

## Family reunification in practice – Polish case

Michał Górski

### Abstract:

Family reunification procedures in Poland are relatively liberal and thus majority of applications are successful. However, due to a difficult situation on the job market in Poland, meeting the application requirements is considerably uneasy.

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According to the Migrant Integration Policy Index, family reunification policy implemented in Poland is considered “slightly favourable” and was awarded a tenth place among 31 analyzed countries<sup>1</sup>. Indeed, the family reunification directive was transposed in Poland without many additional restrictions. Thus, none of the integration measures apply. There are no age limitations for both spouses and minors over 15 (the voluntary solution for the Member States), as well as no restrictions in access to employment, including self-employment for family members within the first 12 months of stay. The right to family reunification granted for refugees is not limited to relationships predating their entry (cf. art. 9(2) of the [Family Reunification Directive](#)). It is a sponsor who makes the application, which in many aspects seems to be a favourable solution as it is easier to obtain the permit within the administrative procedure through a sponsor in Poland than for the family member to meet all the criteria directed by a Polish consul in the country of origin. Moreover, family members may already be staying with the sponsor during the procedure (cf. art. 5 (3) of the directive).

This however does not mean that Poland is a paradise for third-country families. First of all, the sponsor must reside in Poland for at least two years before filing an application for family reunification. Possibly the largest problem the applicants face is the requirement of having stable and legal income sufficient to support all family members (currently ca. 110 euro per person). This has to be net income, after deduction of expenses such tax, social security and documented costs of accommodation.. The latter may also cause bureaucratic troubles for applicants, who not only have to provide legal title for their place of residence (e.g. rent contract), but often document all the bills from different service providers<sup>2</sup>. Health insurance

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<sup>1</sup> *Family Reunion Rankings for 31 MIPEX III Countries*, Migrant Policy Integration Index. <http://www.mipex.eu/family-reunion>

<sup>2</sup> Difficulties regarding calculation of applicants’ income (both from the side of applicants and authorities) resulted in excluding accommodation costs in the draft of new Act on Aliens. Thus, applicants will no longer need to document these costs when applying for a residence permit, including reunification. See art. 114 of the draft, which is now being discussed in the Polish Sejm: <http://orka.sejm.gov.pl/Druki7ka.nsf/Projekty/7-020->

for all family members is also required. The above-mentioned criteria concern most of third-country nationals applying for residence permit in Poland. The administrative procedure costs ca. 90 euro per each family member and lasts a few months, an additional source of frustration for applicants. Sponsors are often unable to go through the application procedure by themselves and thus need to hire attorneys, resulting in extra few hundred euro expenses. Still, a growing tendency needs to be noted as statistical data shows that the number of residence permits granted for family reunification increased: from 1791 in 2009 and 2108 in 2010, to 2239 in 2011<sup>3</sup>. That equals to around 5-7% of all the resident permits granted in Poland. Furthermore, the ratio of negative decisions was low, ca. 0.5% of the total number of decisions regarding family reasons, with another 5% of cases dismissed, either by the party or by the authorities. This low ratio is probably the result of a limited discretionary power of the authorities – when a sponsor meets all the requirements (e.g. length of stay, income, accommodation and health insurance), the authorities are obliged to grant the permit.

Nevertheless, NGOs criticize some aspects of implementation of the [Family Reunification Directive](#). The main point of criticism includes introducing a maximum 5-year period before becoming eligible for autonomous residence permit and not including broader family bonds, such as relatives in the direct ascending line, adult children and unmarried partners<sup>4</sup>. However, especially for the latter, the Polish Act on Aliens allows granting a residence permit based on “other” reasons, which proves to be a relatively often practice (the requirements are similar to those described above). What is interesting, the same type of permit may be granted for a nuclear family member, when the two-year-stay requirement for a sponsor is not met. However *praeter legem* it may sound, such interpretation complies with the Constitution of Poland, which says that “*Marriage, being a union of a man and a woman, as well as the family, motherhood and parenthood, shall be placed under the protection and care of the Republic of Poland*”, and other binding international laws. This type of residence permit is not always worse than family reunification one, especially from the perspectives of obtaining residence permit for the EU long-term residents.

What next? According to the general [position of the Polish Government](#) included in responses for questions made in the [Green Paper on the right to family reunification of third-country](#)

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[703-2013/\\$file/7-020-703-2013.pdf](#) (in Polish). At the moment of writing the article, the bill was forwarded to the Internal Affairs Committee after having been voted through at the first reading at Sejm.

<sup>3</sup> *National Contact Point to the European Migration Network in Poland, Misuse of the Right to Family Reunification in Poland*, [http://www.emn.gov.pl/download/74/15069/Naduzywanie\\_prawa\\_ang\\_2.pdf](http://www.emn.gov.pl/download/74/15069/Naduzywanie_prawa_ang_2.pdf), Table 6; See also *Dane liczbowe dotyczące postępowań prowadzonych wobec cudzoziemców w latach 2009 – 2011 [Statistical data regarding administrative procedures involving foreigners in years 2009-2011]*, <http://www.udsc.gov.pl/Zestawienia.roczne.233.html>. Cf. completely different data on EU document regarding Green Paper (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0735:FIN:en:PDF>). The reason for this huge difference is not clear, but the data in article come from the root, i.e. Polish Ministry of Internal Affairs and Office for Foreigners and thus seem more reliable. It must be noted however, that at the time of writing this article, the author could not tell which data are accurate with the complete certainty.

<sup>4</sup> Stowarzyszenie Interwencji Prawnej, *Uwagi do stanowiska Rządu Rzeczypospolitej Polskiej do Zielonej Księgi w sprawie prawa do łączenia rodzin obywateli państw trzecich zamieszkujących w Unii Europejskiej*, [Association for Legal Intervention, *Opinion on Polish Government's position regarding the Green Paper on the right to family reunification of third-country nationals living in the European Union*], <http://interwencjaprawna.pl/docs/stanowisko-laczenie-rodzin.pdf>

[nationals living in the European Union](#), “Poland has not encountered significant problems regarding the application of the 2003/86/EC directive”, although, as a rule, it “stays open to suggestion made by other Member States”<sup>5</sup>. In the draft of the new Act on Aliens<sup>6</sup> no significant changes were made regarding family reunifications, apart from the direct transposition of art. 5 (5) of the directive (best interest of the child), which has not been explicitly included in the current Act.

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<sup>5</sup> Ministry of Internal Affairs of Poland, *Polish Government’s position regarding the Green Paper on the right to family reunification of third-country nationals living in the European Union*, [http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2012/pdf/0023/famreun/memberstatesnationalgovernments/poland\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2012/pdf/0023/famreun/memberstatesnationalgovernments/poland_en.pdf);

<sup>6</sup> See above, footnote 2.