

Republic of Poland – Ministry of Interior and Administration

POLAND'S MIGRATION SITUATION AND THE PROCESS OF ELABORATING POLISH MIGRATION POLICY

The possibility of free travel to and from Poland – which appeared 15 years ago – has highlighted the need for a Polish migration policy, which would elaborate the principles of immigration, including the repatriation from abroad of Poles and people of Polish descent, and the emigration of Polish citizens.

The need of for defining such a policy has been indicated by scientists involved in demography and migration issues, social institutions dealing with migrants, and units of public administration professionally interested in migrants and refugees.

The work on the basics of Polish migration policy has been guided from the very beginning by the assumption that such policy should address both emigration of Polish nationals and the immigration of migrants – including the reception of refugees and their integration in Polish society.

Over the past fifteen years, public administration organs have taken the lead in creating a system of immigration law. It started with the ratification by Poland in 1991 of the Geneva Convention on Refugees, and continued in the early Nineties with the updating of the 1963 law on foreigners, and adoption of laws governing the stay of migrants in Poland, their protection – if needed, and the repatriation of Poles from the Asian republics of the former Soviet Union.

Following the accession of Poland to the EU in 2004, Polish legislation has been adjusted to the Union *acquis* and the process has continued as changes are introduced in the EU migration laws.

In comparison with other European Union states, Poland is a country with a relatively favorable age structure of population, with the problem of ageing and adverse demographic and socio-economic phenomena – some dozen years away.

In view of the high unemployment, caused by a large number of working-age people and economic transformations, Poland continues to be a country of emigration, while the immigration remains a marginal phenomenon, without substantial impact on the social and economic situation of the country.

The last general census showed that over 786 thousand persons permanently residing in Poland had been abroad for at least 2 months when the census was conducted, and 80 per cent of them – i.e. over 626 thousand – had been abroad for over 12 months.

Part of these people are in reality emigrants whose names still figure in the population registers of our country because they have failed to formally notify of their departure.

By comparison, the number of immigrants into Poland is negligible. According to the same census, 34,100 migrants had been staying in our country for at least two months, and among them – 22,700 had been in Poland for at least 12 months.

The following factors have bearing on the immigration policy of our country:

1. Temporary stays on the basis of permits for residence of limited duration

Permits for residence of limited duration are the most common form of legalization of stays in Poland by migrants. The following table presents data on the applications for such permits in recent years:

Year	1998	1999	2000	2001	2002	2003	2004
Number of migrants applying for permit	9451	16715	17175	23661	30245	31736	28147

The following table lists the states whose nationals have received the highest number of permits for residence of limited duration:

Nationality	1998	1999	2000	2001	2002	2003	2004
Ukraine	902	2559	3228	4697	6867	8000	8520
Belarus	232	718	703	1255	2717	2382	2008
Russia	385	1049	1037	1575	1929	1912	1605
Vietnam	733	1482	1177	1056	1063	1080	1875
Germany	179	757	696	1064	1571	1453	409
France	41	545	873	994	1479	1022	330
USA	166	741	506	741	1167	969	898
Armenia	432	626	686	607	657	899	1793
Total permits issued	4893	16811	15039	20787	29641	28567	25427

As the above table shows, practically all the largest groups of migrants (with the exception of the Vietnamese) wishing to legalize their stays in Poland by obtaining permits for residence of limited duration were from European countries and the US.

2. Settlement of migrants

Data on applications for settlement (permanent residence) permits are presented in the following table:

	1998	1999	2000	2001	2002	2003	2004
Number of migrants applying for permit	851	725	1580	748	1143	3004	5100

The following table illustrates - by nationality - the largest groups of migrants granted settlement permits:

Nationality	1998	1999	2000	2001	2002	2003	2004	total
Ukraine	56	82	162	161	80	449	1658	2648
Vietnam	27	47	87	99	148	202	368	978
Russia	27	82	114	70	68	169	446	976
Armenia	7	30	81	50	40	118	235	561

Belarus	18	31	54	45	20	121	389	678
China	9	18	29	22	37	45	40	200
Germany	8	13	13	23	6	42	63	168
Bulgaria	23	14	11	14	3	38	58	161
Total permits	288	512	858	679	602	1735	4366	9040

3. Refugee status and tolerated stay permits

In 2003, 6909 migrants applied to the Office for Repatriation and Foreigners for refugee status. In 2004, such applications were submitted by 8079 migrants. If the upward trend continues, some 9000-9500 applications may be expected in 2005.

Despite its growth, the number of applications for refugee status in Poland is not significant considering the size of the country and its population. In 2003, similar applications were submitted in the Slovak Republic by 10320 migrants, in Germany – by 50450, in Belgium – by 16940, in Holland – by 13400, in Great Britain - by 61050, in France – by 51360.

Refugee status is granted to a relatively low number of applicants, as illustrated by the table below:

Decision:	1998	1999	2000	2001	2002	2003	2004
positive	55	39	53	282	253	219	305
negative	1305	1907	2525	2864	4714	3163	1998
annulment	1707	786	1216	1828	493	4366	2763
total	3067	2732	3794	4974	5460	7742	5066

The following table illustrates – by nationality – the largest groups of migrants granted refugee status:

Nationality	1998	1999	2000	2001	2002	2003	2004	total
Russia	1	4	26	207	206	187	265	896
Belarus	6	4	2	30	9	10	13	74
Somalia	8	7	10	10	3	1	8	47
Afghanistan	11	4	1	13	1	4	1	35
Sudan	2	8	3	6	2	1	-	22
Sri Lanka	8	1	1	2	6	-	-	18
Georgia	-	1	4	4	-	6	-	15
Ethiopia	3	1	6	1	2	1	1	15
Total refugee status granted	66	49	75	296	279	245	315	1325

In the years 1992-2004, an estimated 16 thousand migrants who had applied for refugee status in Poland left for other states, mainly countries of Western Europe, which indicates that they were treating Poland as a transit country on their way to other countries.

Over the last three years, citizens of the Russian Federation have dominated among the persons seeking refugee status and almost 100 per cent of them declared Chechen nationality.

Initially, Russian citizens of Chechen nationality entered Poland legally, taking advantage of the absence of the visa requirement (Poland remained the only state about to join the European Union that had not imposed the visa requirement for nationals of the Russian Federation – that requirement was introduced on 1st October 2003). At present, such persons

either apply for refugee status at the border – if they do not have visas, or after entering the territory of Poland.

In view of the high number of citizens of the Russian Federation claiming Chechen nationality who did not fulfill the legal requirements for being granted refugee status, and considering the special situation of persons fleeing Chechnya, the likelihood of similar groups of migrants arriving in the future and taking into account the legal solutions (subsidiary protection) adopted by other EU states – the new law on the protection of migrants on the territory of the Republic of Poland, which entered into force on 1st September 2003, introduced the institution of “consent to tolerated stay” (Article 97 of the law). A foreigner may be granted consent to tolerated stay if his/her expulsion could only take place to a country in which his/her life, freedom and personal security would be under threat, in which he/she could be subjected to torture or inhuman or humiliating treatment or punishment, in which he/she could be forced to work or deprived of due process of the law, or could be punished without legal basis - in the understanding of the 1950 Convention on Human Rights and Fundamental Freedoms.

Tolerated stay is intended to ensure protection for migrants until conditions are created in his country of origin or permanent residence permitting his/her return. The institution of tolerated stay is expected to be an effective instrument for resolving problems connected with the influx of citizens of the Russian Federation declaring Chechen nationality and seeking refugee status.

Between 1st September 2003 (when the law entered into force) and 31st December 2004 – consent to tolerated stay in Poland was granted to 1169 migrants, including 797 citizens of the Russian Federation of Chechen nationality.

In recent years, Poland once instituted a quasi-amnesty for migrants illegally staying on the territory of our country. Pursuant to Article 154.1 of the law on foreigners of 13th June 2003, an migrant staying in Poland illegally since 1st January 1997 was able to obtain a permit for residence of limited duration of up to one year if he/she was guaranteed accommodation, had a pledge of employment and an income sufficient to cover the living and medical costs of himself/herself and his/her family. 2486 aliens took advantage of the provision – of the 3156 who had applied for it.

INTERGOVERNMENTAL AGREEMENTS CONCERNING TEMPORARY MIGRANTS

The following issues fall within the competence of the Legal Department of the Ministry of the Interior and Administration:

1. Draft Agreement between the Minister of the Interior and Administration of the Republic of Poland and the International Organization for Migration on cooperation concerning voluntary returns of aliens from the territory of the Republic of Poland. On 20th April 2005, the delegations of Poland and the IOM held their third round of talks during which agreement was reached on the text of the Agreement. Now, the draft is in the process of inter-ministry consultations.

2. Draft Agreement between the Minister of the Interior and Administration of the Republic of Poland and the Federal Minister of Internal Affairs of the Federal Republic of

Germany concerning the transit of nationals of third States. The parties held their third round of talks in Berlin on 26th-27th January 2004, and are now exchanging correspondence for the purpose of elaborating the final text of the Agreement.

3. Draft motion for the granting by the Council of Ministers of consent for the signing of Protocol 12 to the Convention on human rights and fundamental freedoms, done in Rome on 4th September 2000.

4. Draft Agreement between the Minister of the Interior and Administration of the Republic of Poland and the Minister of Internal Affairs of the Republic of Austria on the practical conditions and facilitated implementation of the Council regulation No.343/2003 of 18th February 2003 establishing the criteria and mechanisms for determining the member state responsible for examining an application for asylum lodged in one of the member states by a third-country national. On 5th April 2005, the Office for Repatriation and Aliens conveyed to the Legal Department an opinion to the effect that there were no grounds for concluding the above Agreement. In accordance with the opinion – endorsed by the Minister of the Interior and Administration, Ryszard Kalisz – the cooperation between the two countries should continue to be based on the principles stipulated in the Dublin II Regulation.

PARTICIPATION OF NATIONAL AND ETHNIC MINORITIES IN POLITICAL, ECONOMIC AND CULTURAL LIFE AT NATIONAL AND LOCAL LEVEL

1. The size of national and ethnic minorities

During the 2002 National census of population and housing, 253,273 citizens of the RP – or 0.7 per cent of the total population – declared themselves as belonging to national or ethnic minorities.

National and ethnic minorities	Size
Germans	147,094
Belarussians	47,640
Ukrainians	27,172
Roma	12,731
Lemka	5,850
Lithuanians	5,639
Russians	3,244
Slovaks	1,710
Jews	1,055
Tartars	447
Czechs	386
Armenians	262
Karaim	43

The largest national and ethnic minority communities exist in Podlaskie Voivodship (Belarussian, Lithuanian, Russian, Tartar and Roma minorities) and Opolskie Voivodship (German and Roma minorities).

2. Protection of national minority rights in Polish legislation

Polish legislation precisely elaborates the rights of national minorities. The most important legal acts addressing the issue include:

- *Constitution of the RP*, with particular reference to Article 35 - which guarantees national and ethnic minorities the right to maintain and develop their own language, culture, customs and traditions;
- Law of 6th January 2005 *on national and ethnic minorities and regional language*, which makes reference to all the principles contained in the framework convention of the Council of Europe for the protection of national minorities.

Minority rights are also detailed in a number of other laws. These include:

- Law of 12th April 2001 *on elections to the Sejm and Senate*, which exempts election committees established by minority organizations from the 5 per cent election threshold;
- Law of 7th October 1999 *on the Polish language*, which contains a declaration that its provisions do not infringe on national and ethnic minority rights; the Law served as the basis for the regulation of the Minister of the Interior and Administration of 18th March 2002 *concerning instances in which names and texts in the Polish language may be accompanied by translations into a foreign language*;
- Law of 7th September 1991 *on the system of education*, stipulating that schools have to make it possible for pupils to maintain their national, ethnic, language and religious identity, and in particular – to learn their language, history and culture;
- Law of 29th December 1992 *on radio and television broadcasting*, which stipulates that public broadcasters must make provisions for the needs of national and ethnic minorities,
- *Penal code* providing for the penalization of ethnically-motivated crimes;
- *Codes of administrative, civil and criminal procedure*, permitting the use of interpreters;
- Law of 29th August 1997 *on the protection of personal data*, banning – with the exception of specified cases – the disclosure of data on ethnic origin.

3. The participation of minorities in political life

The German minority is the only one that has managed to take advantage of the Law of 12th April 2001 *on the elections to the Sejm and Senate*, which exempted the election committees established by minority organizations from having to exceed the threshold of 5 per cent of the total votes.

The German minority became active on the political scene in February 1990, during by-elections to the Senate in Opolskie Voivodship. At present, the German minority is represented in the Sejm by two deputies: Henryk Kroll and Helmut Paździor.

During the 2002 self-government election, 304 German minority councilors - i.e. 37.8 per cent of all councilors in Opolskie Voivodship – were elected to gmina (commune) and town councils.

The Belarus community became active during the 1989 elections, though none of its candidates was successful. Currently, the Belarus minority is represented in the Sejm by deputies Eugeniusz Czykwin and Aleksander Czuz, and in the Senate – by Sergiusz Plewa (all three are members of the SLD-UP coalition).

In the 2002 self-government elections, the Belarus minority was represented by two committees: the Belarus Election Committees and the Belarus People's Election Committee. Also contesting the poll was the Election Committee of the Bielska Coalition, affiliating

members of the Belarus and Ukrainian minorities. Representatives of the Belarus minority (affiliated in the Podlasie minority Forum) also ran as SLD-UP candidates.

The Lithuanian minority organizations have been active in elections since 1991 – though at that time they did not win any seats. In the 2001 election, the Lithuanian community was represented by Witold Liszkowski (as an SLD-UP candidate) who failed to gain a mandate.

Representatives of the Lithuanian minority have participated in self-government authorities since 1990. In the self-government election of 2002, Lithuanian minority representatives won four of the 15 seats on the Sejny district council and one seat (out of 15) on the Sejny town council. The Lithuanians also won 1 seat (out of 15) on the Krasnopol commune council. The post of the commune elder in Puńsk was won for the second time by Witold Liszkowski, member of the board of the Community of Lithuanians in Poland. The Lithuanians also hold 14 of the 15 seats in the Puńsk commune council.

Ukrainian candidates contested the Sejm elections for the first time in 1989. In the parliamentary elections of 2001, representatives of the Ukrainian minority ran as candidates of the Freedom Union. However, that party failed to cross the electoral threshold and did not enter parliament.

Representatives of the Ukrainian minority also contested the self-government elections, but due to the territorial dispersal of the minority – did not win the majority in any of the territorial self-governments. They play a significant role only in the self-government bodies of the Warmińsko-Mazurskie Voivodship.

During the 1991 Sejm elections, representatives of the **Slovak, Czech, Ukrainian and Lithuanian** minorities formed a joint Election Bloc of National Minorities. They failed to win any seats in parliament. Similar initiatives were not attempted in subsequent polls. The other national and ethnic minorities have not fielded their candidates in parliamentary and self-government polls.

4. The participation of national and ethnic minorities in economic life

The participation of members of minorities in the economic life of the country does not differ from that of other citizens. Animated business activity is taking place in Opolskie Voivodship, which has a large German minority.

5. The participation of national and ethnic minorities in cultural life

The national and ethnic minorities are making a significant contribution to the cultural achievements of the country. The minorities are involved in publishing activity, have their own artistic ensembles, organize cultural events and festivals promoting their culture. The cultural activity of the minorities is subsidized by the state. In 2002 – 5,749,000 PLN was allocated for that purpose, in 2003 – 5,312,000 PLN, and in 2004 – 5,900,000 PLN.