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**UNITED NATIONS**  
**HIGH COMMISSIONER**  
**FOR REFUGEES**  
*Regional Office  
for the Benelux  
and the European  
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## VERENIGDE NATIES

HOOG COMMISSARIAAT  
VOOR DE VLUCHTELINGEN

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### **Background Note on the Protection of Asylum Seekers and Refugees in Poland**

#### **Legal and Institutional Background**

Poland acceded to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol in September 1991. The main domestic legislative instrument regulating the asylum procedure and the rights of refugees has been the aliens law. The asylum-related provisions of the law, which came into effect on 1 July 2001, are generally in line with related European Union and international standards.

In 2002, Poland undertook to draft thorough new aliens legislation. UNHCR provided extensive comments on both drafts of the new aliens law and the law on protection of aliens in Poland, which entered into force on 1 September 2003. The new legislation on aliens in Poland has been incorporated into three legal instruments:

- The law on the legal situation of European citizens (to be enacted at the time of Polish accession to the EU),
- The aliens law,
- The law on granting protection to aliens on the territory of the Republic of Poland, which contain provisions relating to refugee status determination, unaccompanied children and vulnerable persons, as well as rules on detention of asylum seekers. The legislation covers also subsidiary forms of protection such as ‘asylum’, temporary protection and tolerance status. A new provision provides for the possibility for the asylum seeker to have unlimited contact with a representative of the United Nations High Commissioner for Refugees or any organization statutorily dealing with refugee affairs.

UNHCR appreciates that its comments to the draft laws were, to a large extent, taken into account during the intergovernmental consultation. In particular, UNHCR was seriously concerned about a provision allowing for a systematic pre-screening detention of asylum seekers. Following UNHCR’s intervention and in accordance with international standards, the law finally incorporated the principle that asylum seekers should not be detained unless under clearly defined exceptions.

The Central Office for Repatriation and Aliens, an independent governmental body that includes a Refugee and Asylum Procedures Department, deals with asylum claims in the regular and accelerated procedure. Appeals against first instance decisions are made to the Refugee Board. The Board is an administrative body composed of law professors, advocates and former judges. Ultimately, a judicial review can be lodged before the High Administrative Court.

According to the new legislation, asylum applications can be lodged with designated Border Guards Commanding Officers who are authorized to open the refugee status determination procedure at the border, or with the Central Office for Repatriation and Aliens in Warsaw.

## **Statistics**

A major development was the unprecedented surge in the number of asylum seekers to over 4 528 in 2001 up to 5169 in 2002 (increase 12.40 %). Most numerous among this group were asylum seekers from the Russian Federation who numbered 3054 in 2002 (among them 2931 asylum seekers claimed Chechen nationality). Close to 60 % of asylum applicants arrived from Chechnya, Iraq, and Afghanistan. The other countries of origin of asylum seekers were Afghanistan (598), Armenia (224), India (200), Moldova (169), Mongolia (156), and Iraq (137). In 2002, the Office for Repatriation and Aliens granted refugee status to 253 individuals, among which 206 Chechens, 23 African and 9 refugees from Belarus. The 2002-recognition rate in Poland equaled 4.63 %.

From 1 January until 30 June 2003, 2721 aliens applied for refugee status in Poland. The majority came from Russia (2055), India (146) and Afghanistan (104). During this period, the Office for Repatriation and Aliens granted the refugee status to 95 individuals and issued 1801 negative decisions. For the first half of 2003, the recognition rate in the Office for Repatriation and Aliens equalled 5.01 % of all decisions on substance.

Although official statistical data does not indicate the number of persons who receive temporary leave to remain on humanitarian grounds, a substantial increase of applications has been noted since 2001 when this status was incorporated into the law. In 2001 and 2002 there were 3719 persons from the Russian Federation who applied for such temporary residence permit<sup>1</sup>.

## **Chechen Refugees**

Following the October 2002 hostages taking drama in Moscow, Poland temporarily closed its borders to Chechen refugees arriving through Belarus and Ukraine. However, under international and domestic pressure, the Polish Government lifted this ban on entry on 19 November 2002. Thanks to a joint UNHCR-Ombudsman intervention, about 150 Chechen asylum seekers who were camping at the border with Belarus at the Brest railway station, were let into Polish reception centers. However and despite efforts of the Government to accommodate those asylum seekers, conditions in the reception centers temporarily deteriorated.

UNHCR noted that as of 2001 Chechen asylum seekers no longer left the territory without notice but rather waited for the outcome of the asylum procedures in Poland. This trend however changed in 2002, when many Chechens applied for voluntary repatriation and subsequently sought refugee status in neighboring states in particular in the Czech Republic. This phenomenon accelerated during the period of 14 April – 6 June 2003, when 1112 Chechen individuals applied for discontinuation of the refugee determination procedure in Poland, were returned their national passports and subsequently sought refugee status in the Czech Republic. Somewhat later, 220 Chechens registered initially as asylum seekers both in Poland and in the Czech Republic arrived illegally to Austria and filed there asylum claims. In June 2003 UNHCR initiated consultations between the three states to address the issue of secondary movement of Chechen asylum seekers from Poland and establish an early warning mechanism between Poland and the Czech Republic before their accession to the EU.

## **Integration**

Present conditions for the integration of recognized refugees into the Polish society remain a major concern for UNHCR. Following a multi-year delay in its implementation, the ordinance on integration was finally put into effect as of December 2000. Throughout 2001, 2002 and 2003 the implementation

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<sup>1</sup> Russian Federation applicants in 1999 – 1001 applications, 2000 – 1208 applications, 2001 – 1708 applications, 2002 – 2011 applications. Positive decisions in 2000 – 1033 cases, 2001 – 1568 cases, and 2002 – 1908 cases. (www.uric.gov.pl)

of the integration ordinance was impaired due to the insufficient financial resources put at the disposal of the competent authorities. Polish authorities initiated cooperation with partners from the Netherlands in 2003 to implement an integration pilot project in selected provinces in Poland. Despite this effort, refugees recognized in Poland continue to face difficulties to integrate and prefer leaving Poland and moving onwards to EU Member States.

### **Unaccompanied Minors**

Another concern is the treatment of unaccompanied children, particularly with regard to guardianship, detention and social services. While a series of training events and seminars have been organized at local and regional level, as part of an effort to improve the situation, the overall situation did not change significantly in 2001. In June 2002 an ordinance on the treatment of unaccompanied minors during the status determination procedure was finally promulgated. This ordinance, together with the ordinance on the treatment of victims of torture and traumatized refugees, which was issued at the same time, creates a legal basis for improvement in the treatment of these vulnerable groups of asylum seekers and refugees. UNHCR welcomed efforts of the authorities to change relevant legislation in line with international standards. The Law on granting protection to aliens on the territory of the Republic of Poland will improve some aspects of this situation by removing protection gaps for separated children, such as appointment of a guardian to represent the minor in the proceedings for granting the refugee status and accommodating the minor in a custodian – educational center or in a center for persons applying for granting the refugee status.

The Office for Repatriation and Aliens encouraged its staff to attend and graduate from the UNHCR course on the treatment of unaccompanied minors during the asylum procedure held in April 2003.

### **Other Specific Issues**

An additional issue of serious concern to UNHCR has been the situation of persons granted protection on humanitarian grounds who are encountering difficulties in obtaining temporary residence permits. In addition, they are excluded from the network of social assistance and are denied access to the labor market and opportunities of self-employment. This situation created additional conditions leading to secondary movements towards the West.

The ordinance on reception conditions for asylum seekers lead to situations where asylum seekers may have been evicted from the reception centers as a disciplinary measure. As a result, the asylum seeker may have been deprived of the possibility to pursue his/her application for refugee status. UNHCR believes that such measures were too severe. In principle, the reception conditions should improve with the introduction of the new Law on granting protection to aliens on the territory of the Republic of Poland.

### **Main Recommendations**

- Ensure that the implementation of the law on granting protection to aliens on the territory of the Republic of Poland is in accordance with European and international standards and practice;
- Ensure that asylum seekers have unrestricted access to the refugee status determination procedure at the border;
- Assist in training border guards officials on asylum matters;
- Assist in training NGOs representatives on conducting border monitoring missions;
- Encourage the government to develop a more efficient policy relating to the integration of refugees and to allow rejected asylum seekers who were allowed to stay on humanitarian grounds to be granted access to the national social welfare system and labor market;
- Monitor the implementation of the new legislative provisions on the treatment of unaccompanied minors / separated children asylum seekers and refugees.