conditional suspension of its execution;
- 6) one year from the date of regulating fiscal liabilities to the State Treasury or from the date on which those liabilities were barred by the statute of limitations;
- 7) the time limit stemming out from international treaties binding the Republic of Poland, referred to in sec. 1 p. 5;
- 8) till 3 years in the case referred to in sec. 1, p. 6 with the possibility of extension on subsequent periods not exceeding 3 years.

3a. In case of lack of information on the execution of the decision referred to in paragraph 3 point 1-4, the start of the period for which the data of the foreigner shall be entered into the

registry is the last day of the deadline for leaving the territory of the Republic of Poland, and if the decision does not state this deadline – the date of issuing of the decision.

4. The data of a foreigner shall be erased from the index after the expiry of the periods referred to in sec. 3.

Art. 129.

1. Entry, extension of storage and erasure of the data entered in the index shall be carried out by the President of the Office for Repatriation and Foreigners, *ex officio* or at the request of:

- 1) the Minister of National Defence;
- 2) the minister competent with respect to public finances;
- 2a) the minister competent with respect to foreign affairs;
- 3) the Chief Commander of the Police;
- 4) the Chief Commander of the Border Guards;
- 5) the Chief of the Internal Security Agency;
- 6) the Chief of the Intelligence Agency;
- 7) the President of the Institute of National Remembrance – the Commission for the Prosecution of Crimes against the Polish Nation;
- 8) a voivod;
- 9) a consul.

2. If the President of the Office for Foreigners refuses to consider the request of the authority referred to in sec. 1 as justified, the requesting authority may ask the minister competent with respect to internal affairs to settle the case.

3. In the case referred to in sec. 2, the minister competent with respect to internal affairs may consider the request of the authority as justified and order the President of the Office for Repatriation and Foreigners to: enter, extend or erase the data in the index.1.

ANNEX 2 - Visas

Visa may be issued for one of the following purposes:

- 1) tourism;
- 2) a visit;
- 3) participation in sporting events;
- 4) running economic activity;
- 5) cultural activity or participation in international conferences;
- 6) performance of statutory functions by representatives of a foreign state authority or an international organisation;
- 7) performing work (to the foreigner who presents the promise of issuing the permit to work on the territory of the Republic of Poland or a written statement of the employer on the intention to employ the foreigner, if the work permit is not required – see section 4.1.4. ‘Access to the Labour Market’ – Migration);
- 8) taking up studies of first degree, second degree or uniform Masters studies or the third degree studies;
- 9) academic, training, didactic, other than the purpose referred to in point 8;
- 10) benefiting from temporary protection;
- 11) arrival due to humanitarian reasons, state interest or international obligations;
- 12) purpose of joining or staying with a citizen of an European Union or European Free Trade Association (EFTA) member states – parties to the agreement on European Economic Area or Swiss Confederation;

- 13) taking part in a cultural or educational exchange, humanitarian aid or student summer work programmes;
- 14) taking part in asylum proceedings (only national);
- 15) migration of the closest family member of the repatriate (only national);
- 16) executing the residence permit for a fixed period, the permit to settle or the EC residence permit for a long-time residents (only national);
- 17) benefiting from the entitlements granted by the Polish Card (only national),
- 18) repatriation (only national)

Visa (national or uniform) may be also issued as:

- 1) a diplomatic visa (to the chief and member of the diplomatic mission personnel, chief of the consular office and the member of staff of the consulate of another state or other person equal with him/her on the basis of acts, agreements or commonly established international practice, as well as the members of their families);
- 2) service visa (members of the administrative and technical personnel, member of personnel of the diplomatic mission, consular employee, member of personnel of the consular Office service, other person delegated to work in the Republic of Poland and arriving in service, equal with them on the basis of acts, agreements or commonly established international practice, as well as the members of their families).
- 3) courier visa (to diplomatic courier)¹²³.

ANNEX 3 – Residence permit for a fixed period

The issues related to the residence permit for a fixed period are regulated by the provisions contained in charter 4 of the act of 13 June 2003 on foreigners.

Article 53. 1. The residence permits for a fixed period shall be granted to a foreigner who:

- (1) has a work permit or an employer's written statement about the intention to employ the foreigner, if the work permit is not required;
- (2) conducts the economic activity pursuant to regulations in force in the Republic of Poland, which is beneficial to the national economy and which, in particular, contributes to the growth of investments, transfer of technology, implementation of profitable innovations or creation of new jobs;
- (3) as a person with acknowledged artistic achievements intends to continue his/her artistic activities on the territory of the Republic of Poland;
- (4) takes part in trainings and internships implemented under the European Union programmes;
- (5) as a member of the family intends to reside together with a migrating employee referred to in the European Social Charter adopted in Turin on 18 October 1961;
- (6) is a spouse of a Polish citizen;
- (7) as a member of a family of a foreigner referred to in Article 54 arrives on the territory of the Republic of Poland or resides on that territory in order to reunite with his/her family;
- (8) is a foreigner's minor child that was born on the territory of the Republic of Poland and resides on that territory without custody;
- (9) is a spouse or an adult child of the foreigner referred to in Article 54 and has resided on the territory of the Republic of Poland for a period of at least five years on the basis of permits to reside for a fixed period, granted because of the circumstances referred to in Subparagraph 7;
- (10) resides on the territory of the Republic of Poland on the basis of permit to reside for a fixed period granted because of the circumstances referred to in Subparagraph 7, in case of

¹²³ Visa may be also issued for other purpose than those mentioned.

widowhood or divorce, separation or death of his/her direct descendant or ascendant of first degree, if it is in good interest of a foreigner;

(11) resides on the territory of the Republic of Poland on the basis of permit to reside for a fixed period granted because of the circumstances referred to in Subparagraph 6, in case of widowhood or divorce, if it is in good interest of the foreigner;

(12) is a minor child, born on the territory of the Republic of Poland, of a foreigner who has a residence permit for a fixed period;

(13) possesses the EC residence permit for long-term residents granted by another member state of the European Union and is going to take up employment or to carry out economic activity in conformity with the regulations in force in the Republic of Poland, to take up or continue studies or professional training, or proves that there are other circumstances that justify his/her residence on the territory of the Republic of Poland;

(14) is a family member the foreigner referred to in Subparagraph 13, with whom he/she has resided on the territory of other member state of the European Union, who accompanies the foreigner or intends to join him/her;

(15) is a victim of trafficking in human beings within the meaning of the Council Framework Decision of 19 July 2002 on combating trafficking in human beings and fulfils jointly the following conditions:

(a) resides on the territory of the Republic of Poland;

(b) has undertaken cooperation with an authority competent with respect to the procedures on combating trafficking in human beings;

(c) has terminated contacts with persons suspected of committing offences related to trafficking in human beings;

(16) arrives to or resides on the territory of the Republic of Poland in order to take up or continue full-time studies or doctoral studies on the territory, hereinafter referred to as the 'studies'; also if he/she began to study on the territory of another European Union member state and intends to continue or complete the studies on the territory of the Republic of Poland;

(17) is a scientist who arrives to or resides on the territory of the Republic of Poland in order to conduct scientific research on the basis of a contract to carry out a research project signed with a scientific institution approved by the Minister competent with respect to science;

(18) possesses the residence permit referred to in Article 1 (2) (a) of the Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals with 'scientist' annotation, issued by another European Union member state, if the contract to carry out a research project, signed with the appropriate scientific institute of this country, provides for carrying out scientific research also on the territory of the Republic of Poland

19) is a holder of the permit to perform work on the territory of the Republic of Poland on the terms specified in the legal acts issued by the organs established on the basis of the Agreement Establishing an Association between the European Economic Community and Turkey, signed in Ankara on 12 September 1963.

– if the circumstance which is the basis for his/her application for this permit justifies his/her residence on the territory of the Republic of Poland for a period exceeding 3 months.

2. A family member of the foreigner referred to in Paragraph 1 (13) and Article 54 shall be:

(1) a person married to the foreigner, such marriage being recognised under the Polish law in force;

(2) a minor child of the foreigner and a person married to the foreigner, such marriage being recognized under the Polish law in force, including an adopted child;

(3) a minor child of this foreigner, including an adopted child, dependant on the foreigner, if the foreigner exercises actual parental control over the child;

(4) a minor child of the person referred to in Subparagraph 1, including an adopted child, if such person supports and exercises actual parental control over the child.

3. A direct ascendant shall also be regarded a family member of a minor foreigner who has been granted a refugee status and resides on the territory of the Republic of Poland without custody.

4. The foreigner referred to in Paragraph 1 (1) who carries out or intends to carry out work in the limited partnership, limited liability or stock company established by him/her; or in the company he/she joined or took over or purchased its shares, shall demonstrate that the activities of this company or partnership meet the conditions referred to in Paragraph 1 (2).

5. The foreigner referred to in Paragraph 1 (16) shall confirm his/her will to take up or continue studies on the territory of the Republic of Poland by providing a certificate of admission to studies, issued by appropriate institution and presenting a proof of payment of fees if they are required by this institution in order to take up or continue studies.

6. The provision of Paragraph 1 shall not apply to the foreigner:

(1) who resides on the territory of the Republic of Poland on the basis of the residence permit for a fixed period, referred to in Art. 53a Paragraph 2 or on the basis of the uniform residence visa authorising only the entry into the territory of the Republic of Poland with the purpose referred to in Art. 28 Paragraph 1 (11), unless the foreigner applies for the residence permit for a fixed period pursuant to Paragraph 1 (15);

(2) referred to in Article 110;

(3) who has a permit for tolerated stay.

7. The provision of Paragraph 1 (16) – (18) shall not apply to the foreigner:

(1) who uses the complementary or temporary protection;

(2) who applies for a refugee status or asylum.

8. The provision of Paragraph 1 (16) shall not apply to the foreigner:

(1) referred to in Paragraph 1 (13);

(2) who carries out work or economic activity on his/her own behalf on the territory of the Republic of Poland, unless the foreigner applies for a consecutive permit pursuant to Paragraph 1 (16).

9. The provision of Paragraph 1 (17) and (18) shall not apply to the foreigner:

(1) who intends to conduct scientific research within the framework of doctoral studies;

(2) transferred by a scientific institution with its seat on the territory of the European Union member state other than the Republic of Poland to a scientific institution with its seat on the territory of the Republic of Poland.

Article 53a. The residence permit for a fixed period may be granted to a foreigner who:

(1) intends to take up or to continue, on the territory of the Republic of Poland:

(a) education or

(b) professional training;

(2) due to family links intends to join a Polish citizen or a citizen of a European Union member state, a member country of the European Free Trade Association (EFTA) – a party to the agreement on the European Economic Area or the Swiss Confederation, residing on the territory of the Republic of Poland or to reside with him/her;

(3) is a cleric, a member of an order or a person performing religious function in churches and religious associations whose status is regulated by an international agreement or provisions of acts concerning relations between the state and the church or other religious association, or which operate on the basis of entry into the register of churches and other religious associations, and his/her stay on the territory of the Republic of Poland is related to the performed function or preparation to perform such a function;

(4) demonstrates that the circumstances other than those laid down in Subparagraphs 1-3 or Article 53 (1) occur

– if the circumstance which is the basis for his/her application for this permit justifies his/her residence on the territory of the Republic of Poland for a period exceeding 3 months.

2. The residence permit for a fixed period may be granted to the foreigner who stays on the territory of the Republic of Poland illegally, if:

- 1) the provisions of Polish law require the foreigner to present himself/herself in person in front of a Polish organ of state authority;
- 2) an exceptional personal situation requires the presence of the foreigner on the territory of the Republic of Poland;
- 3) it is required by the interest of the Republic of Poland;
- 4) the organ competent in respect to conducting proceedings in the area of combating trafficking in human beings establishes that the foreigner is most likely to be a victim of trafficking in human beings in the meaning of the framework decision of the Council of 19 July 2002 on combating trafficking in human.

Article 53b. 1. The foreigner referred to in Article 53 (1) (1), (2), (7), (9), (13), (14), (16) – (18) and in Article 53a (1), shall be obliged to possess:

(1) health insurance within the meaning of provisions on health care financed from public sources or documents confirming that the costs of medical treatment on the territory of the Republic of Poland shall be covered by the insurer; and

(2) a stable and regular source of income which is sufficient to cover the cost of maintenance of that foreigner and of the family members supported by him/her in cases referred to in Article 53 (1) (1), (2), (7), (9), (13) and (14) and in Article 53a (1) (b) and Subparagraphs (2) and (4);

(3) sufficient financial resources to cover the costs of maintenance and return in cases referred to in Article 53 (1) (16) – (18) and in Article 53a (1) (1) (a).

2. The condition referred to in Paragraph 1 (2) shall be regarded as fulfilled also if the costs of foreigner's maintenance are covered by his/her family member obliged to maintain him/her and residing on the territory of the Republic of Poland.

3. The foreigner referred to in Article 53 (1) (16) shall also demonstrate that he/she has sufficient financial resources to cover the costs of the studies.

4. The provisions of Paragraph 1 (1) and (2) shall not apply to a foreigner applying for a residence permit for a fixed period on the basis of Article 53 (1) (7),

1) a family member of a foreigner granted a refugee status or a subsidiary protection, if the application for a residence permit for a fixed period has been submitted within 3 months from the date of obtaining the refugee status or the subsidiary protection;

2) an minor child of the foreigner who is married to a Polish citizen and is a holder of a residence permit for a fixed period granted pursuant to Art. 53 Paragraph 1 (6) or a permit to settle granted in relation to marriage with a Polish citizen.

4a. The provision of Paragraph 1 (1) and (2) shall not apply to a foreigner who applies for a residence permit for a fixed period pursuant to Art. 53 paragraph 1 (1), posted to the territory of the Republic of Poland in order to providing services, an employee of an entrepreneur from the Swiss Confederation who provides services, acting in accordance with the law of Swiss Confederation, having their registered office, central administration or principal place for the provision of services in his territory, provided that this employee was employed in the territory of Swiss Confederation.

5. The income referred to in Paragraph 1 (2), after deduction of accommodation costs for each family member supported by the foreigner, or for the foreigner if he/she is a single person, shall be higher than the income constituting the basis for social assistance pursuant to the provisions of the Act of 12 March 2004 on social assistance.

5a. It is assumed that the accommodation costs, referred to in Paragraph 5, cover at least the sum of fixed fees related to the use of the occupied housing by persons living in that housing as well as fees for the supply of energy, gas, water as well as the collection of sewage, waste and waste water.

6. The Minister competent with respect to social insurance, in consultation with the Minister competent with respect to internal affairs, the Minister competent with respect to higher education and the Minister competent with respect to science, shall specify, by ordinance, the minimum amounts that the foreigners referred to in Article 53 (1) (16) – (18) should have to cover the costs of maintenance on the territory of the Republic of Poland and the costs of return and the documents which may evidence to lawful acquisition of such amounts. The amounts laid down in the ordinance should allow for covering the maintenance costs on the territory of the Republic of Poland of a foreigner and the family members he/she supports, without the need to use social assistance pursuant to the Act of 12 March 2004 on social assistance.

Art. 53c. In the procedure related to granting of the residence permit for a fixed period for the citizens of the Republic of Turkey in relation to conducting economic activity on the basis of the regulations in force in the Republic of Poland in this area, the provisions of article 41 paragraph 1 of the Additional Protocol to the Agreement Establishing an Association between the European Economic Community and Turkey should be taken into account.

Article 54. The residence permit for a fixed period referred to in Article 53 (1) (7), shall be granted to

a family member of the foreigner residing on the territory of the Republic of Poland:

- (1) on the basis of a permit to settle;
- (2) on the basis of long-term resident's EC residence permit;
- (3) who has been granted a refugee status;
- (3a) as a result of granting subsidiary protection;
- (4) for at least two years, on the basis of a residence permit for a fixed period, including directly before submitting an application for residence permit for a fixed period for his/her family member on the basis of permit to reside for a fixed period granted for at least one year;
- (5) on the basis of the residence permit for a fixed period, referred to in Article 53 (1) (17) and (18).

Article 57. 1. A foreigner shall be refused the residence permit for a fixed period, if:

- (1) he/she does not meet the conditions referred to in Articles 53-53b;
- (2) his/her data is recorded in the register of foreigners whose residence on the territory of the Republic of Poland is undesirable;
 - (2a) his/her data are entered in the Schengen Information System for the purposes of refusal of entry;
- (3) circumstances of the case demonstrate that the purpose of his/her entry into or residence on the territory of the Republic of Poland is or will be other than the one declared;
- (4) the basis for the application for permit is marriage concluded with a Polish citizen or the foreigner residing on the territory of the Republic of Poland referred to in Article 54, and such marriage was concluded to circumvent the provisions on granting the residence permit for a fixed period;
- (5) it is justified by reasons of state security and defence as well as public security and order, or the interests of the Republic of Poland;
- (6) during the procedure for granting the residence permit for a fixed period the foreigner:

- (a) has submitted an application or documents which contain untruthful personal data or false information;
 - (b) has testified untruthfully or has concealed the truth, or has falsified or counterfeited a document for the purpose of using it as authentic or has used such document as authentic;
 - (7) he/she has been diagnosed with an illness or infection that is subject to obligatory medical treatment according to the Act of 5 December 2008 on infectious diseases and infections (DZ.U. No 234, item 1570), or there is a suspicion of such disease or infection and the foreigner refuses to undergo medical treatment;
 - (8) he/she does not meet fiscal obligations to the State Treasury;
 - (8a) he/she did not return the costs of expulsion which was financed from the state budget
 - (9) he/she resides illegally on the territory of the Republic of Poland.
- 1a. A foreigner shall be refused a subsequent residence permit for a fixed period pursuant to Article 53 (1) (16) also if he/she has failed to get credit for the year of studies and has not obtained a conditional entry for another year or semester of studies.
2. The foreigner staying on the territory of the Republic of Poland on the basis of visa referred to in Article 29 (3) shall be refused a residence permit for a fixed period, if he/she applies for this permit on the grounds of circumstance referred to in Article 53 (1) (1) or (2).
3. The following foreigners shall not be refused a residence permit for a fixed period:
- 1) the foreigner who is a spouse of Polish citizen or a person who has been granted the permit to settle or the EC residence permit for long-term residents on the territory of the Republic of Poland, if the only grounds for refusal was one of the circumstances referred to in Paragraph 1 (3) and (7) – (9);
 - 2) the foreigner referred to in Article 53 Paragraph 1 (7) and (13) as well as the family member of the foreigner referred to in Article 53 Paragraph 1 (13), if the only grounds for the refusal would be the reason referred to in Paragraph 1 (7), if the foreigner applies for a consecutive permit;
 - 3) the foreigner referred to in Article 53 Paragraph 1 (8) and (12), if the only grounds for the refusal would be the reason referred to in Paragraph 1 (9);
 - 4) the foreigner referred to in Article 53 Paragraph 1 (15), if the only grounds for the refusal would be the reason referred to in Paragraph 1 (7) or (9);
 - 5) the foreigner applying for the residence permit for a fixed period due to circumstances referred to in Article 53 Paragraph 1 (1), temporarily delegated to provide services on the territory of the Republic of Poland by the employer with its seat on the territory on the European Union member state, member state of the European Free Trade Association (EFTA) – party to the agreement on the European Economic Area or Swiss Confederation, authorised to stay and work on the territory of that state, if the only grounds for the refusal would be the reason referred to in Paragraph 1 (9);
 - 6) the foreigner who has come of age during the stay on the territory of the Republic of Poland and applied for the residence permit for a fixed period within a year from the date of coming of age, if it is in a particularly important interest of the foreigner, if the only grounds for the refusal would be the reason referred to in Paragraph 1 (9).
4. (erased).
5. (erased).
- 5a. In the case referred to in Paragraph 1 (2a), a residence permit may be granted for a fixed period only for serious reasons, particularly for humanitarian reasons or due to international obligations, taking into account the interest of the state making the entry into the Schengen Information System.
6. A foreigner staying on the territory of the Republic of Poland, whose residence is undesirable, may be obliged to leave this territory by decision on refusal of residence permit for a fixed period, indicating also the deadline for leaving this territory.

7. The provisions regulating proceedings on obligation to leave the territory of the Republic of Poland shall apply respectively to decision on refusal of residence permit for a fixed period obliging the foreigner to leave the territory of the Republic of Poland.

8. The provisions of Paragraph 1 (1)-(4) and (8)-(9) shall not be applied to the foreigner applying for the residence permit for a fixed period on the basis of Article 53 Paragraph 1 (19).

9. Provisions of Paragraph 1 (1), (2) and (3)-(9) and Paragraph 2-7 shall not be applied to the foreigner applying for the residence permit for a fixed period on the basis of Article 53a Paragraph 2.

ANNEX 4 – Administrative division of Poland (Voivodships)



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