CHAPTER 1

Categories of Aliens and Types of Expulsion

1 Introduction

Immigration policy is one of the State’s primary functions. All forms of immigration proceedings of a State Party to the International Covenant on Civil and Political Rights and the European Convention on Human Rights are subject to the human rights standards established in them. Being an alien does not take him outside the international protection of human rights. However, concerning the right to be protected against arbitrary expulsion, immigration status has a decisive significance, since this right is guaranteed only to lawfully present aliens. Without a doubt, the possibility of expulsion creates a feeling of uncertainty for an individual living in a foreign State. For that reason, legal protection against expulsion measures turns out to be one of the key issues regarding the status of lawful aliens. For precise understanding of the notion of an alien, some basic classifications have to be made. Therefore, I will discuss: long-term immigrants, migrant workers, refugees, stateless persons and EU citizens.

2 The Notion of an Alien

In 1892, the Institute of International Law recognized “aliens as all those who do not have a current right of nationality in the State without distinguishing as to whether they are simply visitors, or are resident domiciled in it or whether they are refugees or have entered the country voluntarily.” Therefore, international law doctrine defines “an alien” as a natural person who is not a national of the State in which he is present. An alien, thus, could be a citizen of another country or one without any citizenship (a so-called stateless person).

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1 Throughout this book use of the masculine pronouns and possessive adjectives (he, him, his) should in general be taken as representing both male and female.
2 International Rules on the Admission and Expulsion of Aliens (Règles internationales sur l’admission et l’expulsion des étrangers), adopted by Institute of International Law in 1892, Art. 1.
3 There are two coexisting terms, namely: “alien” and “non-national.”
J. Białocerkiewicz is correct in stating that there are many negative definitions of an alien, both in literature and international agreements.\(^6\) They refer to someone who is staying in a State or passing through its territory without citizenship of that State.\(^7\) The lack of “nationality” is a differentiating criterion between aliens and nationals.

The Polish legislator in Article 3(2) of the Act on Aliens of 12 December 2013 also applied a commonly accepted negative definition: “Any person who does not have Polish citizenship shall be regarded as an alien,”\(^8\) regardless of whether the person has a citizenship of another State or is simply stateless, as the Polish law does not make any distinction in treating these two. Such assumption is consistent with international legal standards which are based upon attributes of a human being rather than a citizen, an alien or a stateless person.\(^9\)

It should be emphasized that the right of an alien to be protected against arbitrary expulsion expressed in Article 13 of the International Covenant on Civil and Political Rights,\(^10\) Article 1 of Protocol No. 7 to the European Convention on Human Rights,\(^11\) Article 22(6) of the American Convention on

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\(^6\) Moreover, it is worth mentioning that in the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in Which They Live, adopted by United Nations General Assembly in 1985, when defining the notion of “an alien” there was also a reference to a negative criterion – the lack of nationality of the State an individual stays in, available on the UN website: http://www.un.org/documents/ga/res/40/a40r144.htm.


\(^8\) Polish Journal of Laws of 2013, item 1650.


\(^10\) Art. 13 of the ICCPR: “An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.”

\(^11\) Art. 1 of Protocol No. 7 to the European Convention on Human Rights: “1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed: (a) to submit reasons against his expulsion, (b) have his case reviewed, and (c) to be represented for these purposes before the competent authority or a person or persons designated by that authority. 2. An alien may be expelled before the exercise of his rights under paragraph 1. a, b and c of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security.”