Changes in Polish Refugee Law

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‘The way of thinking according to which the problem can be shelved and ignored as long as it has not yet burst out is still present with us – as it has been in the approach to refugee problems in Poland in the past decade. Therefore, there are no grounds for claiming that Poland has fulfilled all the requirements of the Convention, especially with regard to aliens granted refugee status in this country’.

1. Introduction

In an annual presentation to the Lower House of the Polish Parliament, the Minister of Administration concluded his speech on the implementation of the Geneva Convention relating to the Status of Refugees in Polish Law, with the sentence: ‘In the opinion of the Minister of Administration, it may be said that Poland has lived up to its obligations stemming from the Geneva Convention.’

In this article, while giving a brief overview of the Polish Refugee Law, I would like to point out that perhaps the Minister’s conclusion was somewhat too optimistic. A thorough look at the relevant Polish law makes the image he painted less cheerful. The practice of Polish administrative organs, and in some cases courts as well, seems to be to restrict its application and even to misinterpret the Convention altogether.

Though being a country with an established tradition of producing refugees, after the system change in 1989, Poland decided not to pursue a liberal policy towards asylum seekers now within its borders. Symbolically, this attitude has been exemplified by the name given to a new subsidiary form of protection – ‘tolerated sojourn’. Not humanitarian, not compassionate, but only tolerated. With this article I hope to engage in a constructive, critical and open debate on the state of Polish refugee law, a debate which until now has not taken place.

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1 Tomasz Kuba Kozłowski in Refugee Protection, Warsaw 2002, pp. 75–76.


3 Id., p. 8.
2. Polish Refugee Law

According to the Polish Constitution of 1997, both the Geneva Convention and the New York Protocol form an integral part of the Polish legal system and may and should be applied directly by administrative organs and competent courts. Also the newly passed law ‘On Affording to Aliens Protection in the territory of the Republic of Poland’ (hereinafter the AAP) refers specifically to the Geneva Convention in the definition of the term refugee.

It should be pointed out that the official translation of the Geneva Convention as published in the Polish Journal of Laws contains a mistake: the English terms of ‘State’ and ‘country’ are translated each time in Polish as ‘państwo’. This cannot be explained by the lack of an appropriate Polish word, as the Polish language contains two different words that are suitable for each English expression; thus the word ‘State’ is translated as ‘państwo’, and the word ‘country’ as ‘kraj’. It is perhaps this confused translation, which ought to be removed, that has contributed to a wrong application of the Geneva Convention by some of the administrative organs when dealing with the issue of agents of persecution.

On 13 June 2003 Parliament passed two new laws, which when entered into force (1 September 2003) will dramatically change the existing alien, asylum, and refugee law in Poland. The old Aliens Act of 1997 will be repealed, and two new acts will take its place: the 2003 Aliens Act – dealing with the issues of visas, aliens, removals etc., and the completely new 2003 Act ‘On affording to Aliens protection in the territory of the Republic of Poland’ (‘Ustawa o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej’). It is the latter, dealing with refugee and asylum issues, that is the main interest of this article.

According to Article 13 sec. 1 of the AAP, ‘Refugee status is granted to an alien who meets the requirements of being recognized as refugee as defined in the Geneva Convention and New York Protocol.’ Applications should be made to the Chairperson of the Office for Repatriation and Aliens (hereinafter the Chairperson) who makes the decision in the first instance. The Chairperson’s decisions are reviewed by the independent Refugee Board, whose decisions can be challenged in

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4 Unfortunately the exact basis of such an assumption is not entirely clear. The Supreme Administrative Court has issued two contradictory rulings on the issue of the exact position of the Geneva Convention and New York Protocol in Polish domestic law. The reasoning of the NSA ruling of NSA V SA 708/99 seems to be widely accepted as the official position, even though it is somewhat baroque in reasoning. A clearer foundation has been endorsed by the NSA only a few weeks later in NSA V SA 706/99, but for unknown reasons this ruling has been widely ignored by the legal doctrine. However, both endorse the view that the Convention and Protocol are legally binding international instruments, directly applicable in Polish domestic law, and have precedence over domestic law in case of any collisions.

5 Both were published in the Polish Official Journal of Laws (Dziennik Ustaw) 1991, Nr. 119, items 515 and 517.


7 Dz.U. 03, Nr. 128, items 1175 and 1176.

8 Article 13 sec. 1, Aliens Act 2003 Article 141 sec. 1.