



May 2008

Regularization of Immigrants in Poland: What was wrong with it and what should be done?

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Abstract:

The last two decades of migrations have created quite a large group of illegal residents in Poland. Many of them are relatively well-integrated economically and socially but do not enjoy any resident rights. Regularization of their residence status would enable them to work legally. It would help fighting shadow economy and contribute to a better control over migration in the country.

The last two decades of migrations have created a large group of immigrants who live in the Poland illegally. These people are relatively well-integrated economically and socially, but live in a stalemate: while staying in Poland they are illegal and have few, if any, rights; but if they want to leave, they have to disclose and face punishment. Poland should pass a regularization act that would solve the problem of the illegal residence of this population. Besides giving a pardon to these people, regularization would help to fight the shadow economy, contribute to the positive image of Poland as a state bound by the rule-of-law and enable better control over migration in the country.

The two regularizations that took place in recent years (2003 and 2007) were unsuccessful because they did not alleviate the root issue and excluded most of those resident aliens who needed the regularization. The problem further grew with the strengthening of border control and, if it is not solved today, it may only become worse in the future.

Foreigners who reside illegally in the Republic of Poland had their most recent chance to legalize their residency between 20 July 2007 and 20 January 2008. The regularization applied to those immigrants who had not submitted an application for a residence permit under the previous regularization (which took place in 2003). The terms of the previous regularization in 2003 were similar to the regularization in 2007.¹

The 2007 law allowed for the legalization of residency to foreigners who:

- 1) Had been residing in Poland non-stop since at least 1 January 1997;
- 2) Did not have a legal residence on 20 July 2007;
- 3) Applied for the legal residency status before 20 January 2008;
- 4) Indicated a place of accommodation where they could reside and presented a legal title authorizing them to occupy it;
- 5) Had the promise of being granted the work permit in the Republic of Poland or a written declaration of the employer confirming the intention to employ them or entrust them with other gainful work, or possessed the resources sufficient to cover their costs of living and those of their dependents, including costs of medical treatment, without the need to claim financial help provided by social assistance centres for the period of one year;
- 6) Had not submitted an application for a residence permit under the 2003 regularization law.

The interested immigrants were obliged to fulfil all the indicated conditions and if they did, the competent head of the region was obliged to grant them the residence permit for a fixed period of time (one year, unless it resulted in a threat to the state security or defence, the public security or policy, or a burden for the state budget, or unless it was against the interests of the Republic of Poland).

The conditions indicated above excluded a vast majority of immigrants residing in Poland illegally from the possibility gaining legalization. The exact number of immigrants who have applied for the regularization of their residence under the 2007 law is not known, but according to the head of the Polish immigration office, it was expected to reach only a few hundred!² That is not many considering the extent of the problem of illegal immigrants residing in Poland and the urgency of dealing with it. The conditions excluded a vast majority of illegal residents and, in reality, completely missed the point.

¹ It was assumed to be a continuation of the 2003 regularization rather than a new one. See: transcriptions from a discussion during the meeting of the Administration and Internal Affairs Commission of Polish Parliament from May 22, 2007 (Biuletyn nr: 1969/V Komisja: Komisja Administracji i Spraw Wewnętrznych /nr 103/).

² Transcriptions from a discussion during the meeting of the Administration and Internal Affairs Commission of Polish Parliament from May 22, 2007 (Biuletyn nr: 1969/V Komisja: Komisja Administracji i Spraw Wewnętrznych /nr 103/).

Already the first regularization conducted in 2003 indicated that setting such tough conditions does not lead to solving the problem of illegal residents. Under the previous law, less than 2 500 people legalized their residence. They were mainly from the Armenian and Vietnamese communities - groups that lobbied for this law and that were able to take advantage of it. Looking more closely at these groups and the requirements immigrants had to fulfil, we may notice that both these regularizations were tailored to suit these communities. The decision makers justified their approach by saying that these Armenians and Vietnamese were well integrated and needed the regularization most, even though not all of them applied for legalization during the first regularization. Those who did not apply then asked for a second chance, which was given to them in 2007. Altogether, from the point of view of all illegal residents, the regularization conducted in the proposed form was ineffective and did not deal with the real problem.

What is the real problem? Who needs regularization?

In order to answer these questions, a brief background on where most of the illegal resident aliens in Poland come from is necessary. Since the beginning of 1990s, the largest group of immigrants who live and work in Poland are the country's eastern neighbours—mostly Ukrainians, but also Belarusians and Russians. They came to Poland on the basis of visa-free movement, mostly as shuttle migrants dealing with simple jobs and petty trade. At the peak of these migrations, the number of workers from these countries was estimated to be up to a million a year!³ This situation lasted until 2003, and up to a few months before Poland had joined the European Union (1 May 2004) on which day a new visa regime was introduced for the citizens of these countries, which required visas. Even so, the visas were quite easy to obtain and shuttle migrants were able to stay in Poland legally for up to 180 days every year. In the last few years, the number of foreign workers employed in Poland was estimated to be up to 300 000 a year. Most of these workers were Ukrainian.⁴

Introducing visas, however, created a problem for many of those migrants who constantly travelled back and forth between Poland and Ukraine. The Border Guards started paying more attention to the number of days they had stayed in Poland. Those who overstayed their visas were banned from re-entry for a year. For the first years, many Ukrainians who worked in Poland had tried to deal with the problem through methods including applying for new passports where the number of days started to count back from the

³ i.e. Mirosław Bieniecki, *Ukrainian labour migrations to Poland*, in: Marie Jelinkova, Ian Cook (red.) *Visegrad Moves*, Multicultural Centre Prague, Warszawa 2007.

⁴ Mirosław Bieniecki, Justyna Frelak, Piotr Kaźmierkiewicz, Mikołaj Pawlak, *Ukrainian Migrants on the Polish Labour Market*, IOM Ukraine, Kiev 2008

beginning, changing their family names in order to get a new visa as a different person, etc. Meanwhile, the authorities were building a stricter and stricter system of control, such as adjusting to the Schengen Information System.

With border control becoming more strict, more and more Ukrainians were deciding to go back to Ukraine or migrate to other countries, where the systems were more open for foreign workers and where they had a possibility of legal employment (e.g. Spain, Portugal, Italy, Czech Republic). Some of them have decided, despite the situation, to stay in Poland and live there illegally after overstaying their visas. It is impossible to estimate even roughly how many Ukrainians stay in Poland today without any legal right to do so. Sociological observations of these people indicate that this number is significant. The official estimations are as low as a “few hundred”,⁵ while the estimates based on observation of the irregular workers indicate a few thousand. They work in the shadow economy, do not pay taxes, and do not have insurance.⁶ Once in a while, someone gets caught and is deported (e.g. 1 500 Ukrainians were deported from Poland in 2007).⁷

Most of them learned how to live in the country without documents. They usually have work, they speak Polish well, and they are ethnically undistinguishable from the average Pole. They keep out of trouble, knowing that any contact with the police can lead to deportation and a ban on re-entry. Leaving Poland voluntarily also means at least a year ban on re-entering Poland (and all other Schengen countries). On the other hand, Polish authorities seem blinded to irregular immigrants from Ukraine—or at least it looks as though they try not to notice them.

Meanwhile, over the past several months, Poland has liberalized the access to its labour market for the non-EU neighbouring states and many of these people could have a chance for legal work in Poland. Legal work also means a legal residence. There is only one problem—once they leave Poland, where they are illegally at the moment, they cannot re-enter, which creates a vicious cycle. The possibility of regularization could break this cycle, and introducing the Schengen regulations and security system undermines the counter-argument that regularization causes more illegal immigrants to come to the country with a hope of a future regularization.

⁵ e.g. Piotr Stachańczyk, the Head of Office for Foreigners, said that so called “small abolition” (“small regularization”) would have to concern only a few hundred of Ukrainians. Look: Transcriptions from a discussion during the meeting of the Administration and Internal Affairs Commission of Polish Parliament from May 22, 2007 (Biuletyn nr: 1969/V Komisja: Komisja Administracji i Spraw Wewnętrznych /nr 103/)

⁶ Mirosław Bieniecki, Justyna Frelak, Migranci ekonomiczni w Polsce – praktyka funkcjonowania [Economic Migrants in Poland – practice of functioning], in: Witold Klaus (ed.) Funkcjonowanie migrantów na polskim rynku pracy [Functioning of Migrants on the Polish Labor Market], SIP, Warszawa 2007

⁷ The Office of Foreigners’ statistics www.udsc.gov.pl

Regularization seems to be the easiest way to solve the problem of illegal residents in Poland. It is difficult to say why the parliament did not decide to do it, especially because it was proposed by some officials in the context of the last regularization. The two options that were discussed included legalization of residence for all of those foreigners who live in Poland and, the second option, so-called “small regularization”, which would allow all unregulated immigrants to leave Poland without any consequences resulting from their illegal residence. The option of repeating the 2003 conditions that were chosen in 2003 was hard to understand. The justification provided by the head of the Office for Foreigners was that some of those who did not apply during the first regularization should be given a second chance. It is impossible to guess why all the other categories of illegal immigrants were excluded and why the state did not approve, at the least, “small regularization.” The transcriptions of the discussion in the parliamentary commission show that the small regularization was abandoned because the head of the Office for Immigrants said that it would concern very few people. As was said before, the numbers are disputable due to the lack of data. Nevertheless, the problem exists and it should be dealt with. It should have been done before or at the moment when Schengen regulations were implemented and it was not. The sooner it is done, the better.

Regularization of immigrants who have irregular status in Poland is important for both the immigrants and the state. For the state, it is a group that contributes to the shadow economy. For the immigrants, it is the situation of vulnerability for various kinds of abuse and violations of their human rights. Immigrants with irregular status are not safe at work and in general. Irregular immigrants, such as Ukrainians in Poland— people who could legalize their employment and residence if they could leave the country without the consequences of today’s illegal status—are a testimony of Polish authorities’ impotence in dealing with the problem of irregular immigrants and show a lack of respect for itself as a nation that is planning to build itself up. Keeping in mind the large size of this group, Poland will have to solve the issues, which could negatively impact Poland’s relations with such an important partner as Ukraine. In this context, leaving this group unattended is unreasonable.

Proposed measures

Considering that the vast majority of irregular immigrants in Poland are Ukrainians, the proposed regulations should focus primarily on this group. Focusing on the experience of Ukrainian immigrants should not lead, however, to the adoption of legislation that concerns only this group. All legal acts concerning future regularization should be universally applicable to all illegal residents who fulfil certain conditions.

There are at least two options for the regularization act that would solve most of the problems of irregular migrants in Poland. The first one is to forgive their illegal residence and allow them to apply for a temporary residence status in a similar way to the July 2007 regularization, but with a closer date of crossing the Polish border, such as 21 December 2007 (Poland's entry to the Schengen zone).

The second option would be the "small regularization," the so called "zero option" discussed in the context of the earlier regularizations: that every irregular resident alien would be able to leave the country without bearing the consequences of his/her illegal status. In such cases, immigrants would have to express their will to leave Poland to the Police or Border Guards and...leave. For many of them, it would mean that they would be able to come back legally and start regular employment in Poland soon.

The above-mentioned conditions would allow for the regularization of those immigrants who are actually bound to the country through work and residence. It would demand, however, a system of institutional control and bureaucratic measures.

But there are, of course, two more options: to catch and deport all the illegal immigrants or to keep our eyes shut. The first is not realistic. The second undermines the state's authority and shows a lack of responsibility. In our situation, "small regularization" would be strongly recommended.

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This article was made within the "Regularization of illegal migration" project under the support from Iceland, Lichtenstein and Norway in a framework of the Financial Mechanism of EEA and the Norwegian Financial Mechanism through the NROS Foundation.

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