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Refugee rights protection at the Center for Refugees in Lublin

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Mechanizmy ochrony praw uchodźców na podstawie funkcjonowania
lubelskiego Ośrodka dla Uchodźców

REFUGEE RIGHTS PROTECTION IN POLAND

THE BEGINNING OF THE PROBLEM

After the Yalta Conference in 1945, Europe became divided into two parts, the Western one with the American protection and the Eastern one connected with the Soviet Union.

Due to economic conditions Eastern European countries, also Poland, were not attractive for refugees, unlike Western part of Europe. Except for this there were specific laws, such as Polish one stating that a person can be given an asylum only because of political or ideological reasons.¹ Thus during 1946–1949 about 15,000 political refugees from Greece and Macedonia had found their place in Poland, later in the seventies over a hundred people came from Chile, they had to escape because of political persecution as well.² In the period of Russian protection Polish citizens used to be the ones to seek asylum in Germany or further on the American Continent.

On the 29th of March 1963 the new Aliens Act had come into force nonetheless it did not contain the term “refugee”.

¹ *The Constitution*, 1952, art. 88.

² S. Łodziński, *Cudzoziemcy w Polsce w latach 1989–1994. Rozmiary, zbiorowość, struktura oraz problemy prawne i społeczne polityki migracyjnej Polski*, „Kultura i Społeczeństwo”, nr 3, sierpień/wrzesień 1995, s. 58.

HOW IT WAS TO GET A REFUGEE STATUS IN POLAND AFTER 1989?

In the late eighties there was about 20–30 refugees a year coming to Poland to get a status, mostly from African and Asian countries. The whole situation has changed after 1989, when the borders were opened, which enabled for entering and leaving the country. The Republic of Poland began a transit camp on the way to the Western Europe. Furthermore, due to the economic increase, Poland started to be a goal itself for foreigners from the former Soviet Union.

In the early nineties Polish Red Cross was responsible for helping asylum seekers, then the Bureau of Migration and Refuge in the Ministry of Internal Affairs, later the Department of Migration and Refuge in the Ministry of Interior and Administration. At the end of 1990, 385 persons from 640 applying for were given a refugee status. In the autumn of 1991 Polish Parliament ratified the 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees.³ Then in February 1992 the Bureau of UN High Commissioner for Refugees was opened in Warsaw.

As the number of “people in need” was growing substantially, some changes in Polish law became essential. Thus art. 88 from Constitution (1952) had had to be rewritten, stating now: “Citizens of other countries and Stateless can be given an asylum according to the specific bill”.⁴

The Aliens Act from 1963 was also changed. A term “refugee” based on Convention (1951) and Protocol (1967) has finally entered Polish law as well as refugee status procedures and rules of readmission.⁵ The decision about giving a refugee status was made by the Minister of Internal Affairs after consultation with the Minister of Foreign Affairs.

The number of asylum seekers is constantly increasing. In 1993 there were 600 applications for a refugee status, a year later 527 (328 persons got a status), it was the Bosnia time. In 1995, 842 persons applied for a permit to stay in Poland and only 106 statuses were given. On several occasions foreigners were on their way to Germany, that is why they have not waited until the end of a procedure.⁶

REFUGEE RIGHTS PROTECTION ACCORDING TO THE RECENT RULES AND PROCEDURES

In the end of the nineties new laws and rights were established in Poland.

The Constitution from the 2nd of April 1997 (art. 56), the Aliens Act – 25th of June 1997, the Council for Refugees and the last but not least the Aliens Act from April the 12th, 2001, changing the previous one.

³ *Ibid.*, s. 73.

⁴ *Constitutional Bill, 17th of September 1992*, Wydawnictwo Naukowe PWN, Warszawa–Łódź 1993.

⁵ The Aliens Act, 29th of March 1963.

⁶ A. Szostakiewicz, *Wąska kładka*, „Tygodnik Powszechny”, nr 12/1997, s. 5.

The Constitution treats a refugee problem as follows: “aliens can be given an asylum in Poland according to the rules from the Aliens Act. [...] a foreigner that is looking for a protection in Poland, escaping from any persecution, can be given a Refugee Status in compliance with international treaties”.⁷

According to the art. 56, the new Aliens Act came into force on the 25th of June 1997. Chapter 5th of this act says: “ a foreigner can be given a refugee status in Poland in the interpretation of the Geneva Convention and the New York Protocol, unless they were given one in another country, that gives them a real protection” (art. 32).⁸ In April 2001 there was a new Aliens Act, which changed some of the previous paragraphs.

The process of getting a refugee status begins with leaving an application by a foreigner right after they crossed a border (art. 37)⁹, which has to be done personally (art. 34, (1)). An application must contain personal data of a given fugitive, their spouse and children under 18 (art. 34, (2)). Then a person has to be made identified (by photographing and taking lines upon the finger) and on several occasions medically tested.¹⁰ In general, those activities are taken to confirm personal data given in an application. If a foreigner refuses to be checked or the information given by them is false, their application will not be recognized (art. 38, (3)).

There is a special UNHCR¹¹ questionnaire attached to each application form, which informs High Commissioner about another person applying for a Refugee Status.¹²

While waiting for a status decision – which approximately takes 6 months (art. 41) – a fugitive is being given a temporary identification card (art. 39, (1)). Furthermore, they can expect from a given country: accommodation, food supply, medical service, material help – given once or regularly, help with leaving Poland. Those services can be obtained in Centers for Refugees (art. 40, (1), (2)).

The decision depriving a person of a refugee status is strictly based on the Geneva Convention (1951). It means that a legal permit for staying within the Polish territory needs to be changed (art. 48). If such decision is being taken during the process of giving a refugee status, then it has to be delayed until the end of the process (art. 46).

The article 49 – the last one from the chapter “A Refugee Status” – says about the cooperation between Polish officials and UNHCR, as well as about

⁷ *The Constitution*, 2nd of April 1997, art. 56.

⁸ J. Białocerkiewicz, *Cudzoziemcy w Rzeczypospolitej Polskiej*, Toruń 1998, p. 175; see also the new Aliens Act from the 12th of April 2001.

⁹ See: the Aliens Act (2001).

¹⁰ Only when there is a possibility that a given person suffers from an infectious disease.

¹¹ UNHCR – United Nations High Commissioner for Refugees.

¹² J. Białocerkiewicz, *op. cit.*, p. 183.

possibilities for aliens to contact with High Commissioner and non-governmental organizations.

In January 1999 the Prime Minister Jerzy Buzek has established the Council for Refugees¹³ mentioned in the Aliens Act as an appeal for decisions of the Minister of Interior and Administration in the matters of giving or losing a refugee status (art. 69). According to the new Aliens Act (2001) the Council for Refugees is a body, that enables to appeal for decisions made by the President of the Department for Repatriation and Aliens (art. 69, (1)).¹⁴ Thus the Council can change the decisions of the President as well as its own decisions (art. 70).

The Council for Refugees also: works on a jurisdiction of giving or taking away a refugee status, collects information about countries that fugitives come from, cooperates with other institutions dealing with aliens and migration problems (art. 69, (2), (3), (4)).

The Prime Minister chooses members of the Council¹⁵ from candidates introduced by the Minister of Foreign Affairs and the Minister of Justice – for five years.¹⁶ They have to be Polish citizens, have a theoretical knowledge and a practical experience on the topic of refugees. Half of them at least need to have a law degree.

The Council works in three and one-person groups (art. 73, (3), (6), (7)).

The Prime Minister can dismiss a member of the Council if:

- * they decide to resign themselves
- * because of illness that makes their work impossible
- * they were sentenced guilty
- * there were other circumstances.

In such cases the Prime Minister has to find a replacement until the end of the term of office (art. 72).

The Department for Repatriation and Aliens has been established by the Aliens Act from 2001, as the administration organ to work in the refugee field (art. 68a).

The Prime Minister appoints the President of the Department, following certain rules and procedures¹⁷, v-ce presidents are appointed and dismissed by the Minister of Internal Affairs (art. 68b, (3)).

The President of the Department for Repatriation (art. 68c): makes a decision whether to give a refugee status to a person or not, manages centers for refugees, analyses general refugee situation, cooperates with international organizations, collects information about countries that can “produce” refugees.¹⁸

¹³ The Aliens Act (1997), art. 113, (2).

¹⁴ The Department of Repatriation and Aliens is a body established by the Aliens Act from 2001 (art. 68a).

¹⁵ It consists of the President and 11 members.

¹⁶ Each of them introduces 8 candidates (art. 71, (1)).

¹⁷ The Aliens Act, 2001; art. 68b, (1), (2).

¹⁸ See further: art. 68c, (2d), (8), (13), (14), (15).

Having decided about the integration with the European Union, Poland had had to provide changes in the law field. Thus we ratified most important international treaties. In 1991 the Republic of Poland had become a member of the Council of Europe and then ratified the Convention on the Rights of the Children, the Convention relating to the Status of Refugees plus its Protocol (1967). Two years later on the 19th of January 1993 Poland ratified the European Convention on Human Rights and on the 1st of February 1995 the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.¹⁹

Furthermore, a resolution regarding common Refugee Policy confirms the Amsterdam Treaty of the 17th of June 1997.²⁰

REFUGEE RIGHTS PROTECTION AT THE CENTER FOR REFUGEES IN LUBLIN

CENTER FOR REFUGEES IN LUBLIN – BRIEF DESCRIPTION

The Lublin Center for Refugees was established in October 1994 as a local branch of the Main Center for Refugees located in Podkowa Leśna.²¹

In the beginning there was only one center, located on Wrońska Street.

When a large number of refugees began coming from Kosovo,²² however, it was necessary to establish a second center on Magnoliowa Street for the original inhabitants. There was approximately 122 persons waiting for their status at that time.

During the past two years the number of asylum seekers in Poland has increased considerably. At the present time there are two houses for foreigners in Lublin. There is one center at Wrońska Street which gives shelter for 121 people and a second one at Magnoliowa Street with 141 inhabitants.²³

The number of fugitives is not constant due to their mobility; many still try to “reach the Western World” and thus Poland tends to be only a stop on the way.

The Centers for Refugees are organized according to the Regulation of Minister of Interior and Administration,²⁴ which means they consist of:

¹⁹ See further: Z. Hoida, *Ochrona praw człowieka*, Lublin 1996.

²⁰ The Amsterdam Treaty, part 1b; K. Popowicz, *Traktat amsterdamski – omówienie, komentarz*, „Radca Prawny” 1997, nr 6, s. 25, 26.

²¹ Information comes from the interview with Ms Wioletta Kędzińska.

²² It was after the great escape of the ethnic Albanians from Kosovo in 1999.

²³ Approximate number of people that can stay at Lublin Centers: 150 at Wrońska Street, 125 at Magnoliowa Street.

²⁴ Regulation of Minister of Interior and Administration, 9th of November 1998, paragraphs: 2, 3, 4, 5.

a reception room,²⁵ a day-room with a TV set,²⁶ a laundry, and a drying room and a number of bedrooms. The bedrooms come in a variety of sizes, the largest containing four beds and the smallest being single rooms. However there are only a few of the latter.

Families can stay together in the same room, but otherwise residents are divided according to their sex.²⁷ If there are children without any relatives or administrators, they are sent to the Center in Podkowa Leśna.

Bathrooms and toilets are situated inside the buildings. Each bathroom has got at least two showers and one toilet on every floor (in the Center at Magnoliowa Street there is a wash-hand basin in each bedroom) and the inhabitants are expected to have their own toiletries.

Meals are provided in the canteen; breakfast is between 8.00 a.m. – 9.00 a.m., dinner 1.00 p.m. – 2.00 p.m. and supper 5.30 p.m. – 6.30 p.m.²⁸

Medical Care is provided by a doctor and a nurse, who are hired by the Officials from Podkowa Leśna; the medical assistance can be obtained three times a week: on Mondays, Wednesdays and Saturdays in each Center.

Asylum seekers are also provided with a Polish language course. A teacher comes to both of the Centers: on Mondays, Wednesdays and Thursdays to the Wrońska Center and Tuesdays, Fridays to the Magnoliowa Center.²⁹ There are classes for children as well as for adults. Once a year Caritas Polska³⁰ in cooperation with the School of Polish Language and Culture organizes regular courses of Polish Language for the refugees at the Catholic University of Lublin.

There are two permanent employees at the Lublin Centers for Refugees: a director and a social worker.

Inhabitants of the Centers are obliged to wear identification cards with a photograph attached, their visitors are given a special permit with their name on it. The building is closed between 10.00 p.m. and 6.00 a.m.

According to the Regulation of Minister of Interior Affairs and Administration³¹ the Centers are required to spend 18 zł for each resident's daily portion of food.

Mothers of children under two are given 2/3 of this amount.³²

²⁵ It is a room, where the admission or expulsion from a Center take place – see further Regulation of Minister of Interior and Administration, 9th of November 1998, art. 6.

²⁶ Cultural events are provided there.

²⁷ Foreigners are responsible for keeping their rooms clean.

²⁸ Menu is based on religious and cultural requirements.

²⁹ Timetables are the following: Mondays–Wednesdays 12.00 p.m.–4.00 p.m.; Thursdays 9.00 a.m.–12.00 p.m.; Tuesdays–Fridays 12.00 p.m.–4.00 p.m.

³⁰ Caritas Polska is a non-profit non-governmental organization working in the field of Asylum Seekers.

³¹ See further: Regulation of Minister of Interior and Administration, 27th of February 2001.

³² It means they get 12 zł.

Fugitives also get 2,5 of this amount as pocket money, and once a year the administration of the Centers supply clothes and toiletries.

There are specific Rules for those staying at the Refugee Centers³³, they secure respect for culture, customs and religious rituals for inhabitants. Furthermore, if there are people who constantly break the rules of a center, they can be expelled from it.

Residents can receive legal assistance³⁴ from law students from the Jagiellonian University in Kraków who volunteer their expertise. It takes place once a month in each Center and concerns obtaining a refugee status or appealing against the decision (tab. 1).

Tab. 1

Magnoliowa 121					Wrońska 141					Total
country	family	children	alone	total	country	family	children	alone	total	262
Afghanistan	9	17	19	45	Afghanistan	2	2	10	14	59
Chechnya	8	13	11	32	Chechnya	21	51	21	93	125
Mongolia	1	1	1	3	Mongolia	0	0	0	0	3
Macedonia	1	2	2	5	Macedonia	0	0	0	0	5
Russia	2	5	6	13	Russia	0	0	1	1	14
Kazakhstan	0	0	1	1	Kazakhstan	0	0	0	0	1
Azerbaijan	4	7	7	18	Azerbaijan	3	5	5	13	31
Iran	0	0	1	1	Iran	0	0	0	0	1
Uzbekistan	0	0	1	1	Uzbekistan	0	0	0	0	1
Stateless	0	0	1	1	Stateless	0	0	0	0	1
Ukraine	0	0	1	1	Ukraine	0	0	1	1	2
Byelorussia	0	0	0	0	Byelorussia	0	0	2	2	2
Moldavia	0	0	0	0	Moldavia	0	0	3	3	3
Armenia	0	0	0	0	Armenia	1	2	2	4	4
Georgia	0	0	0	0	Georgia	2	3	5	10	10

The data come from Ms Wioletta Kędzińska; Centers for Refugees in Lublin, December 2001.

At the present time there are 262 persons in the Centers, coming from: Afghanistan, Armenia, Azerbaijan, Byelorussia, Chechnya, Georgia, Iran, Kazakhstan, Macedonia, Moldavia, Mongolia, Russia, Ukraine, Uzbekistan. Families – this time – are only from the former Soviet Union. There is also one Stateless person.

³³ See further: Regulation of Minister of Interior and Administration, 9th of February 1998.

³⁴ Two years ago there was a lawyer hired by Caritas – Piotr Sendecki, who did the legal assistance. He was a member of ECRE – European Council for Refugees.

STRESZCZENIE

Artykuł w pierwszej części omawia podstawowe instrumenty prawne związane z problematyką uchodźczą w Rzeczypospolitej.

Po roku 1989, kiedy otwarto granice oraz zniesione zostały ograniczenia wyjazdowe i przejazdowe, Rzeczpospolita stała się punktem na szlaku uciekających do Europy Zachodniej. Co więcej, przeprowadzana wówczas reforma gospodarcza spowodowała, że nasz kraj uznało za cel wielu przybyszów z Europy Środkowo-Wschodniej i byłego ZSRR. Wobec stale rosnącej liczby wypędzonych niezbędna była nowelizacja prawa – dostosowanie norm do realiów – stąd ustawa o cudzoziemcach z czerwca 1997 wraz z rozporządzeniem MSWiA o ośrodkach dla ubiegających się o status uchodźcy oraz nowelizacja ustawy o cudzoziemcach z kwietnia 2001 r .

Ochrona praw cudzoziemców ubiegających się o status uchodźcy i zgodnie z polskim prawodawstwem pozostających pod opieką lubelskiego Ośrodka dla Uchodźców, to główny problem omawiany w artykule.

Obecnie, ze względu na stale rosnącą ilość obcokrajowców przybywających do Lublina, zaistniała potrzeba stworzenia dwóch ośrodków. „Geografia problemu” także uległa modyfikacjom poprzez znaczne powiększenie zasięgu terytorialnego. Cudzoziemcy przybywają do Rzeczypospolitej z Afganistanu, Armenii, Azerbejdżanu, Białorusi, Czeczenii, Gruzji, Indii, Iranu, Laosu, Kazachstanu, Macedonii, Mołdawii, Mongolii, Rosji, Ukrainy, Uzbekistanu, Zairu; ocenia się, że z około 80 krajów.