



COMMISSIONER FOR HUMAN RIGHTS

Warsaw, 5 October 2015 .

**Adam Bodnar**

**V.543.9.2015.MS**

**Mrs.  
Ewa KOPACZ**

**The Prime Minister of Poland**

Dear Madame Prime Minister.

In the first half of the year almost 350,000 migrants arrived in the European Union. Among them are both people seeking protection from war or persecution, as well as economic migrants who have left their country seeking a better life and work. This poses the challenge for the whole Europe which is undoubtedly the adoption of incoming migrants and averting the threat of a humanitarian crisis, which may lead leaving thousands of migrant workers without assistance. Of course, the mere adoption of migrants, or even fast consideration of submitted by them applications for refugee status or residence permit applications is not the only challenge. Public authorities should make every effort to encourage these people to stay in our country, to create the conditions for integration with Polish society, provide the opportunity to learn Polish, open educational pathways and professional career. The Polish State must therefore develop an approach to migration phenomenon, which is already commonly referred to as the Adoption Culture. This in turn will not be possible without the cooperation of public authorities, local government, civil society and, of course, the migrants themselves.

Below, Madam Prime Minister let me introduce the most important, in my opinion, challenges that the Polish state must respond wanting to house migrants with the dignity they deserve. These challenges, along with recommendations and lines for action suggested by me, may be treated as a contribution to the development of a kind of "road map" for the public authorities responsible for the preparation and implementation of state migration policy. Some of the recommendations are the result of the consultation meeting conducted by me with members of the Committee of Experts on Migrants.

**Acceptance of migrants on Polish territory.** Currently in the European Union there is a discussion on the issue of the relocation of part of those foreigners who have come to Europe. An important step in this discussion was the September decisions of the Council on the commitment of the EU Member States regarding the acceptance on their territories already numerically identified groups. According to estimates, a total of approx. 6 200 people is to arrive in this mode to Poland. In addition, Poland has undertaken to adopt, under the procedure of resettlement, 900 people who are present on the territory of Lebanon. Relocation and resettlement, even if ultimately become the practice in all Member States, however, are ad hoc solutions. The massive influx of migrants to Europe has become already a fact. Development of favourable long-term strategy of the proper acceptance of these people, providing them with the necessary assistance and efficient completion of the necessary procedures related to the granting of international protection, legalization of stay or return to their country of origin is therefore in the interest of all the members of the European Union.

Regardless of whether and when such a strategy will be developed, Poland should be prepared to accept more migrants and not only within the framework of co-ordinated by the European Union relocation. Already one of the routes used by foreigners, runs through Ukraine to Poland. So far, use it far fewer people than the roads leading by Greece and the Balkans or Italy. However, in situation when further European states close their borders, the proportions may change and becomes possible the scenario in which more and more groups of migrants will choose so called East - Europe Trail. It is important to note that among the migrants there will be not only refugees and persons seeking international protection. To a large extend there will be economic migrants who are seeking for a better life and work. In my opinion Poland should not assume excluding the possibility of adopting also those persons on its territory.

Therefore, I appeal to you Madame Prime Minister for your interest in preparation of Poland for the adoption of migrants, both coming within the relocation from the Member States of the European Union and from other directions, also in unregulated manner. In my opinion, it is necessary to prepare a comprehensive action plan addressed both to the authorities of the central government as to local government units, which would guarantee a smooth adoption of the migrants on the Polish territory, and provide them with a decent life, at least for the duration of refugee proceedings and the time necessary to adapt and self-empowerment in the new reality.

These preparations may be based on developed last year and positively evaluated by the then Commissioner for Human Rights, *the Action Plan of the Ministry of Internal Affairs in the organization of the reception, transport and stay on the territory of the Republic of Poland refugees from Ukraine* (the document was approved on 31 March 2014). This plan defined the tasks of the Ministry of Interior and its subordinate departments in border protection, reception, transport and quartering migrants in centres for foreigners or, if necessary, in temporary camps, to provide those in need of care and protection order and security in places of residence of foreigners . All contained in a document scenarios can be applied in the current situation.

**Preparation of offices for receiving and processing a greater number of applications.**

I am afraid that the expected increase in the number of applications for refugee status can lower standards of service to the public at the Office for Foreigners and lengthen the waiting time for handling the matter in this Office. The same problem, in case of increased influx of migrants who are not interested in obtaining international protection may apply to the provincial authorities who are competent to carry out the procedures for the legalization of stay of foreigners on Polish territory. Already, these authorities should therefore prepare themselves for the organizational and human resources changes that in emergency situations will avoid paralysis in dealing with refugee issues or residence permits.

**Social assistance for persons applying for refugee status.** All foreigners seeking international protection who come to Poland, obtain the right to social assistance in the dimension specified in the Act of 13 June 2003 on Granting protection to foreigners on Polish territory (Dz.U. of 2012 item 680 as amended). This assistance will be granted in 11 open centres for foreigners applying for refugee status or outside these centres, in the form of cash benefits. In both cases, however, I have doubts whether the present system of social assistance will ensure foreigners real support for the duration of asylum proceedings. According to the information of the Office for Foreigners that at 11 centres there are only 431 available places. The authority may increase this number by opening new centres and setting the place reserves, up to 2000, which may not satisfy the real needs.<sup>1</sup>

Another problem is the location of the centres. Most institutions of this type are in fact in the eastern provinces, in small towns, far from large urban centres. In such conditions it is difficult for comprehensive support and full integration. The access to legal aid or any forms of professional activation is severely limited. It is also difficult to find employment, to which foreigners seeking refugee status, in accordance with Art. 36 paragraph 1 of the Act on granting protection to foreigners on Polish territory, have the right, if after 6 months from the date of application for refugee status a decision in the first instance is not issued, and the cause of no decision will be in the sphere of the foreigner.<sup>2</sup>

Eligibility to benefit from social assistance in the form of cash benefits to cover the costs of residence outside the centres does not give foreigners better prospects. The amount of benefits paid pursuant to § 6 of the Regulation of the Minister of Internal Affairs and Administration of 10 November 2011 on the amount of aid for foreigners seeking refugee status (Dz.U. of 2011 No. 261, item 1564) , ranging from PLN 25 to PLN 12.5 per day, depending on the number of family members residing in Poland together with a foreigner. These amounts do not guarantee a decent standard of living for foreigners: are too low to meet all the needs, ranging from rental of a dwelling, ending with the cost of everyday living. It should be recalled that on an adequate standard of assistance granted to foreigners spoke Court of Justice of the European Union. In its judgment in Case C-79/13 (Saciri family case ), the Court stressed that granted monetary aid to foreigners must be sufficient to provide a decent standard of living adequate for the health of persons seeking protection and their support. In cases where foreigners accommodation is not provided in kind, the paid benefits, according to the Court, may have to be sufficient for the purposes of allowing a foreigner provide their accommodation on the private market.

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<sup>1</sup> Such data are given in the booklet *Refugees in Poland. More knowledge, less fear*, published on the website of the Office for Foreigners ([www.udsc.gov.pl](http://www.udsc.gov.pl)).

<sup>2</sup> It should be noted that the Act of 10 September 2015 amending the Act on granting protection to foreigners on Polish territory and some other Acts, adopted by Parliament and submitted to the President of the Republic of Poland for signature on 15 September, this regulation has been changed so that the certificate entitling to perform the work will be issued to a foreigner if the case concerning the granting of international protection will not be settled within the statutory period of 6 months, and the delay is not due to the default of the applicant.

Referring to the guidelines of the Court I postulate, therefore, that the amount of benefits paid to foreigners, first, customize to their individual needs, and secondly, to increase to a level that allows foreigners renting and maintaining flat.

Polish preparations for the adoption of migrants are therefore an impulse to look into the functioning system of social assistance for foreigners applying for refugee status. First, consideration should be given to increase in the budgetary resources earmarked for this assistance. It seems also necessary to indicate the new location of the above-mentioned centres. Facilities of this kind should arise in large cities, including the provincial ones, with the involvement of local authorities, local NGOs, as well as local entrepreneurs who could also get engaged in professional activity of migrants. Migrant settlement policy should be subordinated to two assumptions: on the one hand care must be taken to maintain the family but also cultural bonds, between migrants, on the other hand to avoid concentration of large groups of foreigners in one place (e.g. in large centres for foreigners). The preservation of bonds will prevent the isolation of foreigners within the host society, and to avoid concentration will allow to avoid overburdening schools, where the children of foreigners will be sent, and facilitate the integration in local communities.

In my opinion, should be also considered a change of the aforementioned Art. 36 paragraph 1 of the Act on granting protection to foreigners on Polish territory, which would be the automatic granting to foreigners applying for refugee status job opportunities, e.g. after 3 months from the initiation of refugee proceeding. Obtaining the right to take up employment would be then run independent of the statutory six-month deadline for a decision on refugee. The preservation of 3-month period that would elapse from the initiation of the proceedings, would give the government authority time for a decision on manifestly unfounded case, thereby preventing attempts to use the refugee procedure solely for the purpose of obtaining the right to perform work.

## **The change of the practice of placing foreigners in detention centres and the introduction of absolute prohibition of the detention of minors and their caregivers.**

The Act of 12 December 2013 on foreigners (Dz.U of 2013 item 1650 as amended) provides the ability to stop a foreigner for whom it may be decided on the commitment to return to his/her country of origin, in a guarded centre. Pursuant to the provisions of the Act on granting protection to foreigners on Polish territory in such centres can also be placed foreigners applying for refugee status. Both acts provide the possibility for a judgment against the detained foreigner alternatives to detention measures that would protect administrative proceedings conducted in relation to foreigners. Among the alternatives and, what important, freedom means the acts mention: the obligation to report to the designated authority at specified intervals, payment of cash collateral, or commitment to live within the designated place<sup>3</sup>.

The possibility of a decision of such measures, whether by authority of the Border Guard, or by the court hearing the application for placing a foreigner in a guarded centre, should contribute to reductions in the number of foreigners placed in detention facilities. According to the data provided by the Border Guard the introduction of alternative measures to detention after 1 May 2014 contributed to reducing the number of minors placed in institutions with more than 40%<sup>4</sup>. Still, alternative measures to detention predicated on the principle of exception to the rule, which remains directing detained foreigners to detention centres. This practice of the Border Guard and the courts should be changed, what is possible, even under applicable law.

What is needed is a legislative initiative aimed to establish a total ban on placement in detention centres for foreigners minors and those who care for them. This postulate was already repeatedly declared to the Minister of Interior, but unsuccessfully<sup>5</sup>. There is no doubt, that conditions in detention centres, especially the ruling regime which is close to the prison, are not suitable for children. Staying in such institutions can be a traumatic experience for them and negatively affect their physical and psychological development. Therefore and in this respect, Madame Prime Minister, I would ask for personal involvement in the postulated by me change of the applicable law.

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<sup>3</sup> Respectively: Art. 398 par. 3 on foreigners and Art. 88a par. the Act on granting protection to foreigners on Polish territory .

<sup>4</sup> Case No V.542.32.2014.MS. Response of the Chief Commander of the Border Guard No KG CU 1405/IV/MK/15.

<sup>5</sup> Case No V.542.32.2014.MS.

### **Access of the children of foreigners applying for refugee status to education in Poland.**

The difficulties that accompany the education and integration of foreign pupils in Polish schools have been diagnosed in the report entitled *Implementation of the rights of minors foreigners to education*, issued by the Office of the Commissioner for Human Rights in 2013.<sup>6</sup> Among the solutions suggested in the report, which were to increase the effectiveness of teaching and ensure the effective implementation of the right of foreigners to education guaranteed in Art. 70 par. 1 of the Constitution of the Republic of Poland, were to standardize core curriculum implemented in relation to foreigners, to establish minimum requirements for this group of pupils, to create a uniform assessment standards and promote students to the next class, and to change the rules for admission of foreigners to external examinations, the test of 6th class and lower secondary school exam. In the latter aspect, the report suggests three solutions, namely: to allow the possibility of exempting foreigners from such exams because of insufficient knowledge of Polish, to adjust the requirements for these exams and, what important, also the examination papers to the possibility of a student - a foreigner, and admission to exams only those students who have, for a certain time earlier, attended education in Polish schools. Effective implementation of the tasks incumbent upon schools requires also from teachers and educators special knowledge and intercultural competence. These may be achievable through trainings and workshops addressed to people working with foreigners' minors and equipment for schools with appropriate educational materials. It is also necessary to involve Polish students in any activity aimed at foreign students to adapt them to the new conditions. It should be the duty of teachers from now to spread among Polish students a solid knowledge of the phenomenon of migration and refugees, countries and cultures from which migrants originate, as well as to sensitize the young generation on the issue of cultural differences, respect for those differences and intercultural dialogue. School authorities should also convince the Polish students' parents to the fact that a multicultural school teaches respect and tolerance, and is an invaluable asset in today's multicultural world.

The report, along with the onset of the Commissioner for Human Rights was handed over to the Minister of Education in June 2014.

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<sup>6</sup> RPO Report entitled. *Implementation of the rights of minors foreigners to education*, the principle of equal treatment Law and Practise , No.12, ed. the Office of Commissioner of Human rights, Warsaw 2013.

In another speech, dated 9 February 2015 the Commissioner for Human Rights once again asked the Minister to take actions, which will bring the real impact on improving the implementation of the right to education of minors foreigners in Poland<sup>7</sup>. All the proposals contained in the report still remain valid. In the current situation, when there is a real prospect that in Polish schools will be much more foreign students derived from new cultures, introducing changes to help schools with the implementation of their tasks and at the same time improving the situation of the student - foreigner becomes urgent.

### **Ensuring foreigners seeking in Poland international protection the access to medical care.**

In July this year, after a visit of workers of the Commissioner for Human Rights Office in a centre for foreigners applying for refugee status in Linin, was taken to investigate the case concerning the access of foreigners applying for this status to medical care throughout the country. It was connected with the change of the provider responsible for the organization of medical care in centres for foreigners, which since June is the company Petra Medica. The Office of the Commissioner for Human Rights reached signs that that change , at least in the initial phase, resulted in a significant restriction in access to medical services. The Head of the Office for Foreigners was asked for the clarification. In response, the Commissioner received assurance that despite initial difficulties related to the need to ensure continuity of benefits, currently there is no risk of deterioration in foreigners' access to medical care. The Commissioner was also informed of significant developments that were conducive to increasing the availability of medical services. Among the changes were mentioned: opening of new subcontractors places throughout the country, increasing the number of working hours of medical staff in the centres for foreigners, the appointment of a coordinator of patients' registration, who is responsible for organizing the queues to specialists, as well as a commitment of the healthcare providers to provide access to health care for all foreigners applying for refugee status , benefiting from social assistance in the form of cash benefits .

In the new situation all these activities, however desirable, may prove to be insufficient. Potentially the number of foreigners eligible, as applicants for refugee status, to benefit from medical care will increase . This will put new challenges before the healthcare provider, especially if new centres for foreigners are open.

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<sup>7</sup> Case No V.540.11.2014.MS.

<sup>8</sup> Case No V.543.5.2015.MS. Response of the Office for Foreigners, dated on 28 August 2015, No DPS= WUŚ-510-10421/2015/MK.



In this situation will be certainly needed urgent conclusion of agreements with new subcontractors who will be willing to provide medical services to foreigners. It is worth noting that with the takeover by Poland of liability for migrants coming to Europe from the Middle East and Africa of receiving medical care there will be people from different cultural backgrounds than those that have dominated so far. This in turn will require particular sensitivity of medical personnel, a new approach, and, of course, new language skills. At the same time it is also necessary to pay special attention to ensuring foreigners access to psychological and psychiatric treatment. Especially in these areas, the provider must ensure that the foreigners in need can get help in a language they understand.

**Help for the victims of war, torture and other forms of inhumane treatment.** Among the foreigners may be people who either in the country of origin or during the journey already experienced violence, torture or other inhumane treatment. These people are not always willing to talk about it. Therefore, medical personnel, not only in the centres for foreigners, but in any medical facility designated to provide services for migrants, should be particularly alert to any signs that may indicate that the foreigner using these services is a victim of violence. It is desirable the creation of a single practice that would show how to conduct medical history and studies, including psychological, as soon as possible to identify individuals in need of assistance. In this context, it should be indicated that recommendations on the functioning of such a mechanism (so called Medical screening), which detained or staying in detention foreigners should be subject , in the broad sense, are contained in 23<sup>rd</sup> Report of the General Committee to Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) from 2013. Similar recommendations in relation to one of the Danish centres for asylum seekers, the Committee also presented in the report of the visit carried out in this country in February 2014 (CPT / Int. (2014) 25).

Responsibility of the Polish State is to create a comprehensive program for assisting and rehabilitation of people who have been victims of torture or other inhumane treatment. This obligation stems from Art. 14 of the UN Convention of 10 December 1984 on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Journal of Laws of 1989 No 63, item 378). The guidelines for this program include the General Principles No. 3 to the above. provision. According to this document, the program should aim to complete the rehabilitation of persons, understood as the restoration of his/her physical and mental integrity, as well as providing a place in society.

Any action aimed at such persons should at the same time take into account his/her personal qualities, origin and culture and personal history.

**Culture of adoption.** Developing the topic should refer to the results of Migrant Integration Policy Index 2015 (<http://www.mipex.eu>). According to the last, the fourth edition of this comprehensive survey, Poland does not compare favourably. Among 38 countries we have 32nd place, while among the EU Member States a lower rate achieved only 5 other countries (Malta, Slovakia, Lithuania, Cyprus and Latvia). It should also be noted that in the opinion of researchers restrictive policies against migrants contribute to the strengthening of the unfavourable attitudes towards them represented by members of the host society. This statement - to the course of the current public debate and increasingly frequent speeches denying the validity of openness to migrants, and even perceiving only the risks associated with their arrival - this is the most accurate.

In the course of establishing the overall rate for led by State policies for the integration of migrants there were taken into account conditions across eight areas, i.e. the labour market, family reunification, education, health, political participation, the right to permanent residence, the right to acquire a nationality and protection against discrimination. Poland received a score of 41 points, the highest rated European countries - Sweden, Portugal and Finland - have received the results of 78, 75 and 69 points. The lowest rate Poland obtained in the areas of political participation (37th place), health (34th place), the labour market (33rd place) and education (30th place). In summary, the current policies create more obstacles than opportunities for full participation of migrants in society.

These figures show the challenge we face, in particular with the expected increase in inflow to Poland foreigners who are not EU citizens. The current shape of the state migration policy - both in practical and legal terms - requires many changes. To take steps in this direction obliges us a commitment to respect international standards of a democratic rule of law, which specifies the will and the actual actions of the state in the fight against discrimination, racism and other xenophobic attitudes. Numerous omissions in implementing solutions conducive to building an open state have a negative effect on the social dimension of the process of adapting to the acceptance migrants, currently required also by external circumstances, i.e. decreasing level of openness of society, its tolerance and attitude towards foreigners.

**Preventing the hate crimes and the hate speech.** I believe that it is necessary to launch a major information campaign about refugees and their situation and about what they can expect after arriving to Poland. Reliable activities in this area should include the whole range of issues, i.e. to present both the positive and potential negative aspects of the process. The proper conduct of these activities requires the mobilization and involvement of many public services. The atmosphere of the ongoing debate and the observed social unrest indicates a need to take immediate action on incitement to hatred against people who will soon come to our country.

As underlines in its case the European Court of Human Rights , the violence motivated by prejudice deserves special attention of states because of the need to strengthen in the society condemning hatred and strengthening among the people who are members of minorities, the confidence that they are protected against the threat of violence (judgment of 31 May 2007, Šečić against Croatia, Application No. 40116/02). If the attack is motivated by racism particularly important is that the investigation was conducted vigorously and impartially.

Neglecting these actions and treatment of violence and brutality racially-motivated as other matters, means closing our eyes to the specific nature of such a particularly destructive acts, has an extremely detrimental impact on fundamental rights and leads to discrimination (judgment of 31 July 2012, M. and others against Italy and Bulgaria, Application No. 40020/03). For these reasons I asked the Prosecutor General to take appropriate action by law enforcement agencies on hate crimes.

The instruments of criminal law should be used ultimately as for the elimination of socially harmful attitudes and phenomena. This education serves as the basis to counter intolerance, not only among children and teenagers, but also their families, and thus the wider community. As evidenced by studies carried out (see. *Discrimination in school - the presence of unauthorized* Society anti-discrimination education, 2015), Polish schools do not provide adequate knowledge about equal treatment and non-discrimination, and thus do not prepare to function in a multicultural society. However, if certain behaviour as an offense, necessary is immediate and unconditional reaction of law enforcement agencies. No quick and decisive response from law enforcement agencies to actions motivated by hatred can cause a feeling of impunity among their perpetrators and cause a build-up hostile sentiment.

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<sup>9</sup> Speech of 25 September 2015 No VIII.518.34.2015.

**Integration of foreigners who have already obtained refugee status.** Support for foreigners is the basis for the chapter 5 of the Act of 12 June 2004 on social assistance (Dz. U. of 2015., item 163). The support is started on the application within 60 days from the date of obtaining by an foreigner the refugee status. Worth considering is the flexibility of these solutions, allowing for wider access to the assistance to refugees in justified cases. I also consider it expedient to simplify the procedure for consideration of proposals.

The key issue, however, is the provision of adequate financial resources, enabling local governments to implement payment of cash benefits referred to in Art. 92, including in particular the implementation of costs of learning Polish, and - most importantly - for the implementation of individual programs of integration. Effective implementation of assistance implemented within the framework of programs of integration requires the creation of assists programs . The current social welfare services are not able to effectively implement this scale of integration activities. There is a need for full cooperation in this regard, of employment services and social assistance together with the corresponding expansion of their personnel. It has to be considered the possibility of separating in the Ministry of Labour and Social Policy a unit dealing with issues of integration of foreigners. Appropriate emphasis must also be put on a campaign to inform foreigners themselves, as well as potential employers, of their entitlement to recognized refugees the right to take up employment without the need to obtain additional authorization.

At the end well worth the recommendation is to entrust a single governmental body tasks associated with coordinating the activities of various ministries and government agencies and local governments related to the implementation of the process of receiving refugees.

**Institutions of higher education in the integration process.** A major role in the integration of refugees can play universities. I welcome the declarations of many rectors of universities opening their schools to refugees. Following the Academy of Science and Technology in Cracow, the Jagiellonian University and the Warsaw University, which first offered support for refugees, go further universities from across Poland. Announced by Madame Minister Lena Kolarska-Bobińska coordination of these initiatives by the Ministry of Science and Higher Education, in cooperation with the Ministry of Interior and the Office for Foreigners should provide grounds for hope that the offer of the university will be included in the relocation and resettlement programe. Regulation of the Minister of Science and Higher Education of 19 August 2015 on the recognition of diplomas of higher education obtained abroad and on confirmation of higher education at a given level of education (Dz. U. of 2015 item 1467), which will enter into force on October 8 can promote the integration process.

Pursuant to Art. 16 paragraph 1 of the Act of 15 July 1987 on the Commissioner for Human Rights (Dz.U. of 2014 item 1648 as amended) I would like to introduce Madame Prime Minister these comments with the hope that they will be used in the development of such a policy of the Polish state, which will provide migrants proper adoption in our country, ensure respect for their rights and freedoms, and shall also provide these people a real chance to start a new life in Poland.

Yours sincerely,

Signature on the  
original