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***BETWEEN POLISH INTERESTS AND THE
EU INFLUENCE - POLISH MIGRATION
POLICY DEVELOPMENT 1989-2004***

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Abstract: Poland's geopolitical turn to the West after 1989 resulted in the Europeanization of many policy fields. Polish migration policy, constructed in the radically changing migration situation, has been widely perceived as the policy built under the prevailing EU dominance. The paper examines to what extent the adjustments to the EU *acquis* determined the Polish migration policy formulation and to what extent the space was left for Polish particular interests. It places special emphasis on the policy areas in which Polish interests have been especially vivid such as the visa policy towards Polish Eastern neighbours.

Keywords: migration Policy, Europeanisation, Poland

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1. Introduction

As it has been proved e.g. by Zolberg (1999), one of the major determinants that shape the migration flows are the migration policies of the states involved in migration phenomenon. It has been particularly visible in the East-West migration flows in an enlarging Europe. Poland, the largest new EU member state, and its migration policy is surely of vital importance to the scale, volume and trends in East-West migrations. From this perspective, it is worthwhile to analyze the latest trends and changes in Polish migration policy as well as to specify the crucial factors influencing the process of shaping of the migration policy in Poland.

According to Geddes “policy in the Central and Eastern European Countries has arisen almost entirely as a result of the requirements of EU accession and that EU policy models and ideas about borders, security and insecurity have been exported to CEE countries” (Geddes 2003: 173). Furthermore, he claims that “the immigration policy frame adopted by the CEECs has been largely inspired by the requirements of accession to the EU and dominated by security concerns” (Geddes 2003: 184). In the light of such theses it is interesting to see to what extent the adjustments to EU *acquis* determined the Polish migration policy formulation and to what extent the space was left for Polish particular interests. Was it possible for Poland, having the longest Eastern border of the EU, to have its own migration policy or was it all just copying the Western models and adjusting to the EU law? Which other factors could be pointed out to be relevant to Polish migration policy making? How all this process has been influenced by Polish foreign policy consideration and to what extent Poland had to resign from securing its foreign policy goals in migration policy under the EU influence?

The year 1989 was really a breakthrough year in European and Polish history. The new challenges arose from both the internal transformation as well as from the dramatically changing external environment. The new beginning and the new times brought the radical changes to every sphere of social, economic and political life in Poland, among others the sphere of migration and migration policymaking. Radical rejection of communist system resulted in a need to build, sometimes from scratch, many policies, to find a new place for Poland in international relations and to shape its future path of development.

Polish migration policy has often been under considerable critique for its “reactive character” and lack of reflection on its goals and rules (Kępińska, Stola 2004: 160). It has been even sometimes claimed that Poland did not develop any migration policy at all throughout the 90s (Iglicka 2003) and that, as it was already stated above, all the developments in Polish migration policy were merely a reaction to EU accession requirements. I would like to challenge these statements in this paper not with the aim to radically overthrow them, but rather with the aim to point to some other often neglected issues that must be taken into account while analysing and assessing Polish migration policy after 1989.

Security dimension, refugee protection provisions in Polish law and the network of readmission agreements can be found at the roots of Polish migration policy in the 90s.

2. The issue of security and combating illegal migrations

The establishing of Tadeusz Mazowiecki as a first non-communist prime minister marked the beginning of a new era and started the process of building the Third Republic of Poland. The end of cold war and the fall of Berlin wall resulted in a new geopolitical order in Europe. Central and Eastern European countries, once artificially gathered under the nuclear umbrella of USSR, now were faced with a challenge how to ensure security in a new order. The decision to turn to the Western economic, political and military structures was first of all considered as a way of ensuring security to states temporarily left in geopolitical vacuum. It is obvious that development of migration policy could not have been of primary importance for Polish governments in the beginning of the 90s. The country in transition, bearing the sometimes very painful social costs of economic transformation from socialist to market economy, and searching for a new place in the system of international relations in Europe in order to secure its future security and economic growth, had many more urgent problems and issues to look to. Having that said, it is not a revelation that the first concerns about the unprecedented increase in population movements and border crossings were security concerns and the most (in my opinion) important dimension of the development of the Polish migration policy in the beginning of the 90s, was the security dimension. It has been additionally enhanced by the attitudes of the public opinion demanding first of all ensuring security from state authorities. The final liberalisation of the passport law (The Act on Passports of 29 November 1990¹) that resulted in the skyrocketing increase in the numbers of border crossings both by Polish nationals and foreigners was one of the first effects of the 1989 breakthrough as regards migration flows (see Figure 1).

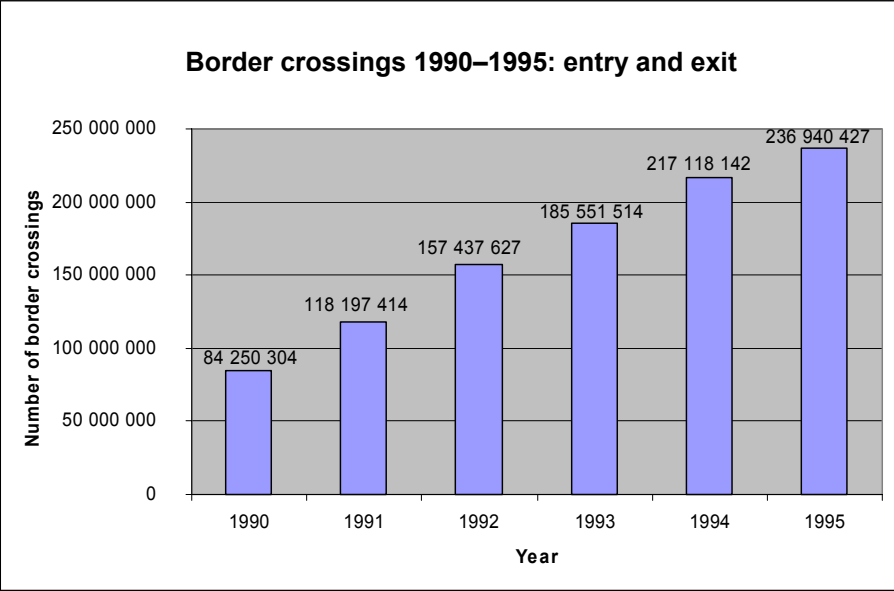
The intensification in the international mobility of Polish citizens and foreigners coming to or through Poland subsequently evoked the questions about security and the need to combat such phenomena as illegal trade in arms, drugs, international criminal networks, etc. It was coupled with the process of securitizing migrations in general in the 90s that had its roots in abandoning the traditional military thinking about international security issues and resulted in identifying the new non-traditional security threats, one of them being international migration (Anioł 1992; Kicinger 2005: 27). It cannot be surprising that, given a new geopolitical order, Poland turned to the West in search for solutions and help.

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¹ Journal of Laws of 1991, No 2, item 5.

abandoning the traditional military thinking about international security issues and resulted in identifying the new non-traditional security threats, one of them being international migration (Anioł 1992; Kicingier 2005: 27). It cannot be surprising that, given a new geopolitical order, Poland turned to the West in search for solutions and help.

Figure 1. Border crossings 1990–1995: entry and exit (including both Polish nationals and foreigners)



Source: Polish Border Guard Statistics; “Poland. Statistical Data on Migration 1990–1996”.

Poland’s cooperation with Western countries in the field of migrations perceived as a security threat started within the intergovernmental cooperation of Berlin-Budapest process initiated by the intergovernmental conference in Berlin 1991 on combating illegal migrations and then within the Vienna Process initiated by Vienna Conference. These intergovernmental meetings were the first forums on which Western and Eastern countries met to discuss the common problems of illegal migration, smuggling and trafficking. It seems that such cooperation was only natural bearing in mind the international character of challenges and common strive to ensure security both in Western and Eastern countries.

As it was rightly put forward by Anioł (1996: 18–19), the security dimension in Polish migration policy in the beginning of the 90s could not be confined only to security defined as a protection against the transnational criminal activities. One additional fear, prevalent at that time, must be included, i.e. the fear of the mass inflow of persons from the East fleeing destabilization in the post-Soviet republics. Polish long and poorly protected border with the ex-Soviet republics, visa-free regime with those states and frequent contacts made these fears justified to certain extent. The progressing closure of Western countries could be added as a factor that might have enhanced the fears. In face of such security risks, the cooperation with the Western European countries, especially Germany, was initiated. With time passing, and the ever closer cooperation in border matters with the West, the label arise that such

cooperation is the result of the European integration. The fact that it had its roots in the security risks at the beginning of the 90s and was in line with Polish national interests is often neglected in the analysis of the Polish migration policy.

3. Asylum and human rights

The following 1990 year was the year when Poland was faced for the first time (not including the incident of Greek and Chilean political refugees during the communist period) with the problem of refugee movements. Although the Constitution of the People's Republic of Poland guaranteed the right to asylum to anyone persecuted for the defence of labour class interests, for the struggle for national liberation or for scientific activity (art. 75 of the 1952 Constitution²), the law was strictly politically motivated and was used to secure people of value for the communist system in Poland. Not attracting *bona fide* refugees for political reasons (communist system) and not attracting people heading for the West for economic reasons because of its poor economy and chronic deficiencies of the socialist system, Poland used to be rather the sending than receiving country in European asylum flows till 1989. The turning point was 1990 when about 100 asylum seekers were returned from Sweden to Poland on the basis that they had false Swedish visas or no documents but arrived to Sweden via Poland and had Polish visas (Szonert 2000: 37). It must be bore in mind that the year 1990 is the year of ripening asylum crisis in almost all Western European countries faced by skyrocketing numbers of asylum seekers (Salt 1993, Loescher 1989). The collapse of communism in Poland proved to be a good occasion for Swedish authorities to break the channel of inflow of asylum seekers that led via Poland. What was unacceptable in the 80s due to the foreseeable protests of public opinion became possible after 1989 when turning back asylum seekers to Poland could not have evoked the protests that they are returned to the communist country. The asylum seekers were placed in local seaside holiday centres at the expense of the local social aid which was the sign of the complete *ad hoc* reacting to the situation. The numbers of asylum seekers returned from Sweden were growing as well as the financial problems posed by their presence for the local authorities awaiting the forthcoming summer season at the seaside. As Marek Szonert, the participating observer of the events admits, the Polish authorities were astonished by the new phenomenon (the inflow of refugees heading for the West) and not prepared for it and therefore they sought for inspiration in Western countries more experienced in the field (Szonert 2000: 36).

Firstly, the main role in responding to refugee problem was played by the Polish Red Cross and the Ministry of Health and Social Assistance (Szonert 2000: 41). Soon, the camp sites were visited by UNHCR workers invited by Polish government. This resulted in further cooperation with UNHCR and it was rightly stated by Anioł (1996: 34) that the Swedish decision to expel asylum seekers to Poland and its consequences definitely fastened the process of accession of Poland to Geneva Convention. Both UNHCR and Western countries

² Journal of Laws of 1952, No 33, item 232.

pressured Poland to join the Geneva Convention. Although not significant in numbers, but stable inflow of asylum seekers to Poland showed the permanency of this phenomenon and the need to establish the stable financing system not based on the ad hoc government donations and the clear division of responsibility among the government institutions. Only in November 1990 the Governmental Commission for Refugee Affairs and Ministry of Interior's Plenipotentiary for Refugee Affairs were created (Szonert 2000: 61). However, the first steps of Polish governments— negotiations with Sweden to participate in the costs of the stay in Poland of the returned asylum seekers and the cooperation with UNHCR were the clear signals that Poland turned to the West in search for solutions and help. It is remarkable that such solutions as not admitting further asylum seekers to Polish territory by the Border Guard or sending the asylum seekers back to their countries of origin were not taken into account at all (Szonert 2000: 63).

Finally, the accession to Geneva Convention in 1991 (in force since 26.11.1991) laid down foundations for the development and evolution of refugee law in Poland. The general provisions of the Convention were incorporated in Polish Act on Aliens³ and the Constitution's provisions on asylum were subsequently changed⁴. The opening of the UNHCR Liaison Office in Poland in February 1992 ended the phase of accession of Poland to the world refugee protection system. The accession to Convention for the Protection of Human Rights and Fundamental Freedoms (1950) in 1993 was the final underpinning of asylum system in Poland⁵. Both the accession to Geneva Convention (and New York Protocol) and the accession to European Human Rights Convention were the clear indicators that Poland was turning West in search for solutions in the field of asylum movements.

The cooperation with the West was intensified through Polish participation in different forums discussing the question of asylum in Europe at that time (that were accessible for Poland from the point of view of its integration with European Communities), encompassing UNHCR, Conference for Security and Cooperation in Europe, The Council of Baltic Sea States as well as the Council of Europe and its conferences and committees (CMDG and CAHAR). Polish delegates were also invited to participate in CIREA and CIREFI meetings, that were the first fora to discuss asylum, border and migration issues in European Communities (Szonert 1999: 222). The asylum law in Poland, many times changed since the beginning of the 90s later on, systematically evolved under predominant influence of EU *acquis* and become the most “Europeanized” part of Polish migration policy in the beginning of the 21st century.

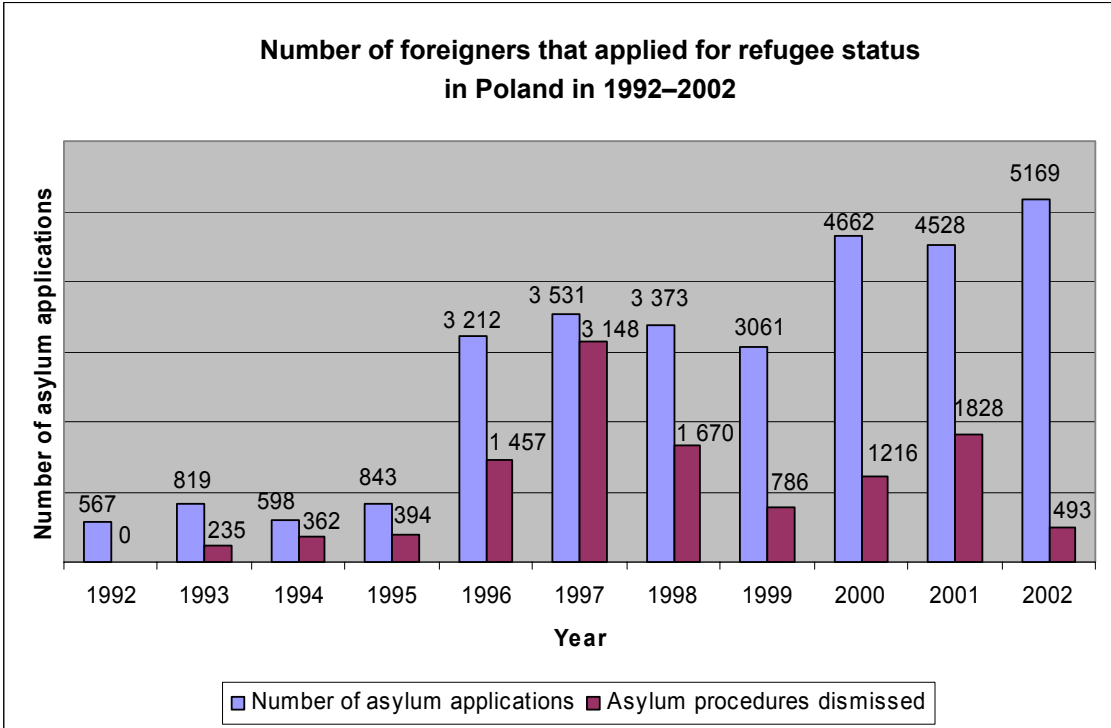
³ Journal of Laws of 1991, No 119, item 513.

⁴ Journal of Laws of 1991, No 119, item 514.

⁵ Journal of Laws of 1993, No 61, item 284. Although the Convention doesn't include the right to asylum per se, yet, the jurisdiction of the Strasbourg Human Rights Courts clearly indicates that expulsion to a country where one might be in danger of persecution, inhumane and humiliating treatment is the violation of articles 3 and 13 of the Convention (the former forbidding torture, inhumane or degrading treatment or punishment and the latter giving the right to effective remedy before national authorities).

In order to keep the proportions of the phenomenon some statistics on the inflow of asylum seekers to Poland are presented in Figure 2. As it can be seen, the numbers of asylum seekers have never reached the Western level through the 90s⁶, and the fact that majority of procedures had to be dismissed in the beginnings of the 90s clearly indicated the general trend that asylum seekers did not treat Poland as their destination country and tried their luck heading for the West even if they applied for refugee status in Poland. Nevertheless, the asylum law, as it will be presented later in the paper, became the part of Polish migration policy that has been influenced by Western ideas and solutions to the greatest extent.

Figure 2. The number of foreigners that applied for refugee status in Poland in 1992–2002



Source: Ministry of Interior, Department for Migration and Refugee Affairs statistics, after: Szonert (1999): 226–227; Koryś (2004): 83; Kepińska (2004).

4. Readmission agreements network in post-cold war Europe

Soon the issue of security was very closely linked to the issue of asylum due to the readmission agreement signed in March 1991 between Poland and Schengen group countries. According to it, Schengen countries lifted visa requirements for Polish nationals but Poland had to accept its obligation to take back its nationals and third country nationals that illegally entered Schengen territory via Poland. This agreement was later a model for further

⁶ According to UNHCR statistics, the numbers of asylum applications lodged in the major European receiving states – Germany, France, and the UK amounted to 1,935,107, 345,614 and 332,272 asylum applications respectively in the decade 1987–1996. (see: ‘Statistics’ on «www.unhcr.org», Table 14).

readmission agreements between single EC member states and other third countries⁷. Additionally, the agreement launched, what is often described as a chain reaction of readmission agreement among Poland and its neighbours⁸ and among other EU member states and Central and Eastern European countries. As a result, Poland signed readmission agreements with all its neighbours except for Russia and Belarus despite many efforts to sign them.

Very important agreement was signed between Poland and Germany in Bonn on 7 May 1993 on cooperation in combating the consequences of migration flows (in force since 1 June 1993) that modified the general agreement with Schengen countries. The agreement was an important signal of developing special relations and special cooperation between Poland and Germany on migration issues with both countries deeply interested in such special relations. Poland was again acknowledged a safe third country; therefore persons that illegally came to Germany through Polish territory and applied there for asylum were to be sent back to Poland. The exception was made for persons that applied for asylum before the new German asylum law had come in force, for persons that had been staying in Germany for at least 6 months with the acceptance of German authorities and persons that entered Germany legally and only then fall into irregular status. The limit of readmissions for 1993 was set for 10,000 persons. Additionally, Germany agreed to admit some persons in case of sudden mass inflow of immigrants to Polish territory. The financial aid reaching 120 million DM was provided for Poland as a compensation for the costs of the intake of readmitted persons. The money was to be spent on the development of border infrastructure and asylum infrastructure in Poland (Anioł 1996: 39–40). Poland, as the first of CEEC, by signing this agreement fully accepted its role as a safe third country that was imposed on it by its Western neighbours (Anioł 1996: 40). It is important to remember that this agreement was very crucial for Germany, where, due to partisan debate, such agreement was necessary in order to make the constitutional changes in asylum law that were indispensable in the tense asylum crisis and considerable overloading of asylum procedures. Only after signing an agreement with Poland, did SPD agreed to add a new 16a article to German Constitution that limited the scope of the right to asylum and helped the country to deal with asylum crisis⁹ (Anioł 1996: 38–39).

There are different interpretations of the results of this agreement. First, that Poland was burdened with the tasks to cordon the Western countries and was forced to quickly adapt to the change from refugee sending or transit to refugee taking country (Lavenex 1998: 282). From other perspective, Poland through enhanced cooperation with Germany, and significant

⁷ Moreover, the agreement provided a basis for the Council Recommendation concerning a specimen bilateral readmission agreement between a Member State and a third country (OJ C 274 of 19.09.1996) adopted by the Council of Justice and Home Affairs on 30 November 1994 on a German initiative (Lavenex 1998: 281).

⁸ Special impulse for such agreements was the 1993 bilateral agreement between Poland and Germany signed on 7 May 1993. Soon afterwards Poland concluded readmission agreements with Czech Republic (10 May), Ukraine (24 May), Slovakia (2 June), Romania (24 July), Bulgaria (25 August) (Anioł 1996: 41).

⁹ The new 16a Article provided that person arriving from the European Communities Member State, from a country that is a member to Geneva Convention or from a country where there are fundamental human and refugee rights secured, cannot apply for asylum in Germany.

financial investments in border infrastructure had been preparing itself the role of the gatekeeper of the Eastern EU border (Anioł 1996: 41–42). However, one of the most important results of the readmission agreements that were often omitted was, in my opinion, the reintroduction of visa requirements with regard to many countries with which Poland had earlier had visa-free relations. A spectacular example of this mechanism was the introduction of visa requirement for former Yugoslavia nationals (1 July 1993) as a result of readmissions to Poland of 412 persons in the first half of 1993 by Sweden and Denmark that had introduced visas for former Yugoslavia nationals a month earlier (Anioł 1996: 35–36).

All in all, the readmission agreements signed by Poland were the third element, beside the joining of the Geneva-based refugee protection regime and start in cooperation in security matters – building the position of Poland in international migration relations in Europe in the beginning of the 90s.

5. Brief overview of the most important changes in the Polish migration law 1989–2004

Although there were some attempt after 1989 to establish consultative bodies at governmental level with the view to elaborate the aims and principles of the Polish migration policy, such bodies or did not worked or did not manage to delineate the vision of the Polish migration policy in a high-rank policy document. Therefore given the lack of any official policy documents stating the goals and principles of the Polish migration policy, the basis for the analysis of the policy developments remains the analysis of the changes in law that illustrate the intentions of policy-makers. The main aim of this overview is to separate the evident European influence in the evolution of Polish migration law from the realisation of Polish interests and ideas about migration.

Poland entered the new era with an old-regime Act on Aliens of 1963¹⁰ that did not match the rapidly changing reality. The law created in a communist era, where foreigners were a rarity, had many loopholes and was created rather with the aim to observe foreigners than to manage the mobility and migration issues (Łodziński 1998). The first changes after 1989 resulted from the incorporation into the Polish legislation of Geneva Convention¹¹. The old law was has been changed some times since then¹², yet, the repairs proved to be insufficient in the light of the need to ensure state's security and given the progressing integration with the EU. The old law did not provided for a temporary permit to stay, lacked of criteria of entry of foreigner, especially it lacked the obligation to have the sufficient amount of money for the planned stay in Poland, lacked details in the expulsion and detention procedures. Additionally, it did not provided for the conditions to issue/to withdraw the permit to settle in

¹⁰ Journal of Laws of 1963, No 15, item 77. Changed in 1974, 1977 and 1983.

¹¹ Journal of Laws of 1991, No 119, item 513.

¹² Journal of Laws of 1992, No 7, item 30; Journal of Laws of 1995, No 23, item 120.

Poland while leaving decisions on permits to settle to voivod authorities that led to the decentralization of migration policy. Furthermore it lacked the legal basis for keeping the various registers and records of foreigners. All in all, it has proved in practice to be insufficient to ensure security in the reality of increasing population movements. Therefore in 1995–1997 the work on the new Act was resumed. The Ministry of Interior and its project was the only legislative initiative¹³ in the field (Iglićka et. al. 2003: 15). The debate on the new Act was not heated and lacked controversies, only the involvement of UNHCR and Helsinki Human Rights Association brought the humanitarian issues into the debate. The justification for the new Act, presented by the government, was the argument that it is necessary to create such regulations that would facilitate the international people's flows and would at the same time combat the negative effect of these flows. The argument that it is necessary to enact a new Act in the perspective of Polish integration with EU also made its place in the debate (Iglićka et. al. 2003: 15; Łodziński 1998). However, at that time the arguments of security were of the at least similar strength and influence¹⁴ in comparison to the arguments on the EU future membership requirement.

It is worth mentioning that concurrently to Parliamentary works on the new Act on Aliens; the new Constitution had been under construction. Finally enacted on the 2 April 1997¹⁵, it encompassed some basic provisions concerning issues closely related to migration policy such as the right to leave the country (art. 52.2), which was the affirmation of the freedom to leave your country in opposition to communist system, the right to asylum and refugee status with reference to implementing laws and international agreements (art. 56), the basic rules regarding the obtaining of Polish citizenship (art. 34), the right to settle in Poland for persons of Polish origins (art. 52.5) and affirmed the close links between Poland and its Diaspora abroad (art. 6). As it has been rightly suggested by Professor Rajkiewicz (*Report on the state migration policy 2004*), the constitutional provisions could serve as a basis for the elaboration of the migration doctrine in Poland that has been so much called for by the researchers in the field (Głabicka, Okólski, Stola 1998; *Report on the state's migration policy 2004*; Iglićka 2003).

The new Act on Aliens, enacted on 25 June 1997¹⁶, that came in force on 27 December that year, brought some provisions that were clearly influenced by EU and Western countries solutions, yet, it brought also some provisions that represented specific Polish interests resulting from Polish vision of its interest in the field of migrations. The latter will be presented below in the first placed, then followed by the examples of EU influences.

¹³ According to Polish Constitution of 1997 the President, the Sejm and the Senat (Lower and Upper Chamber of Parliament), the government and the citizens amounting over 100,000 persons have the right to lodge the legislative proposal in Parliament.

¹⁴ One of the discussed issues was the obligation to consult with the Office for State Security before issuing every single permanent residence permit to a foreigner.

¹⁵ Journal of Laws, 1997, No 78, item 483.

¹⁶ Journal of Laws 1997, No 114 item 739.

The new Act, according to Łodziński (1998), “widened the state authorities’ competences that let them control the flow of foreigners and limit the inflow of undesired foreigners to Poland”. The Act specified the conditions of entry of foreigners on Polish territory, one of them being the obligation to have sufficient means to cover the cost of stay in Poland or the invitation from Polish institution or Polish citizen guaranteeing the coverage of these costs. The Act widened the catalogue of criteria basing on which the authorities could refuse or to invalidate visa, refuse entry, refuse or invalidate the temporary residence permit. The new criteria were related to state security and encompassed the danger for state security, public health, the well-founded suspicion of terrorism, suspicion of smuggling or trafficking, suspicion that the real motive of entry was different from declared. Also the catalogue of grounds on which the decision on expulsion could have been taken was broadened. The illegal employment or disclosure that the foreigner has no sufficient means for living could have been the reasons for expulsion decision (art. 52.1). Furthermore, the Act developed in more detail the procedures of expulsion. All these changes definitely were aimed at assuring security and resulted from the experiences from the recent past, when the lack of sufficient and adequate regulations hindered state authorities from effective fight against the negative phenomena resulting from international flows. The immediate effects of the new Act was the sharp decrease in the movement on Polish Eastern border in 1998 and the subsequent fall in the petty and bazaar trade in the Eastern regions of Poland (Łodziński 1998).

The important provisions concerned the repatriation. The new Act introduced a new, repatriation visa and cleared many complicated legal issues that evoked the practice and concept of repatriation in the previous years. The issue of repatriation, although negligible in terms of numbers of actual repatriates that arrived to Poland (altogether only 3,992 persons for the years 1998–2003, Kępińska 2004: 34), proved to be one of the most important questions in the Polish migration policy after 1989. Therefore, repatriation is an example that the evolution of Polish migration law did include specific Polish interests and will be discussed later in the paper.

There were of course some changes that were under evident influence of Western legislations brought in with the new 1997 Act on Aliens. One of them was the temporary residence permit not known in Polish law and very popular in the Western countries, others represented e.g. the provisions regarding the responsibility of a sea and air carrier for the passengers they take (whether they fulfil the entry criteria i.e. have passports, visas, sufficient financial means or invitation). The Act imposed the fine on the carrier and the obligation to take back the passenger on their cost (art. 68).

The area of asylum seemed to be influenced to the most extent by Western solutions and by the beginnings of the EU cooperation in the field. Although the numbers of asylum application were not considerable especially in comparison to the West, the new Act introduced the “safe third country” and “safe country of origin” concepts into Polish legislation along with the concept of “manifestly unfounded application” and “accelerated

procedure”, all of these had been successfully used earlier by Western countries in their battle against the asylum crisis¹⁷. Furthermore, the new Act reduced the possibility to lodge the asylum application (only personally at the border or within 14 days after crossing the border or within 14 days after getting to know the circumstances in the country of origin that may be the reason to apply for asylum in Poland) which was definitely aimed at limiting the possibilities to abuse the asylum procedure. The Refugee Council was established as an appeal organ in relation to decision on asylum application made by the Ministry of Interior.

All in all, the new Act finally replaced the old one of communist origin, the main changes resulting from securing Polish interests (security, repatriation, limitation in asylum abuses), however, with some clear indications that Poland was going to draw from the experiences of its Western neighbours and from their solutions, which was especially vivid in the field of asylum.

Soon the “new” law proved to have its shortcomings in the changing migration situation and in the perspective of the Polish EU membership. In response to the Polish application for membership in the European Communities lodged in April 1994, the Council of European Union decided to launch negotiations with certain applicant countries, including Poland. The negotiations officially started in March 1998 and in May 2000 in the “Justice and Home Affairs” chapter. It surely has been the significant impulse for the works on the amendment of the Polish Act on Aliens that lasted in 2000–2001. This time, the argument of the obligations resulting from accession procedure and negotiations was of predominant character and structured the debate on the new law in two channels – the limited debate on the issues that needed change as a result of the adjustment to EU *acquis*, and the other issues such as repatriation, citizenship that could have been discussed and were discussed at that time. Finally two separate bills were prepared to regulate these issues (The Act on Repatriation, enacted on 9 November 2000 and the proposal of the Act on Nationality, not enacted by the Parliament). However, in the field of migration the driving force of changes were the requirements resulting from European integration, the repeated appeal in every European Commission report to enhance the protection of the Eastern border and toughen the entry rules (see Iglicka et. al. 2003: 18). Also the justification of the proposal of the amendment by the Ministry of Interior and Administration, its author, pointed to the calendar of changes in Polish law resulting from the National Plan of Preparation for Membership in the EU and from the Polish negotiation position in the Justice and Home Affairs chapter. Iglicka et. al. (2003: 18) even suggest that this way European Commission as the main actor of the negotiations from the EU side became the initiator of the changes in the Polish Act on Aliens.

¹⁷ It is worth noting that all these issues were the subject of “soft” EU regulations at that time. Compare: Resolution of 30 Nov. 1992 on manifestly unfounded applications for asylum; Resolution of 30 Nov 1992 on a harmonized approach to questions concerning host third countries; Resolution of 30 Nov. 1992 on countries where there is no general risk of prosecution; Council Resolution of 20 June 1995 on minimum guarantees for asylum procedures.

The amendment of 2001¹⁸ brought many important changes both in the Polish migration law and the migration policy-making. Some new, Western and EU inspired, institutions were introduced such as the “marriage of convenience” concept along with the regulations aiming at combating this practice; also the temporary protection institution, not known earlier to Polish law, used in case of the mass inflow of persons fleeing war or serious human rights violations. The latter institution had its roots in the Polish and other Western European countries’ experiences with the inflow of people fleeing the countries of former Yugoslavia. The regulations were inspired by these events and experiences; however they did not encompass the EU directive on the matter that was agreed later this year¹⁹. Also the regulations on the family reunification introduced by the amendment²⁰ came in line with Western standards and EU discussions on family reunification directive²¹.

Other important changes brought in by the 2001 amendment included the change in the definition of the “safe third country” and “safe country of origin” that took into consideration not only the formal participation of the given country in international instruments regarding human rights protection but the real situation in the country. The conditions to apply for the permanent residence permit were changed (one could apply after 5 years of stay in Poland (3 years if the reason to come was the family reunification); the new ways of control of the legality of stay of foreigners were introduced; the latter were obliged to present to entitled authorities the documents proving the legality of their work or stay in Poland (earlier the foreigner were only obliged to register in the place of residence); the new administrative decision – obligation to leave the territory of Poland was introduced as the supplement to the decision on expulsion. As for the policy-making sphere, the new administrative organ – the Office for Repatriation and Aliens (ORA) was introduced as the governmental organ responsible for all matters related to migration and migration policy in Poland.

All in all, the 2001 amendment has been created under much more European influence than the new Act of 1997, and the European influences were much more visible in this case. However, as it has been aptly named by Kępińska and Stola, “adopting the EU *acquis* turned out to be similar to following the moving target” (2003: 164). The constant evolution of EU law resulted in the constant necessities to amend the Polish legislation and adopt the newly adopted EU measures in various fields, including migration and asylum. The successful end of negotiations in December 2002 and signing of Treaty on Accession (April 2003) did not

¹⁸ Journal of Laws, 2001, No 42, item 475.

¹⁹ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting balance of efforts between Member States in the receiving such persons and bearing the consequences thereof, Official Journal L 212 of 7.08.2001.

²⁰ According to the Act the foreigner with the permanent residence permit, with refugee status or a foreigner who had lived in Poland for at least 3 years on the fixed-term residence permit, could apply to grant his/her spouse or minor children the fixed-term residence permit with the view to family reunification provided that the applicant can prove that they poses sufficient means and material conditions for their family, that they will not present a danger to a state security and that their health contributions will be paid.

²¹ The first proposal for the Council Directive on family reunification for third country nationals was presented as early as in December 1999 by the Commission. The divergence of states’ positions in this field resulted in long negotiations and only in September 2003 the Directive was agreed.

ended the process of changes in the Polish law aimed at the incorporation in the Polish law the binding (and sometimes non-binding) EU measures.

The completely new Act on the terms and conditions of entry and stay on Polish territory of citizens of EU member states and members of their families was enacted on 27 July 2002²² that incorporated into Polish legislation the special privileged status of EU citizens resulting from the EU regulation in the area of free flow of persons. The following 2003 year brought the new Act on Aliens²³ and the Act on Granting Protection to Aliens within the Territory of the Republic of Poland²⁴, both issued on 13 June 2003.

There could be generally the growing specialization in the migration legislation observed in Poland. If 1997 Act on Aliens provided for all kinds foreigners with the exception only for diplomatic and consular corps and their families, the 2003 Act on Aliens excluded from its provisions additionally EU citizens; repatriates, and all persons seeking for protection in Poland (asylum seekers, people seeking for temporary status). Once combined in one act, the legislation on aliens in Poland was to be found in 4 separate acts at the beginning of 21st century.

The new Act on Aliens of June 2003 was very detailed and developed especially in such fields as the rules on the crossing of the border, the rules on the issuance of visas, residence cards, Polish travel or identity documents to foreigners, keeping foreigners in guarded detention centres or in arrest, the registers related to the foreigners etc. Generally, with one exception, there were no radical novelties to Polish legislation this time, rather the polishing and refining of the previous institutions and procedures and their modifications basing on the gained experience and the new requirements of evolving EU law.

The only mentioned exception is the first in Polish history regularisation action basing on article 154 of the new Act; the instrument often used by Southern European countries suffering from large numbers of irregular immigrants on their territories but a novelty in Polish tradition, intended to limit the “grey zone” in Polish economy. Basing on new provisions, the foreigners that had been staying in Poland for at least 6 years, had 4 months (1 September – 31 December 2003) to lodge the application for the fixed-term residence permit provided that they proved their ability to support themselves in Poland without the necessity to recourse to public benefits. Consequently, above 3,500 applications were lodged, 46% of them by the nationals of Vietnam and 38% by the nationals of Armenia. In case of 76.8% of the applications positive decisions were issued (Biuletyn Migracyjny 1/2005).

Act on Granting Protection to Aliens within the Territory of the Republic of Poland, enacted together with the Act on Aliens, combined the four forms of protection that could be granted

²² Journal of Law, 2003, No 141, item 1180.

²³ Journal of Law, 2003, No 128, item 1175.

²⁴ Journal of Law, 2003, No 128, item 1176.

to foreigners in Poland i.e. refugee status based on Geneva Convention provisions, asylum²⁵, temporary protection and the novelty which was the permit for tolerated stay. The latter form was a novelty in Polish legislation, introduced with the aim to offer the basic protection to people that apply for asylum and not fulfil the Geneva Convention criteria of well-founded and individual persecution, and if their expulsion to the country of origin would be impossible because of humanitarian reasons²⁶.

Special treatment within the asylum procedure was provided for unaccompanied minors as well as for aliens whose psychophysical state allows presuming that they have been victims of violence or of aliens with disabilities, in line with the provisions of the European directive on minimum standards in reception of asylum-seekers²⁷ that provides that Member states should take into account the specific situation of vulnerable persons (article 17) and unaccompanied minors (article 19).

Similarly, the provisions on the temporary protection were developed in such fields as the right to work and economic activity, the right to family reunification and health protection in line with the EU directive on the minimum standards in giving temporary protection²⁸. Some novelty represented also the possibility of receiving help in the voluntary return to the home country of foreigner that applied for granting refugee status (article 68).

At the day of accession to the EU, on 1st May 2004, the Polish migration law was fully in line with EU *acquis* in the field. Yet, the accession did not stop the changes. The subsequent amendment took place in April 2005²⁹ aimed at improving the already highly developed legislation and to bring it in line with the evolving EU legislation in the field. At the time of writing, another amendment is under preparation.

The brief overview of the development of the migration law in Poland after 1989 leads to some conclusions. Firstly, it cannot be denied, that especially after 1997, the crucial (although not one and only) factor influencing Polish migration law was the process of integration with EU and the requirements resulting from adjustments to EU law in preparation for

²⁵ It has to be remembered that the institution of asylum is separate in Polish legislation from the institution of refugee status. The latter, based on Geneva Convention is a form of international protection whereas the former is the institution of Polish law understood as a right of a state to grant protection to foreigner if it is beneficial for the state from the perspective of its interests. In fact only few foreigners have been granted the asylum in Poland after 1989 (Kępińska 2004: 35).

²⁶ The article 97 of the Act explicitly recalls the provisions of the Convention on Human Rights and Fundamental Freedoms of 1950 and specifies that permit for tolerated stay may be issued if the expulsion endanger foreigner's life, freedom, personal security, or where he/she would be subject to tortures or inhumane or degrading treatment or punishment, or could be forced to work or deprived the right to fair trial, or could be punished without any legal ground.

²⁷ Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers; Official Journal L 31 of 6.02.2003.

²⁸ Council Directive 2001/55/EC of 21 July 2001 on minimum standards for giving temporary protection in the event of mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences of thereof; Official Journal L 212 of 7.08.2001.

²⁹ Journal of Laws of 2005, No 94, item 788.

membership. These influences were obvious, visible and cannot be denied by any means. However, as it was underlined, the EU was not the only player and there were some policy areas where specific Polish interests were identified, protected and even predominant. These areas will be described in more detail in the following chapters.

6. Poland and its interests: Visas for Polish Eastern neighbours – success or defeat?

The question of Polish interest versus EU dominance is particularly vivid in the perspective of the obligation to introduce the strict visa requirements on the citizens of Ukraine, Belarus and Russia. The non-visa regime with these countries, the heritage of the former “socialist brotherhood ties”³⁰, was left in force in the new era after 1989 which is sometimes called the most fruitful decision of Polish migration policy in terms of its outcomes i.e. effects on migration flows³¹. Such step was in accordance with Polish foreign policy interests, one of them being the need to support the democratic and market changes in our Eastern neighbours in order to achieve a stable and foreseeable geopolitical order in the East. Facilitation of the mutual contacts of citizens of Poland and countries in the East has been seen from the beginning as a way to achieve such goal set for Polish foreign policy. Already in September 1990, Polish Ministry of Foreign Affairs, Krzysztof Skubiszewski, when declaring the principles and goals of the Polish East policy, underlined that “propinquity and understanding at the society level is seen by the foreign policy pursued by the Government as the cornerstone of the genuine future rapprochement based on different principles than hitherto”³². This principle has been later included in the declarations and treaties concluded between Poland and its Eastern neighbours in the beginning of the 90s³³. The maintenance of the non-visa regime versus citizens of Ukraine, Belarus and Russia proved to be the most visible sign of the commitment to the “close contacts” principle in Polish East policy.

Consequently, the citizens of these countries, especially Ukraine, amounted to, according to various sources, 200 – 500 thousands persons staying in Poland. Vast majority of them find illegal seasonal employment in Poland in agriculture, domestic services, child care and

³⁰ Agreement between Poland and the USSR of 13.12.1979 (in force since 22.03.1980).

³¹ Statement by Professor D. Stola at the international conference: *Security Dilemmas and Options for National Immigration Policies*, Warsaw 29 September 2005.

³² Poland and the East – Statement by the Polish Foreign Minister Krzysztof Skubiszewski in the Senate, Warsaw, 7 September 1990. Zbiór Dokumentów 3/1990.

³³ Declaration on Good-neighbourly relations, Mutual Understanding and Cooperation between the Republic of Poland and the Republic of Belarus of 10 October 1991 (Zbiór Dokumentów 4/1991); Agreement between the Republic of Poland and the Republic of Belarus on the Main Principles in Transfrontier Cooperation of 24 April 1992 (Zbiór Dokumentów 4/1992); Treaty between the Republic of Poland and Ukraine on Good-Neighbourliness, Friendly Relations and Cooperation of 18 May 1992 (Zbiór Dokumentów 4/1992); Treaty between the Republic of Poland and the Republic of Belarus on the Good-neighbourly relations and Friendly Cooperation of 23 June 1992 (Zbiór Dokumentów 1/1993); Treaty between the Republic of Poland and the Russian Federation on Friendly and Good-Neighbourly Cooperation of 22 May 1992 (Zbiór Dokumentów 2/1993).

construction, filling in significant gap on the Polish labour market. Moreover, borderlands in Poland and its Eastern neighbours used to be very closely economically tied by numerous petty trade links.

The common EU visa regime that places Russia, Belarus and Ukraine on the visa-countries list³⁴ resulted in the necessity to introduce visas for the nationals of Ukraine, Belarus and Russian Federation as a condition *sine qua non* of Polish integration with the EU.

Upcoming deadline for the change brought about the heated debate in Poland on the visa issue at the end of 2001 and at the beginning of 2002. It is worth noting that it was the first serious debate on the acceptance of EU requirement in the field of migration. Until then the argument that a given action is necessary from the point of view of adjusting Polish law to EU *acquis* was of indisputable strength and ended every discussion. The issue of visas for Polish Eastern neighbours became vivid and publicly discussed, e.g. in the most opinion making Polish daily *Rzeczpospolita*³⁵. The arguments in favour of the introduction of visas, apart from the recouring to the EU accession demands, pointed to the issue of public security and the effectiveness of visas as the primary instrument of control of foreigners entering the state. The arguments against visa regime focused on the economic and moral rhetoric. The opponents of visas pointed to the predicted difficulties and the decrease in numbers of border crossing and the negative economic and moral consequences of that fact. Support for the Polish minority in the East as well as for the democracy in the East was presented as the moral obligation of Poland that was to be achieved e.g. through intensive human contacts that were to be interrupt with the introduction of visas (more on the debate see Iglicka et al. 2003: 21). Additionally, many research studies predicted the negative economic and social consequences of introducing visas (see Kaźmierkiewicz 2004)³⁶. However, the EU accession process made it impossible to retain the former non-visa regime. Yet, what seemed to be a defeat of Polish interest in the perspective of EU accession could also be called a success. Given that is had been in Polish vital interest to retain unhampered flows of people between Poland and its Eastern neighbours, the goal has been achieved. First, the introduction of visas was maximally delayed. Secondly, due to an almost automatic mode in issuing visas as if on a conveyor belt, the movement on Polish Eastern border has not considerably decreased. During the first year

³⁴ Council Regulation (EC) No 539/2001 of 15 March 2001 listing the countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, Official Journal L 81 of 21.03.2001.

³⁵ The opinions on the issue of visas for Ukraine, Belarus and Russia were in *Rzeczpospolita* presented by e.g.: M. Saryusz-Wolski, *Paszport z orłem i gwiazdką* [Passport with and eagle and a star](9.05.2001); K. Wójcicki *Nasz los nie decyduje się nad Bugiem* [Our fate is not being decided on the other side of Bug river] (27.01.2002); B. Cichocki, *Czas pozbawić sąsiadów złudzeń. W kontaktach ze Wschodem najważniejszy jest interes Polski* [It is time to disillusion our neighbours. Polish interest is the most important in the contacts with the East] (14.02.2002); J. Boratyński, *Nie odgradzajmy się od sąsiadów ze Wschodu* [Let's do not separate from our Eastern neighbours] (7.02.2002); Z. Najder, *Polsko-ukraińskie asymetrie* [Polish-Ukrainian asymmetries] (8.11.2001); M. Mazur-Rafał, *Głos za wprowadzeniem wiz* [The voice in favour of visas] (18.01.2002); W. Sadurski *Obniżyć nowy mur berliński* [To decrease the new Berlin wall] (13.02.2002).

³⁶ However, there were also studies that did not predict any significant economic consequences of visa introduction e.g. Orłowski (2001), Najder (2001).

of visa regime over 1,100,000 visas were issued for Ukrainian (over 600,000), Belarussian (over 300,000) and Russian (over 200,000) nationals by 12 Polish consulates in these countries (Kępińska 2004: 12). The liberal mode of issuing visas and no fees for visas for Ukrainian nationals, proved to be an example of securing Polish interests on the one hand and fulfilling our obligations resulting from EU membership on the other hand.

7. Poland and its interests: Employment of foreigners in Poland – real or pretended lack of control?

The final liberalization of the passport law in 1990 and the significant increase in international mobility of Polish nationals as well as the increase in the numbers of crossing Polish borders by foreigners resulted in the considerably enlarged migration flows in Poland in comparison with the previous decades. It is remarkable, that one of the first steps undertaken by new Polish authorities in response to this increase in flows were the changes in the Act on employment made as early as in December 1989 (Act on Employment of 29 December 1989³⁷) that introduced the obligation to apply for a voivod labour office agreement in order to employ a foreigner. The voivod labour office was obliged to take into account the situation on the local labour market in its decision. One can risk a thesis that these changes were an anticipation of the skyrocketing unemployment rates of the next decade. The rules on the employment of foreigners were never radically liberalised since then and up till now the decisive criterion taken into consideration while issuing the work permit in Poland is the situation on the local labour market.

The new Act on employment and combating the unemployment of 14 December 1994³⁸ maintained the regulations stating that in order to get a visa with work permit, it is necessary to get the permission of the voivod labour office that is obliged to consider the situation on the local labour market. Visa with work permit could be issued for a period of up to one year, for a specific position and specific employer. The cost of work permit was settled as the minimal monthly payment in Poland. The exceptions were made only to researchers employed in the higher education institutions and in Polish Academy of Sciences.

Such strict regulations involving complicated two-fold procedure to get the visa with work permit, the relatively high cost of such permit combined with high levels of registered unemployment in Poland resulted in a very low numbers of foreigners that officially undertook a gainful employment in Poland throughout the 90s and in the beginnings of the 21st century (Figure 3).

³⁷ Journal of Laws of 1989, No 75, item 446.

³⁸ Journal of Laws of 1995, No 1, item 1.

Figure 3. Work permits issued to foreigners in Poland, 1990–2004



Sources: “Poland. Statistical data on migration 1990–1996”; Ministry of Interior; Kepińska (2004: 33); Okólski (1999: 49). Data for 2004 come from «wup.mazowsze.pl» – portal of Mazovian voivodship labour office.

What is characteristic, majority of the work permits issued in Poland (in 2004 – 74%) were issued to key staff in international enterprises, Western counsellors and experts. In 2003 out of 18,841 work permits, only 339 were issued to unskilled workers.

It has never been concealed by public authorities that the protection of labour market in Poland is the priority of the Polish legislation concerning the employment of foreigners. In the perspective of the general battle against unemployment any political party or any government even mentioned the possibility to open more Polish labour market to foreigners. However, the actual employment of foreigners in Poland has always been much higher than official statistics and even if it is impossible to measure the illegal employment the numbers range from 300,000 up to one million, the latter generally assumed as the overestimated (Koryś 2004: 18). The largest group of irregular immigrants represent the Ukrainian, Belarusian and Russian nationals illegally employed in agriculture and construction (men) or in domestic services and child care (women).

The economic explanation for this phenomenon can be found both in pull factors of Polish economy as well as in the push factors of the irregular immigrants’ countries of origin. The changing structure of economy in terms of desired qualifications and flexibility of the work force could be a source of the mismatch between the demand for and supply of work even in the conditions of rising unemployment. The demand for highly qualified workers and for

unskilled but mobile and flexible workers is present in every dynamically developing economy. The foreign labour force often finds its place in these labour segments as is in the case of Poland (Golinowska 2004: 111). The complicated and costly work permits procedure combined with lower labour costs in case of illegal employment discourage employers from regularising the employment of foreigners in the secondary labour market. Other reasons that trigger off these particular migration flows are the geographic proximity, personal relationships and historical ties between Poland and its eastern neighbours, the developed migration infrastructure and the existence of migration networks in Poland as well as the relative security and easiness of the entry to Poland (Stola 1997).

The evident question arises – what is the attitude of state authorities towards the growing hidden employment of mostly Ukrainian, Belorussian and Russian workers in Polish agriculture, construction and domestic services sectors? It would be hard to believe that the authorities are not aware of the generally known phenomenon, subject to many research studies³⁹. From the formal point of view, Polish authorities declare the fight against the illegal employment which is supported by the development of legal regulations that provide instruments for such fight. Since 1997 the illegal employment of a foreigner, till then punished with a fine, could have been the reason for the decision on expulsion (article 52.1 of the Act on Aliens of 1997). Additionally, according to the same Act, the foreigner could be refused visa or refused entry to Poland if their genuine intention of stay in Poland is different from declared (article 13). These two instruments if consistently used could have served as radical but effective measure in the fight against the illegal employment in Poland. But the reality was different. First, as it was described in the previous chapter, visas, the primary instrument of control limiting the possibilities of entry to Poland were not introduced for our Eastern neighbours till 2003 and henceforth have been liberally issued with the view not to interrupt the close contacts between the neighbouring societies. The possibility to refuse visa or entry on the grounds that the genuine intention of stay in Poland (illegal employment) is different from declared (tourism) was not generally used. Secondly, the labour inspections were inadequate and did not reveal significant numbers of foreign workers illegally employed in Poland. For example in in above 25.7 thousands of labour inspections in 2003, only 2.7 thousand cases of illegal employment of a foreigner were revealed, 1.3 thousands of them represented the Ukrainian nationals (Kepińska 2004: 80). The numbers on the one hand might be a proof of actions undertaken by state authorities in order to combat the illegal employment of foreigners, but on the other hand are significantly low in comparison to estimated few hundred thousands of illegally employed foreigners in Poland.

³⁹ One interesting statement of Andrzej Olechowski, Polish Ministry of Foreign Affairs could be cited as an example of the awareness and to certain extent approval of Polish authorities of the presence of guests from the East in Poland: *“Each day, we in Poland play host to hundreds of thousands of legal and illegal Russian, Ukrainian and other seasonal workers, merchants and tourists. They argue with Poles over wages, prices and the quality of goods. But, in spite of the volume of this traffic, we have yet to note a single incident aimed against the Russians. A miracle? Yes, the miracle of normality”* – Presentation of Polish Foreign Policy in 1994 – Statement by Minister of Foreign Affairs of the Republic of Poland Andrzej Olechowski in Sejm on 12 May 1994, Zbiór Dokumentów 2/1994.

Comparing the real numbers of Ukrainian and other illegal workers in Poland to the declared policy goals, the Cornelius and Tsuda “gap hypothesis” definitely has to be recalled given that “the significant and persistent gap exists between the official immigration policy and the actual policy outcome” (Cornelius, Tsuda 2004: 4). The explanation for such phenomenon, apart from economic arguments (demand for immigrant labour structurally-embedded in every economy of the developed countries), lies additionally in the possibility of “ambiguous policy intentions” (Cornelius, Tsuda 2004: 5–15), that often involved turning a blind eye to law violations.

It is worth noting that the policy is not only an action but also the lack of action in the relevant policy field. The policy decision *sensu largo* encompass both policy decisions *sensu stricto* and the aware lack of policy decision i.e. aware lack of policy action (Pietraś 1998). Therefore, as Zolberg simply puts it, “the absence of an effective regulatory system is itself a ‘policy’ (1999: 81). Having that said, I argue that the policy towards the illegal workers from the eastern countries in Poland could be called *the policy of silent toleration*. What could be the rationale for such policy option? The analogy with the USA policy towards the immigration from Mexico could be helpful in this place.

On the one side, the persistent irregular immigration from Mexico to the US could be regarded as a complete policy failure given the declared decades-long fight against such immigration. It has been proved in different studies that “the impact of sanctions on unauthorised entry and employment remains minimal” (Zolberg 1999: 78). However, on the other hand, as Zolberg points, it could be also be a success if we assume that the system is “purposefully weak” and “allows a relatively stable informal ‘guest worker’ program to stay in place”. This way the authorities respond both to public opinion expressing the wish to limit immigration and to the “clearly expressed preferences of powerful regional economic entrepreneurs” demanding cheap immigrant labour force (Zolberg 1999: 76). Having that said, the Zolberg’s conclusion that “the high incidence of unauthorized ‘back-door’ migration can hardly be taken as evidence of the ineffectiveness of policy” (1999: 81) seems to be well-founded. If analogy is used, the same mechanisms could be observed in Poland. The open permission for the massive employment of foreign workers in Poland would unavoidably triggered off the clear and strongly expressed opposition of public opinion due to the high unemployment levels. Therefore no political party or single politician have decided yet to officially admit that there is a large demand for foreign labour force in Polish economy or that the employment of Ukrainian or Belarusian workers in Poland will enhance (or start as in case of Belarus) the development of democracy in the East. On the other hand, these same two factors – awareness of the demand for foreign labour in some sectors of economy and the strategic foreign policy goal which is the closer cooperation and support for democracy in the East via people’s contacts – could be called the driving factors of the “silent tolerance” for the often officially “tourist” visits of Eastern workers in Poland. One remark however must be added. The generators of the demand for the cheap immigrant labour in Poland are not powerful entrepreneurs as is in the case of the US, but rather not so well organised small and

medium and often family enterprises in agriculture, construction and sewing sector. Additional demand comes from the households and their demand for care and cleaning services. The “silent tolerance” policy with regard to Ukrainian and other irregular workers from the East, could be also seen from the perspective of the foreign policy factor as one of the driving factors in creating the migration policy (Meyers 2002: 131). Polish policy-makers seemed to be willing to accept the irregular presence of thousands of foreigners in Poland in order to support the realisation of the strategic foreign policy goal which is the democracy and stability across our Eastern border.

8. Poland and its interests: The case of repatriation

The repatriation is understood as the return to Poland of people of Polish nationality or their descendants with a view to settle in the motherhood country combined with the privileged way of acquisition of Polish citizenship (Łodziński 1999: 314). The concept of repatriation entails the right of people of Polish origin to settle in Poland and this right is derived purely from the fact of their Polish origins. In other words it entails the assumption that Poland is the country open for all Polish people which is undoubtedly the consequence of the *ius sanguinis* tradition in Polish Act on citizenship. The concept of repatriation has been present in the Polish migration policy since the beginnings of the restored Polish state in 1918 and with some changes survived till the present day, thus being an important example of continuity in Polish migration policy. Already the Act on Citizenship of 1920 provided for the possibility of return to Poland and to regain their Polish citizenship for all people of Polish origin living abroad and their descendants who express their will to be Polish citizens and to settle in Poland⁴⁰. The concept of repatriation had been then repeated in the laws on Polish citizenship enacted under communist rules (in Act of 1951⁴¹ and in Act of 1962⁴²). Due to the political constraints, the post war repatriation of Polish nationals from the Soviet Union had not been finished and soviet statistics admitted that above 1 million of Poles still had lived in the USSR after the end of two repatriation waves finished in 1960. Although the 1962 Act on Citizenship provided for repatriation⁴³, it lacked procedures and in fact remained a dead letter for decades⁴⁴. Only the political and economic transformation after 1989 did trigger off the third wave of repatriation to Poland. From the beginning the repatriation was treated as the moral obligation to the compatriots and their descendants in the East, especially those living in poor conditions in the Asiatic republics of the former USSR. Soon the inadequacy of the existing regulations was brought to life and only the new Act on Aliens of 1997 introduced

⁴⁰ Journal of Laws of 1920, No 7, item 44, article 3.

⁴¹ Journal of Laws of 1951, No 4, item 25.

⁴² Journal of Laws of 1962, No 10, item 49.

⁴³ Journal of Laws of 1962, No 10, item 49, article 12.

⁴⁴ Till the middle of the 90s repatriation was exceptional and covered only few family members of former repatriates, based on the internal regulations of Ministry of Interior and Ministry of Foreign Affairs (Hut 2002: 41).

the regulations that formalized the repatriation procedure as well as the benefits accessible to repatriates (Hut 2002: 48–51).

The revival of the idea of repatriation almost immediately after 1989 bears evidence to the actuality and vitality of the idea of repatriation that managed to find support in Polish society despite the period of “dormant” repatriation after the 1960. The lack of procedures in the first half of the 90s that in fact rendered the repatriation impossible, led to heated discussions and the proposals to change the law. What is especially worth noting, is the fact that the changes in law were made, unlike in other fields of migration policy, basing on the policy guidelines adopted by the governments that settled the rules of further government policy on repatriation. According to Decision of the Council of Minister of 14 May 1996, on the rules of state policy on repatriation, the repatriation was to be the stable element of the state policy on the Poles abroad and an element of the complex Polish migration policy. Repatriation was to take form of an individual process which was in opposition to large scale mass repatriations of post-war era. The process of repatriation was to be launched by the invitation of Polish local authorities (*gmina*) that would guarantee the accommodation, and help with finding a job and other forms of help depending on the financial possibilities of the local authorities. The Asiatic republics of the former USSR were pointed as the priority areas due to poor living conditions of Poles living there and due to the fact that they could not take the opportunity to repatriate earlier (Hut 2002: 48–51). The repatriation visa introduced by the 1996 Act on Aliens regulated the procedure and opened up the real possibilities for repatriation. People who could prove their Polish origin in front of Polish consul could have been granted repatriation visa that gave them right to enter Poland and to obtain the Polish citizenship on the moment of crossing the Polish border. The Constitution of 1997 guaranteed the right to settle in Poland for every person whose Polish origins could have been proved in front of the Polish consul (article 52.5). This gave impulse to legislative works on the separate bill on repatriation that has been finally adopted on 9 November 2000⁴⁵ as a result of the general consensus of public opinion and all political parties that repatriation should be continued. The law was in line with earlier policy declarations. The opening declaration confirmed that “repatriation of Poles that were left in the East and especially in the Asiatic parts of former USSR is the duty of the Polish state”. In line with this declaration, the geographic scope of repatriation was limited to the Asiatic republics of former USSR, leaving many persons of Polish origins in neighbouring countries out of the scope of the law. This is in the sharp contrast to Constitution that does not provide for any geographical limitations of the right to settle in Poland of people of Polish origin.

In practice due to financial constraints and the regulation that repatriation was to be implemented in fact at the level of the local authorities i.e. *gminas*, led to the very limited results in terms of numbers. In the years 1996–1997 – only 334 families managed to come to Poland as repatriates whereas the numbers for the years 1998–2003 amounted only to 1,531

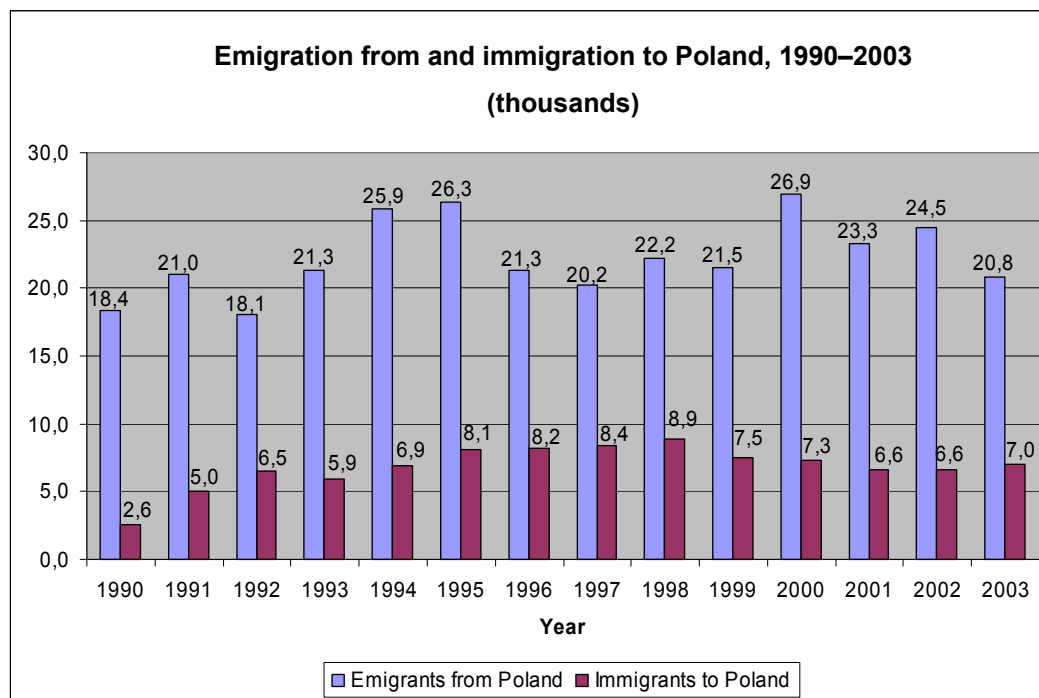
⁴⁵ Journal of Laws of 2000, No 106, item 1118.

families (3,992 persons) (Kępińska 2004: 34) which is almost negligible in comparison to other migration flows in Poland. However, what is important is the fact that the repatriation was sustained and remained the specific feature of Polish migration policy despite the changing economic and political milieu. The issue is not without influence on present ideas on Polish migration policy. The recently presented report on the Polish migration policy, prepared under the supervision of Professor Rajkiewicz, also touches on the issue of repatriation and calls for the increase and more activity in the repatriation of Poles from abroad. The issue of repatriation surely will be on the political agenda in coming years in the perspective of creating the comprehensive Polish migration policy.

9. Poland and its interests: Is there a Polish emigration policy?

The question asked in the title of this chapter might be treated as rhetoric as there have not been any policy statements that would let us for assume that there is a Polish emigration policy. In terms of numbers Poland still might be regarded as a country of emigration as the levels of emigration still exceed the levels of immigration both in official statistics (Figure 4) and in the research estimates.

Figure 4. Officially registered emigration from and immigration to Poland, 1990–2003



Source: Official data from Central Statistical Office (Central Population Register – PESEL), after: Kępińska (2004: 42).⁴⁶

⁴⁶ It has to be remembered that official statistics on migration in Poland leave much to be desired. The evident insufficiency and lacks in statistics, the heritage of the former socialist regime and its mistrust to migrations, lead to the serious inadequacy of migration statistics in comparison with reality (see Okólski 1997).

The foundations for the emigration from Poland were laid down as the right to emigrate immediately after the break down of the communist system. The liberalisation of the political system after 1989 led to final liberalisation of the passport law. In contrast to previous system the right to obtain passport was guaranteed to every citizen restricted only by exceptions specified in the Act⁴⁷. Additionally, the freedom of everyone to leave Poland has been confirmed in Constitution (article 52.2). According to Myron Weiner's scale on exit rules (1985: 445), Poland evolved from prohibition exit or selective exit rules in the communist period to permissive exit rules similar to those of other liberal democratic state. The question arises, whether the next in Weiner scale promotional exit rules, i. e. the regulations promoting emigration and facilitating it, were applied in Poland? Thus would mean a form of active emigration policy pursued by Polish authorities.

Emigration has never been proclaimed by any government as an official means in fight against the unemployment. Yet, numerous attempts were undertaken by Polish governments to enable emigration, especially labour emigration. First, the bilateral agreements on emigration have to be recalled in this place. Throughout the 90s Poland has made many attempts to enable its citizens to undertake the gainful employment in various countries through signing the agreements on the flow of workers. According to the Ministry of Labour and Social Policy, in December 2002 Poland had 14 such agreements signed, most of them however not published in the Journal of Laws (Dworańczyk 2002). One of these, the agreement with Libya of 1980, the heritage of the former socialist brotherhood ties with the socialist countries, was in fact reduced in the new era to the possibilities of employment of Polish medical staff in this African country, but nevertheless the recruitment is not being conducted any more. All the other agreements were concluded after 1989. Some of them – the agreements with the Russian Federation (of 15 March 1994), the Ukraine (of 16 February 1994) and Belarus (of 27 September 1995) have to be treated as strictly politically motivated, as they represent a part of the policy aimed at building a good-neighbourly relations with these countries. Due to the discouraging stay and working conditions and wages in these countries, the agreements are of no practical meaning for the current outflow from Poland (Dworańczyk 2002). Much more important have been the other agreements on the exchange of trainees or seasonal workers concluded with Germany (1990 and 1994), France (1990), Belgium (1990), Switzerland (1994), Luxembourg (1996), Spain (2002). The limits for Polish workers or trainees were very low, ranging from 30 persons in case of Luxembourg to 1000 persons in case of France, with the exception of Germany that set no limits for the seasonal, up to 3 months long employment of Polish nationals in Germany. This agreement in fact provided for the largest numbers of the legal outflow of Polish citizens in terms of numbers, gradually growing through the 90s and reaching above 290 thousands of persons in 2003 (Kaczmarczyk, Łukowski 2004). Identical unlimited provisions for seasonal employment were enclosed in the agreement with Spain, yet, has been in force only since 2002 and the numbers of seasonal workers in 2003 amounted to more than 10 thousand persons. Additional

⁴⁷ Act on Passports of 29 November 1990, Journal of Laws of 1991, No 2, item 5.

agreements, concluded with Czech Republic and Slovakia (1992) and Lithuania (1994) did not provide for any limits or quotas and the employment was to be subject to national regulations (Dworańczyk 2002).

The Polish endeavours to conclude the agreements that would enable Polish workers to take up a gainful employment in the Western countries, could be definitely treated as an instrument of the emigration policy aimed at facilitating the outflow.

Second mechanism, apart from the bilateral agreements on the flow of workers, that could be looked at from the perspective of the emigration policy were the negotiations in the free flow of persons' chapter. The transitional periods for the free flow of workers in the enlarged EU has represented one of the most medial and catchy issues recently not only in Poland but also in old EU member states. The German initiative to introduce the transition periods in the area of the free flow of persons finally was accepted by the EU countries and became the subject of the hard bargaining during the negotiations on the Polish accession to the EU (Duszczyk 2002). The possibility to take up freely employment in any EU country was presented as one of the main benefits to the society in the negotiations phase. The final outcome of the negotiations and the agreement on the transition periods was presented as the unavoidable concession to the EU countries being under the pressure of their public opinion. Again the possibilities to work in the three countries that did not impose transition measures were widely highlighted. Similarly to the case of bilateral agreements, the fight for the possibility of Polish citizens to access the Western European labour markets could be regarded as a form of the emigration policy i.e. policy aimed at facilitating the outflow of workers.

The analogy with the Second Republic of Poland (1918–1939) could be made here. Although the emigration, as a means of depleting human capital and demographic strength of the nation, was considered as necessary evil, yet, all the governments did not stop in their attempts to provide the opportunities to emigrate for Polish citizens. The increase in emigration was the aim of all the interwar Polish governments and one of the ways to achieve this has become the emigration agreements with governments of various immigration countries (Janowska 1981: 100; Kołodziej 1982: 10).

Although the III Republic of Poland did not officially lead any emigration policy, yet, some attempts let us assume that such policy was *de facto* pursued albeit not explicitly declared. Nevertheless, there are voices that in the perspective of the demographic trends and signals of the brain drain in certain sectors such as the medical staff or research staff⁴⁸, such policy

⁴⁸ The outflow of the research staff from Polish higher education sector was subject to detailed studies e.g. by Hryniewicz, Jałowicki and Mync in the first decade of the 90s and revealed the dramatic scale of the brain drain from Polish HE institutions (Hryniewicz, Jałowicki, Mync 1992, 1997). The foreseeable deficiencies in the medical staff resulting from the emigration have been recently reported by the media e.g. *Jak zagraniczne szpitale rekrutują polskich lekarzy* [How do hospitals abroad recruit Polish doctors], *Gazeta Wyborcza* (7.03.2004); *Lekarze wyjadą do Unii?* [Will the doctors go abroad?], *Gazeta Wyborcza* (26.02.2004); *Biała emigracja* [White emigration], *Polityka* (18.01.2003).

should be articulated and implemented in order to counteract these negative phenomena (see *Report on the state's migration policy 2004*).

10. Conclusions

In the efforts to build the Polish migration policy in the 90s, the policymakers had little to build on. The People's Republic of Poland system and its vision of migrations was of doubtful help and there are no signs that any reminiscences to the pre-war period were taken into consideration. The process of European integration seemed to be so predominant in Poland's foreign policy and its internal transformations that it was claimed to have been the predominant or even the only factor shaping the Polish migration policy. Sometimes, even the existence of such policy was denied. I hope that I managed to prove in this paper that there has been the migration policy in Poland – not ideal, not widely discussed, not extremely efficient, not very well articulated and presented and not comprehensive – yet still present and defending Polish interests; not only merely reacting to EU integration requirements.

It is evident and cannot be undermined that growing similarities of Polish law and practice to Western European countries did take place and that there were some changes in Polish law and practice that were implemented strictly in response to the need to adjust Polish regulations to EU *acquis* as it was presented in the former chapters. In the analysis on how much of European influence and EU membership requirements decided on the Polish migration policy, especially in the first half of the 90s, Cornelius and Tsuda (2004) “convergence hypothesis” has to be recalled. According to the authors, the growing convergence in immigration policies of major labour importing countries have to be explained by many, often interlinked factors and the regional integration is only one of them (Cornelius, Tsuda 2004: 17–20). The others as the policy emulation or parallel path of development also has to be taken into account in explaining the growing similarities of Polish migration policy to the migration policies of its Western counterparts.

What is additionally worth noting is the often omitted fact that EU or Western countries' solutions that were adopted by Poland were not by definition contradictory to Polish interests despite of the doubtless difference in the experiences between Poland and Western European countries. This is especially true in such spheres as the security, border protection, fight against the organized and transnational crime, and the protection of the national labour market.

The specifics of migration policy as the internal policy with external determinants and external implications must be borne in mind. The Polish policymakers in attempts to construct the Polish migration policy in a given geopolitical post-cold war order and in a given migration situation resulting from that order, had at the same time, the possibility to use the instruments already used and tested in the West. Furthermore, the international regime on the

protection of refugees as well as other instruments and standards on the protection of the rights of migrants that Poland had been expected to join if the reputation of liberal democratic country was to be gained and maintained. These dilemmas were very aptly put forward by Łodziński (1998: 16) who claimed that in the first phase of building migration policy i.e. till 1997, Poland has been thrown apart between the human rights and humanitarian considerations and the state interest understood in terms of security.

In addition to everything that was the Western or European influence, some specific Polish fields in migration policy have been presented in the paper. They represent the whole spectrum of issues from the point of view of effectiveness of Polish policy in achieving the politically desirable results. The issue of visas for Ukraine, Belarus and Russia was presented as one of the definite and acknowledged success in Polish migration policy. Poland managed both to secure its interests by postponing the introduction of visas and by liberal mode of issuing them and concurrently Poland managed to secure its main interest i.e. the integration with the Western European structures.

The problem of the irregular employment of workers from the East in the secondary labour market in Poland, and the silent toleration policy towards the phenomenon, the existence of which has been proved in the respective chapter of the paper, definitely call for some more transparent policy and more transparent actions. Further, the issue of repatriation seems to be the good example of realisation of Polish particular interests, independently from the process of Europeanization. The specifics of Polish history and the Polish vision of nation based on blood ties, the strong attachment to *ius sanguinis* principle in citizenship law, as well as the rule that Poland is open to all people of Polish origin or their descendants were practically realised in the case of repatriation. Finally, not officially articulated yet strong fight of Polish authorities to enable Polish citizens to take up the gainful employment in the West, remain the example of the area in migration policy where attempts to realise Polish interests were undertaken. The not impressive final effects do not cross out the attempts as the proof of some concept and action in Polish migration policy.

The fact that Poland has not pursued any active and/or selective immigration policy is sometimes considered a proof that there is no migration policy at all (e.g. Iglicka 2003). This, in my opinion, is the oversimplistic and not justified conclusion. On the contrary, I argue that the lack of any official pro-immigration policy is one of the dominant features of the Polish migration policy that remained stable since the beginning of the resurrection of the Polish independent state in 1918. Paraphrasing the famous German phrase, Poland has never been the immigration country from the point of view of the official policy. Of course, given the current migration situation as well as some demographic and economic projections for the future, the voices that Poland should pursue a more active and selective immigration policy are more and more frequent, yet the negative decision of policymakers in the field does not mean that there is no decision or not policy at all. In other words, although the quality and

accuracy of the Polish migration policy might be subject to discussion, it cannot be the existence of thereof.

Two major fights, both of strategic importance, the fight against the unemployment (reaching almost 20% at the beginning of 21st century) and the fight for the position of Poland in international post-cold war system of international relations seemed to be of predominant force in Polish internal and foreign politics after 1989. Consequently, other not so urgent matters as migrations had to be receded into the background.

There are some urgent questions that call for political attention and for action. The doctrine of migration policy, although delineated in Constitution, needs further work and development in order to build a stable foundation for future policy. Further, the policy goals and objectives need to be specified, subject to preceding public consultations and officially adopted by government in order to provide the basis for future law development and guidelines for Polish participation in the European Union efforts to build a Community immigration policy. In order to secure and promote Polish interests at the European level, they need to be clearly specified at national one. The process of specifying them has already started after 1989 and evolved with the building of Polish migration policy, yet it definitely needs completing.

I hope that the aim of this paper has been achieved and both the existence of the Polish migration policy after 1989 has been proved as well as the diversity of factors that shaped this policy and the fact that the EU was not the only player in the game titled "Polish migration policy".

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