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## **Migration law and policy within transition process. A case of Poland**

### **Migration situation in Poland**

For many years the problem of migration and the need of developing a coherent migration policy has not constituted a priority for the Polish government. Up to 1989 emigration was, above all, a political phenomenon and immigration practically did not exist.<sup>1</sup> For the first time since the Second World War Poland faced global migration after 1989. The systematic political and social transformation from a Communist country to a democratic one, governed by the principle of ‘rule of law’, has also had its consequences for migration movements. As a result of said transformation a process of the liberalization of the rules on foreigners’ entering and staying in Poland started. The post-transformation emigration of Poles also created completely new challenges for Polish administration.

The next breakthrough moment for migration situation in Poland was accession to the EU on 1 May 2004. The post-accession emigration of Poles created completely new challenges for the Polish government as the conditions which needed to be addressed in their migration policy began to change, especially the institutional, economic, and demographical ones. Thanks to the principle of free movement of persons within the Union, labour migration of Poles became intensified to EU countries, mainly Great Britain and Ireland. Migration of Poles after 1 May 2004 was characterised not only by the large scale,<sup>2</sup> but also by an incredible dynamic and clear increase in the number of people who migrated with relatively high qualifications, comparing to previous periods. The scale of the phenomenon made it necessary to undertake additional action to support Polish citizens staying abroad. Moreover, the specificity of this migration wave (temporary character, migration of young people) made

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<sup>1</sup> M. Matkowska, *Polska polityka migracyjna – zarys problemu*, Studia i Prace Wydziału Nauk Ekonomicznych i Zarządzania nr 33/2013, p. 87, <http://www.wneiz.pl/sip/numery/rok2013/studia-i-prace-wneiz-nr-33-2013-t-1/3706-polska-polityka-migracyjna-zarys-problemu> (accessed 10 September 2019).

<sup>2</sup> According to estimations of the *Główny Urząd Statystyczny* [Statistics Poland] 2.3 million of permanent residents of Poland were abroad in record-breaking year 2007.

supporting return migration significantly important. Eventually, post-accession migration of Poles created room for changes in the Polish labour market which created a demand for work of foreigners. In the years 2007-2012 a clear liberalisation of access to the Polish labour market can be observed. A significantly larger number of foreigners can be observed in Poland since 2014.

Despite of changing domestic and international/European political, economic and social conditions, for decades Poland was an emigration country. Since 1960 until 2016 the net international migration for permanent residence was continuously negative. In last two years (2017 and 2018) the net of international migration for permanent residence was positive and it is forecasted that this tendency will be continuing.<sup>3</sup>All the variants of the immigration forecast predict an increase in immigration over the next few years, the only difference is the pace of the increase.<sup>4</sup>

In total, according to data provided by the Office for Foreigners, the number of people who have valid documents confirming their right of residence in the Republic of Poland<sup>5</sup> (as of 1 January 2019) amounted to about 372,000. Number of people possessing visas is not included.

### **Shaping a migration policy**

The political, social and economic changes in 1989 resulted in the necessity for the Polish administrative authorities to develop a migration policy. However, directly after transformation Poland was not ready for this. Fundamental provisions and procedures, as well as the knowledge of international standards related to the entry and stay of foreigners were lacking. Also, the institutional and logistics system did not correspond to the contemporary challenges. In such conditions Poland had neither the time, nor the possibility to create and plan its own migration policy in a natural cycle characteristic to those European countries that have a long-time tradition in terms of admission of migrants. Moreover, some standards of activity developed in these countries could not be applied due to a lack of financial means,

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<sup>3</sup>In the forecasts of the Statistics Poland with the expected economic improvement, an increased attractiveness of Poland for foreigners is assumed. An increase of arrivals of immigrants who will substitute Poles leaving to settle abroad is forecasted. The last data published by the Statistics Poland are from 2018, *Concise Statistical Yearbook of Poland* 96 (Warsaw, 2019). The net of international migration for permanent residence in 2014 was -16.000 while in 2016- +2.000, in 2017- +1.000, and in 2018 - +4.000.

<sup>4</sup> M. Waligórska, Z. Kostrzewa, M. Potyra, L. Rutkowska, *Prognoza ludności na lata 2014-2050 (opracowana 2014 r.)*[*Population Projection 2014-2050 (prepared in 2014)*] 98-99 (Statistics Poland, Demographic Surveys and Labour Market Department, Warsaw 2014), <http://stat.gov.pl/obszary-tematyczne/ludnosc/prognoza-ludnosci/prognoza-ludnosci-na-lata-2014-2050-opracowana-2014-r-1,5.html> (accessed 22 August 2019).

<sup>5</sup><https://udsc.gov.pl/statystyki/raporty-okresowe/raport-roczny-legalizacja-pobytu/2018-2/> (accessed 1 September 2019).

sufficient properly trained experts, infrastructure, and numerous other problems related to the political change. In the initial phase of transformation a migration policy was a set of *ad hoc* activity that did not take into account a priority of development of the State. In the end, Polish migration policy was fragmented, strict, and oriented on discouraging migrants to settle in Poland and, in this way, avoid complications related to settlement immigration.<sup>6</sup>

The accession of Poland to the EU in 2004 resulting in new migration challenges revealed the need to create a coherent State's migration policy, but still the comprehensive and current governmental document was lacking. Only in 2012 the Council of Ministers issued the *Migration Policy of Poland - Current State and Postulated Actions*.<sup>7</sup> It was the first governmental document on the State's policy in migration field which was very thorough and in-depth. *The Migration Policy of Poland* revealed the change in approach to migration problems. The policy in this field became a permanent element of the development strategy of Poland. The leading doctrine underlying the migration policy was the openness for incomers. Problems of the labour migration were on the first place. As then government stated, the migration policy should be, at least in a short term perspective, more proactive and concentrated on the labour market and its needs.

The *Migration Policy of Poland* of 2012 was revoked by the Council of Ministers on request of the Minister of the Interior and Administration in October 2016 (one year after Parliamentary election) as, according to the Minister, the document did not address the problems which Poland was facing.<sup>8</sup> The situation which occurred as a result of the migration (refugee) crisis which dominated Europe in 2015 had not been accounted for as well as the large number of economic migrants from Ukraine. The Minister emphasised that currently the following two aspects are the most important issues in migration policy – the influence of migration on the labour market and the citizens' security. It is clear that the present government has a different opinion regarding the migration problems than the previous one. The ideological approach of the previous government, which was based on the vision of multiculturalism and the vast migration absorption, is now classed as wrong.<sup>9</sup> This approach has been replaced by a more restrictive migration policy.

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<sup>6</sup> M. Matkowska, *op.cit.*, p. 90.

<sup>7</sup> *Polityka migracyjna Polski – stan obecny i postulowane działania. Dokument przyjęty przez Radę Ministrów w dniu 31 lipca 2012*, 5 [Migration Policy of Poland - Current State and Postulated Actions. Document of the Council of Ministers, 31 July 2012], <https://www.mswia.gov.pl/pl/aktualnosci/10149,dok.html> (accessed 6 June 2019).

<sup>8</sup> <https://mswia.gov.pl/pl/aktualnosci/15912.Potrzebne-jest-stworzenie-nowej-polityki-migracyjnej.html>.

<sup>9</sup> 'Pragmatycznie, a nieideologicznie - o polityce migracyjnej Polski' ['Pragmatically not ideologically' - about the migration policy in Poland], <http://biuletynmigracyjny.uw.edu.pl/55-grudzien->

With the Ordinance of 12 December 2016 (No. 56) the Minister of the Interior and Administration appointed a Committee to prepare a new migration policy for Poland taking into account the situation of the country and its actions in relation to the phenomenon of international migration. According to the current government it is crucial to closely monitor migration processes, to think in terms of integration and assimilation of economic migrants, and to ensure the safety of Polish citizens against terrorist threats. The new migration policy developed in cooperation with many interested State bodies aims at the realisation of comprehensive solutions for all migration problems. A new vision on migration policies was carried out by the Ministry of the Development and Finances. The main axis of its interests are social and economic issues such as economic processes and the situation on the labour market. The Responsible Development Strategy (RDS) presents the outline of a new model for Poland's development until 2020 (with perspective until 2030). The RDS was drawn up on the basis of the Responsible Development Plan (RDO) and is the work of 12 inter-ministerial working groups of the Ministry of the Development and Finances, carried out since May 2016.<sup>10</sup> The document includes a number of references to the premises of the new migration policy that are discussed in the context of demographic changes, labour market reforms, the education system, the health care system and national security.

Based on the RDS, the Ministry of the Interior and Administration prepared a draft of a new migration policy for Poland (the document of 10 June 2019). According to the document, the aim of the State's migration policy is a coherent, knowledge-based system of migration management, ensuring security and public order, conducive to economic development and social cohesion. In order to meet the needs of the labor market (the Ministry admits that Poland will need 1.5 million new employees by 2030), current short-term immigration should be supported. It is also necessary to encourage Poles to return from emigration, take actions to increase repatriation of Poles from the East, and create a system of integration and assimilation of foreigners willing to stay in Poland. The document also considers the possibility of conducting active measures for settlement migration 'from selected countries'. The State's migration policy is to be conducted according to the concept of 'leading culture' (it sets immigrants a specific framework for functioning in Poland) and not based on the multiculturalism model. The integration system of foreigners should put

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[2016/16/EU/Pragmatycznie-a-nie-ideologicznie-9D-o-polityce-migracyjnej-polski](#)  
(accessed 5 September 2019).

<sup>10</sup>*Migrations in the New Mid-term Strategy for Poland*, <https://emn.gov.pl/ese/news/14526.Migrations-in-the-new-mid-term-strategy-for-Poland.html> (accessed 5 September 2019).

integration as a certain obligation, and not just one of the options possible for the foreigner to choose. The aim is an effective integration and subsequent assimilation of foreigners. The document also identifies areas in which state security should be strengthened. Ensuring security is a horizontal issue; it penetrates all aspects of migration policy and is related to all phenomena in the area of international migration. The document indicates a number of threats related to migration, including terrorism, trafficking in human beings, abuse of asylum procedures. Particularly attention is paid to Islam. 'Poland's migration policy' is to be subject to discussion and consultations, and then to be adopted by the Council of Ministers. The document will be updated every 3 years.

### **Migration law**

Quality and quantity of new Polish migration law have reflected changes in the migration situation in Poland. The need to comply with new international obligations and harmonisation process with large and ever-changing *acquis communautaire* have had a crucial impact on development of Polish migration law.

It is enough to say that the Ordinance of the President of the Republic of Poland of 13 August 1926 on Foreigners was in force until the 4 October 1963 when the Act on Foreigners was enacted.<sup>11</sup> This act constituted the basic source of law pertaining to foreigners for the next thirty-four years. The Act on Foreigners regulated typical issues related to the control of entry, residence and the departure of foreigners from the Polish territory. The Act only contained 29 articles and provisions were formulated generally. It either dealt with matters inadequately, or not at all. Doubtlessly, the narrow scope of the Act can be attributed to the political, economic and social situation at the time of the enactment of the Act. Even later amendments did not materially affect the adequacy of the Act and its ability to keep up with changing conditions. Thus, there was a great need for the 1997 Act on Foreigners,<sup>12</sup> due considering the new migration situation in the State. The new law was regarded as one of the significant expressions of the transformation of Polish legislation, brought about by political and constitutional changes, the ratification of agreements in the area of human rights, and the aspirations of Poland to EU membership.<sup>13</sup> The necessity of introducing solutions similar to

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<sup>11</sup> JL 1963, No. 15, item 77.

<sup>12</sup> JL 1997, No. 114, item 739.

<sup>13</sup> J. Białocerkiewicz, *Nowe polskie prawo o cudzoziemcach przejawem transformacji ustrojowej* [in:] *Przemiany polskiego prawa (1989–1999)*, [New Polish Law as a Manifestation of Structural Transformation, [in:] *Changes in Polish Law (1989-1999)*], p. 147 ff (ed. E. Kustra, Studia Iuridica Toruniensia 2001).

those in other European countries was also taken into consideration.<sup>14</sup> The new Act did away with a lot of the shortcomings of the former regime. In 1997 the new Constitution was also adopted, and it is a fundamental source of status of foreigner in Poland.<sup>15</sup> According to Art. 37 of the Constitution ‘1. Anyone, being under the authority of the Polish State, shall enjoy the freedoms and rights ensured by the Constitution. 2. Exemptions from this principle with respect to foreigners shall be specified by statute’.

In 2001, the Act on Foreigners was amended extensively. Several regimes had been put to test by the practical application of the provisions of the Act, and there turned out to be a number of loopholes and imperfections in the first 'European' law on foreigners. The amendments were made mainly to provide solutions to demands resulting from the process of preparation for EU membership. At this point, it became obvious that further changes, or a new Act on Foreigners would be necessary, taking into account Poland's future membership of the EU. The next step was to put the issue of the administrative status of foreigners in order by dealing with it in three acts: the Act of 27 July 2002 on the Terms and Conditions of the Entry into and the Residence in the Territory of the Republic of Poland<sup>16</sup> pertaining to nationals of the EU Member States and members of their families (replaced by the Act of 14 July 2006 on the Entry into, Residence in and Departure from the Territory of the Republic of Poland of Nationals of the European Union Member States and Members of Their Families<sup>17</sup>), the Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland<sup>18</sup>, and the Act of 13 June 2003 on Foreigners<sup>19</sup>, replaced by the Act of 12 December 2013 on Foreigners<sup>20</sup>.

The first two acts were regarded as *lex specialis* in relation to the Act on Foreigners. Distinguishing these two groups of foreigners who enjoyed a special, preferential position was necessary not only due to the need for further adjustment to the new EU *acquis* but also to improve the transparency of the law, to eliminate legal loopholes, and to duly take into account administrative practice. It was also necessary to prepare the ground for future amendments of the law due to the constant influence of EU law on migration law. Each of the

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<sup>14</sup> J.Jagielski, *Status prawny cudzoziemca w Polsce (problematyka administracyjnoprawna)* [Legal Status of Foreigner in Poland (Administrative Issues)], p.19-20 (Warsaw 1997).

<sup>15</sup>The Constitution of the Republic of Poland, passed on 2 April 1997 and adopted in a nationwide referendum on 25 May 1997, JL 1997, No. 78. The official translation of the act available at: <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>, (accessed 15 September 2019).

<sup>16</sup> JL 2002, No. 141, item 1180.

<sup>17</sup> JL 2019, item 293.

<sup>18</sup> JL 2018, item 1109 as amended.

<sup>19</sup> JL 2003, No. 128, item 1175.

<sup>20</sup>JL 2018, item 2094 as amended.

three acts has either been amended extensively, or re-enacted as a new version. However, the manner of regulating basic issues related to the status of a foreigner has remained unchanged.

These three statutes constitute the core of Polish migration law. However, the legal system regulating migration, which is the product of years of development, encompasses dozens of statutes and administrative ordinances. This is a very extensive, complex and detailed set of rules that may be difficult to understand and apply not only for foreigners but also for administrative authorities<sup>21</sup>. From the normative level's perspective, Polish migration law is harmonized with EU law on migration and generally complies with international standards in this matter. However, the administrative practise reveals many structural and procedural shortcomings. Despite of created with a true effort legal and institutional infrastructure Poland (public administration) does not deal with foreigners properly. A general final conclusion of a report produced by the Supreme Audit Office in August 2019 is that the State is not ready for foreigners.<sup>22</sup>

### **Forced migration**

As far as forced migration is concerned, it has to be said that despite of lack of coherent migration policy towards asylum seekers, Poland, in a short time after transformation in 1989, became a transit and destination country for this category of migrants. Poland had not had much experience with refugees. The institution of asylum and its ideological definition were introduced by Art. 75 of the Constitution of the People's Republic of Poland of 22 July 1952, which stated that the People's Republic of Poland grants asylum to 'citizens of other countries, persecuted for protecting the interests of working masses, fighting for social advancement, defending the peace, fighting to liberate nations or conducting a scientific activity'. In practise asylum was rather a 'dead letter of law'.

The crucial moment for the Polish asylum system was signing the Geneva Convention on Refugee Status<sup>23</sup> and the New York Protocol<sup>24</sup> in 1991, and ratifying other conventions in the area of human rights, especially the Convention on Protection of Human Rights and Basic Freedoms, drawn up in Rome on 4 November 1950<sup>25</sup>. Poland had to comply with new, rather demanding obligations. The democratisation of the political system and the new human rights policies constituted the basis for the creation of the asylum system. The ratification of the

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<sup>21</sup> The 2013 Act on Foreigners had 522 articles in its initial form. After amendments it is even more extensive.

<sup>22</sup> <https://www.nik.gov.pl/aktualnosci/panstwo-niegotowe-na-cudzoziemcow.html> (accessed 14 September 2019).

<sup>23</sup> Convention Relating to the Status of Refugees, JL 1991, No. 119, item 515.

<sup>24</sup> Protocol Relating to the Status of Refugees, JL 1991, No. 119, item 517.

<sup>25</sup> JL 1993, No. 61, item 284.

Geneva Convention and the New York Protocol necessitated changes in national legislation. Initially, provisions addressing forms of protection of foreigners in Poland constituted a part of the broad immigration law and was found in the general provisions of the 1963 Act on Foreigners. In September 1991, the 1963 Act on Foreigners was amended and the issue of refugee status in national law was regulated alongside the already existing institution of asylum.

The ongoing political and social transformation changed the image of Poland in the eyes of the international community. She was no longer a country from which refugees came, but one that received refugees. Due to transit migration, within the context of refugee issues, EU Member States regarded Poland as a 'safe country' to which people applying for refugee status could be sent. The agreement between Poland and the countries in the Schengen group, signed on 29 March 1991, was a breakthrough at the European level. It obliged the parties to readmit citizens of third countries as well as stateless persons including those seeking protection, who crossed the external border of the States belonging to the Schengen group and who remained in their territory irregularly. Not long after, several bilateral readmission agreements were signed, constituting *lex specialis* in relation to the afore-mentioned agreement, based on which it was permitted to send back persons applying for refugee status. Co-operation in the area of migration based on bilateral agreements like that with the Schengen countries paved the way for the negotiations which ultimately made Poland's accession to the EU possible.

Year 1997 was a breakthrough year for the building of a system for the protection of foreigners in Poland. Article 56 of the 1997 Constitution of the Republic of Poland gave the two forms of protection of foreigners a constitutional ranking. As mentioned above, the new Act on Foreigners was also adopted in the same year. Poland's aspirations to EU membership had a direct and decisive influence on its format in general, as well as on the substance of protection of foreigners. In 2003 the legislator placed the issue of granting protection to foreigners in a separate act. It enacted the still binding Act on Granting Protection to Foreigners within the Territory of the Republic of Poland. The Act was amended several times in order to implement EU directives.

The forced migration seems to be a particularly sensitive field of migration policy and law. It is an area where the rule of law principle and the compliance with international obligations are tested mostly. The Polish asylum law as well as its application can be regarded as restrictive and dominated by the concept of securitization of

migration.<sup>26</sup>This tendency has been significantly present in Polish asylum policy since 2015. As examples presented below show, concerns regarding migration law and policy constitute a part of the examination of compliance of activity of Polish government with rule of law principle.

Poland, as a country of asylum, is placed in the middle of the ranking among EU countries (10 -13 position). In years 2007-2018 about 111,000 foreigners applied for international protection in Poland. The highest number of applicants was registered in 2013 – more than 15,000 people. During the migration crisis in Europe which started in 2015 for international protection in Poland applied about 12,000 people. In 2017 and 2018 it was only 5,000 and 4,000 respectively. The largest number of applications was filed by Russians (the significant majority declares to have Chechen origin), Ukrainian, and Tajik. The recognition rate is very low – only about 7% of positive decisions on refugee status and 7% of positive decisions on subsidiary protection.<sup>27</sup>

The migration crisis in Europe did not impact dramatically on statistical data nor a national profile of asylum seekers. Thanks to geographical location Poland was not directly affected by the mass influx of migrants from Syria, Afghanistan, and Iraq. However, the migration crisis, legitimately called a ‘solidarity crisis’, revealed a lack of compliance with obligation emanating from EU legislation, namely a provisional emergency relocation scheme that was established in two Council decisions adopted in September 2015, namely Council Decision (EU) 2015/1523 and Council Decision (EU) 2015/1601, pursuant to which the Member States undertook to relocate from Italy and Greece persons requiring international protection.<sup>28</sup>

As reported in fifteenth report on relocation and resettlement presented by the European Commission, Poland and Hungary are the only Member States that have not relocated a

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<sup>26</sup>See: B. Kowalczyk, Ł. Prus, *Security clause in Polish asylum law*, in: *Ročenka uprchlíckého a cizineckého práva 2016* / ed. D. Jílek, P. Pořízek, Brno: Kancelář veřejného ochránce práv, 2017, p. 526 ff; M. Princ, *Granting Protection to Foreigners – a few Reflections from the Polish Perspective on Current Situation*, in: ed. J. Jurníková, A. Kralová, *Společný evropský azylový systém v kontextu uprchlícké krize (sborník z konference)*. Brno: Masarykova univerzita 2016, p. 163-165.

<sup>27</sup><https://udsc.gov.pl/statystyki/raporty-specjalne/top-5-ochrona-miedzynarodowa/>, <https://udsc.gov.pl/statystyki/raporty-okresowe/raport-roczny-ochrona-miedzynarodowa/2018-2/> (accessed 14 September 2019).

<sup>28</sup>Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece (OJ L 239/146, 15.9.2015) and Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece (OJ L 248/84, 24.9.2015).

Hungary and Slovakia, supported by Poland, challenged the legality of the second Council Decision on relocation - joined cases C-643/15 and C-647/15. In the judgment of 6 September 2017 the Court dismissed the actions. ECLI:EU:C:2017:631.

single person and Poland has not made any pledges since 16 December 2015.<sup>29</sup> The official position of Polish government towards relocation scheme had changed. In September 2015, Poland had agreed to relocate more than 6,000 asylum seekers from Italy and Greece on the basis of two Council decisions. Ultimately, the ordinance of the Council of Ministers that is necessary step in relocation procedure according to Polish law, was not enacted, and the process of relocation from Greece and from Italy which had begun was cancelled in May 2016. The main reasons for this lack of relocation publicly presented by Polish government were: possession of false documents by the candidates for relocation; lack of direct access to the candidates in Italy; and insufficient level of security checks of asylum seekers who were to be relocated from Greece to Poland. Relocation and resettlement involve also a strong political aspect. Visegrad Group has its own vision of coping with forced migration and refugee crisis. Dominant approach aims at granting protection outside of the European Union<sup>30</sup>.

As a result, on 16 June 2017 the Commission initiated a Treaty-infringement procedure against Poland. Having considered the response of Poland to be unsatisfactory, the Commission decided to proceed to the next stage of the Treaty-infringement procedure by sending the Republic of Poland a reasoned opinion on 26 July 2017, and eventually the Commission has decided to bring proceedings before the Court of Justice of the European Union against the Republic of Poland in relation to the non-performance of its legal relocation obligations.<sup>31</sup> The case is in progress. The reasons behind Polish position were that according to Treaties EU Member States have a duty to maintain public order and internal security of the State, and EU legal acts do not affect the performance of these duties.

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<sup>29</sup>Brussels, 6.9.2017 COM(2017) 465 final REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL AND THE COUNCIL *Fifteenth report on relocation and resettlement*. In total, almost 27,700 people was relocated as of 4 September 2017 (19,244 from Greece and 8,451 from Italy).

<sup>30</sup> See: (V 4) Interior Ministers' Meeting (21 November 2016, Warsaw) - *Joint Statement of Ministers on establishment of the Migration Crisis Response Mechanism*, where is stated that: 'we need to address root causes of illegal migration to the EU by: i) providing assistance to third countries hosting large numbers of migrants; ii) supporting effective processing of asylum claims, including by tackling the phenomenon of the abuse of international protection for the purpose of unjustified illegal entry into the EU; as well as iii) improving return and readmission rates of migrants not eligible for international protection in the EU', [http://www.msz.gov.pl/en/foreign\\_policy/europe/visegrad\\_group/polish\\_presidency\\_of\\_the\\_visegrad\\_group\\_2016\\_2017/v4\\_ministers\\_of\\_interior\\_on\\_the\\_migration\\_crisis\\_response\\_mechanism](http://www.msz.gov.pl/en/foreign_policy/europe/visegrad_group/polish_presidency_of_the_visegrad_group_2016_2017/v4_ministers_of_interior_on_the_migration_crisis_response_mechanism) (accessed 11.06.2017).

<sup>31</sup>Commission v Poland (Mécansime temporaire de relocalisation de demandeurs de protection internationale), Case C-715/17 .

The decrease in number of asylum applications is common for the whole European Union<sup>32</sup>. One of the reasons behind this phenomenon is the realisation of ‘non-entry strategy’. This kind of policy causes question as to legitimacy, mainly as to compliance with international obligations. Polish infamous input to the realisation of this idea is a practice at the border crossing point Brest-Terespol. In years 2012-2017 cases were reported that there had been a problem of repeated denial of access to the asylum procedure at the border crossing point Brest-Terespol. Officers of the Polish Border Guard refused to register an application for international protection and refused to entry the country without an examination of the individual situation of the applicants.<sup>33</sup> As a consequence, there are four cases before the ECtHR concerning the pushbacks at Terespol, which have been communicated to the Polish government: M.K. v. Poland, Application No 40503/17; M.A. and Others v. Poland, Application No 42902/17; M.K. v. Poland, Application No 43643/17; D.A. v. Poland, Application No 51246/17. In all cases the Court granted interim measures under Rule 39 of the Rules of the Court, indicating to the Polish Government that the applicants should not be removed to Belarus. As of September 2019 all cases are still pending.<sup>34</sup>

The European Parliament expressed its concerns regarding the situation at the eastern border of Poland. On 15 November 2017, it adopted the resolution on the situation of the rule of law and democracy in Poland.<sup>35</sup> The EP called on the Polish Government (point 8) to halt summary returns to Belarus so as to comply with the binding interim orders of the ECtHR of 8 June 2017, and to ensure that anyone who expresses an intention to seek asylum or international protection at Poland’s borders enjoys full access to the Polish asylum procedure in line with international obligations and EU law. The EP noticed also the proposals made in January 2017 for amendments to the Law on Foreigners by Poland’s Minister of the Interior, which raise concerns regarding their compatibility with European and international law.<sup>36</sup> The

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<sup>32</sup>See: EASO, *Annual Report on the Situation of Asylum in the EU 2018*, June 2019, p. 11-12.

<https://easo.europa.eu/sites/default/files/easo-annual-report-2018-web.pdf> (accessed 15 September 2019).

<sup>33</sup> For more see i.a.: *A road to nowhere. The account of a monitoring visit at the Brzesc-Terespol border crossing between Poland and Belarus*, <http://www.hfhr.pl/en/road-to-nowhere-report-from-brest-terespol-border-crossing/an> (accessed 1 August 2019); Asylum Information Database, *Country Report: Poland. 2018 update*. The report was written by Karolina Rusilowicz, in collaboration with Maja Łysienka and Ewa Ostaszewska-Żuk, lawyers at the Helsinki Foundation for Human Rights, and was edited by ECRE. The information in this report is up-to-date as of 31 December 2018. <https://www.asylumineurope.org/reports/country/poland> (accessed 10 September 2019).

<sup>34</sup>Compare; judgment of 18 December 2018 in case of M.A. and Others v. Lithuania (Application no. 59793/17).

<sup>35</sup>[http://www.europarl.europa.eu/doceo/document/TA-8-2017-0442\\_EN.html](http://www.europarl.europa.eu/doceo/document/TA-8-2017-0442_EN.html)

<sup>36</sup> The draft amendment addresses, for instance, a border procedure – a simplified procedure for granting international protection. The conditions for processing an application in a border procedure partly overlap with the premises for declaring an application to be inadmissible or manifestly unfounded, and the procedure is supposed to be applied in cases where the application is submitted at the border by a foreigner who does

main justification for these proposals were connected first and foremost with the realisation of the constitutional obligation of the State to maintain public order and the protection of internal security as well as accelerating actions taken in relation to foreigners.

The grounds of security and public order justified also the negative position of Polish government towards UN Global Compact for Safe, Orderly and Regular Migration. In November 2018 the Council of Ministers decided not to sign this agreement since it did not meet expectations as to strong guarantees concerning a sovereign right of States to decide on enter and stay of foreigners on their territories. The government had also reservations as to unclear differentiation between legal and illegal (irregular) migration.

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not meet the requirements for entry and residence in Poland. The draft amendment provides for the detention of such foreigners and placing them at guarded centres. Applications are to be handled immediately, not later than twenty days from the day the application was submitted, and the decision would be enforced immediately. The prescribed time for appeal would be seven days from the day the decision is served. The foreigner would be entitled to apply for the suspension of the execution of the decision along with the appeal. Plans have been made to create by the means of ordinance a list of 'safe third countries' and 'safe countries of origin'.