



INSTYTUT SPRAW PUBLICZNYCH
THE INSTITUTE OF PUBLIC AFFAIRS



Polish Experience with regard to the Preparation, Negotiation and Implementation of the Readmission Agreement with EU Member States

Piotr Kaźmierkiewicz
Institute of Public Affairs

*Project sponsored by:
British Embassy in Kiev
Local Government Initiative of the Open Society Institute in Budapest
The East East: Partnership Beyond Borders Program of the Batory Foundation*



CONTENTS

Introduction

1. Legal Status of Readmission in Poland Before 1991

- 1.1. Heritage of Readmission Agreements of the Communist Period
- 1.2. Threat of Legal Vacuum in the Wake of Transformations in Poland's Neighbourhood

2. Poland-Schengen Agreement of 1991

- 2.1. Origin and Conditions of the Poland-Schengen Agreement of 1991
- 2.2. Link Between Readmission Agreements and Visa Facilitation
- 2.3. Modifying the Polish-Schengen Agreement to Limit the Obligations of the Receiving Side

3. Negotiating a Tool to Manage Illegal Transit Migration and Implementing It

- 3.1. Polish Interest in Bilateral Agreements of a New Type
- 3.2. Polish-German Agreement of 1993 As a Working Compromise
- 3.3. Capacity-Building Component of the Bilateral Agreement

4. Shifting the Burden to Countries of Transit and Origin

- 4.1. Concluding Readmission Agreements with the Other Neighbours and Countries of Origin
- 4.2. Content of Poland's Readmission Agreements with Selected Central and Eastern European States

5. Impact on the Illegal Migration Situation in Poland

- 5.1. Burden of Readmission
- 5.2. Effectiveness of Readmission Agreements
- 5.3. Border Guards' Challenges in Realizing Obligations due to Readmission Agreements

6. Critique of Readmission Agreements

Selected Bibliography

Introduction

This brief report reviews the Polish experience in concluding and implementing readmission agreements with its neighbours and other European states, focusing on the two key documents: the agreement with the Schengen states of 1991 and with Germany of 1993. A twofold perspective is offered here: on the one hand, the conclusion of agreements is seen as part of the ‘bargain’ struck between Poland, a country that until the early 1990s had been a major source of migrants itself, and West European states, especially Germany, to remove obstacles to the legal entry and residence of Polish nationals in Western Europe. In this classic sense, readmission was supposed to consist in Poland’s obligation to accept its own citizens who had overstayed their residence or infringed upon their legal status in the destination state in another way. However, from the beginning of the operation of the agreements, Poles represented a minority of the readmitted persons thanks to the gradual facilitation of their entry and residence conditions through the lifting of visas (in the first half of the 1990s), a quota system for labour in Germany¹ and eventual further easing of travel into the EU (culminating in the partial entry of Poland into the Schengen system at the time of EU accession in 2004).

On the other hand, readmission agreements proved to be important elements of international cooperation on countering illegal transit migration that was becoming the most serious challenge in the work of the Polish Border Guard, a civil formation that evolved in 1990 from the military Border Protection Troops. Readmission of third country nationals represented an important part of the broadening of the duties of border protection, first narrowly understood as the control of the border perimeter itself to be redefined through the inclusion of management of transit migration, including the system of identification, transportation, allocation to proper facilities (with the important distinction being made between asylum seekers and other migrants) and expulsion within the bounds of the law.

¹ See the details in P. Kaźmierkiewicz and J. Korczyńska, *Doświadczenia Polski po roku 1989 jako kraju wysyłającego i przyjmującego pracowników: lekcje dla polityki Ukrainy* [Post-1989 Experience of Poland as a Country Sending and Receiving Labour: Lessons for Ukrainian Policy], Institute of Public Affairs, Warsaw 2005. Also published in Ukrainian as: *Ukrainian labour migration in enlarged EU—Polish experience and lessons for Ukrainian policy*, Center for Peace, Conversion and Foreign Policy of Ukraine, Kyiv 2005



This report seeks lessons from the Polish experience in concluding and implementing readmission agreements to solve the problems arising with the rise in illegal transit migration through international cooperation for its key eastern neighbour, Ukraine. For this reason, the analysis focuses on the comparable period of the early 1990s when Poland faced the decision on the format of new readmission agreements with its neighbours and other European states to replace the limited and outdated arrangements with East Germany, Czechoslovakia and the Soviet Union. The later period, commencing with 1994, is seen merely in terms of the impact of the obligations taken in 1991-1993 and further challenges arising in the implementation of the agreements. Of course, this view fails to treat two fundamental processes taking place in the late 1990s and early 2000s: the European integration and domestic evolution of the legal framework for migration and border control policies. However, it was resolved that these issues, treated extensively by the author in his other publications,² are not directly related to the question that the Ukrainian policy-makers are facing at the moment: the value of the readmission agreements as instruments to control transit migration and the challenges of their implementation.

² The evolution of the Border Guard status and responsibilities in the 1990s and the changes introduced as part of EU accession are treated in the Polish section of the chapter, "Policies of Ukraine's Central European Neighbours Related to their EU Accession" (pp. 241-244) in the volume, *2004 European Union Accession: Implications for Ukraine's Relations with its Central European Neighbours*, East West Institute/EuroRegio Ukraine, Kyiv 2004, available at: http://www.eru.org.ua/publications/E_W_Vplyv_eng_1.pdf

The issue of meeting EU requirements in the JHA chapter is also taken up in P. Kazmierkiewicz (ed.), *The Visegrad States Between Schengen and Neighbourhood*, Institute of Public Affairs 2005, pp. 27-30. The development of the Polish migration policy legal and institutional framework is discussed extensively in K. Iglicka, P. Kazmierkiewicz, A. Weinar, *Current Immigration Debates in Europe: Poland*, Migration Policy Group: Brussels 2005, available at: http://www.migpolgroup.com/multiattachments/3010/DocumentName/EMD_Poland_2005.pdf

1. Legal Status of Readmission in Poland Before 1991

1.1. Heritage of Readmission Agreements of the Communist Period

The conclusion of the Schengen-Polish agreement on readmission of own and third country nationals in 1991 was a result immediately of the pressure from the reunited Germany and of Poland's interest in the lifting of visas for its own citizens. Nonetheless, when seen in retrospective, the arrangements inherited from the Communist period were insufficient to meet the emerging challenge of transit migration. The following shortcomings could be identified in the pre-1991 legal arrangements on readmission between Poland and East Germany, Czechoslovakia and the Soviet Union:

- a) The agreements that Poland had with its neighbours had insufficient scope, that is they failed to regulate the status of some of the groups. The regulations contained in the agreements on visa-free travel between Poland and the German Democratic Republic³, Czechoslovakia⁴ and the Soviet Union⁵ (dating from the 1970s) allowed readmitting only the citizens of the two states that had signed a given agreement (Adamczyk 1994: 5).
- b) Out of the three agreements, only the one with the Soviet Union contained a clause on readmitting the persons crossing the border without proper documents (*Ibidem*).

³ Umowa między Rządem PRL a Rządem NRD o wzajemnych podróżach obywateli obu państw [Agreement between the Government of the Polish People's Republic and the Government of the German Democratic Republic on the mutual trips of the citizens of both states, signed on 25 November 1971]

⁴ Umowa między Rządem PRL a Rządem CSRS o ułatwieniach w ruchu osobowym obywateli obu państw [Agreement between the Government of the Polish People's Republic and the Government of the Czechoslovak Socialist Republic on the facilitation in the movement of of the citizens of both states, signed on 20 July 1977]

⁵ Umowa między Rządem PRL a rządem ZSRR o wzajemnych podróżach bezwizowych obywateli obu państw (Dz.U. 13[Agreement between the Government of the Polish People's Republic and the Government of the Union of Socialist Soviet Republics, signed on 13 December 1979]



c) Operational questions of managing illegal migration with the three neighbouring states were covered by the agreements on mutual assistance⁶ (Adamczyk, *op.cit.*, 2). The agreements were very broad, covering the whole range of issues arising on the border, from the delimitation of the borders, managing transportation routes, forestry as well as rules of border-crossing. The bilateral arrangements authorized the actual readmission process to take place between the designated 'border plenipotentiaries' (in Polish *pełnomocnicy graniczni*). The agreements with the CSRS and GDR stipulated that the persons who crossed the border illegally on purpose were to be returned within 48 hours through the nearest border crossing points. The receiving state could refuse or postpone reception of the person and was obliged to communicate the grounds of the refusal simultaneously (as in the agreement with the GDR) or within 8 days since the apprehension (the agreement with Czechoslovakia). It was also explicitly noted that the readmitting state would not transfer persons against whom criminal prosecution on other charges was in progress.

1.2. Threat of Legal Vacuum in the Wake of Transformations in Poland's Neighbourhood

In years 1990-93, all the three states neighbouring Poland underwent serious political transformations, opening questions of the binding force of the earlier agreements on the successor states to the German Democratic Republic (Federal Republic of Germany), the Czechoslovak Socialist Federal Republic (the Czech and Slovak Republics) and the Soviet Union (the Russian Federation, Belarus and Ukraine). Initially, the reunited Germany announced that the GDR-Poland agreement of 1969 did not bind it—the Polish foreign ministry took the position that the old agreements were in force until the entry into force of new ones that would replace them. This

⁶ Umowy o stosunkach prawnych na wspólnej granicy państwowej oraz o współpracy i wzajemnej pomocy w sprawach granicznych [Agreement on legal relations on the common state boundary and the cooperation and mutual assistance in border matters], signed on 15 February 1961 with the Soviet Union, on 2 December 1967 with Czechoslovakia, and on 8 December 1969 with the German Democratic Republic.



position accounts for the fact that with those states that did not sign new agreements with Poland (Belarus and the Russian Federation) readmission proceeds under the old arrangements.

Despite the expressed wish to sign new agreements, the governments of the bordering states were anxious to avoid the legal vacuum that would arise in case of discontinuing earlier practices. Thus, for instance the border guards of the Federal Republic of Germany (Bundesgrenzschutz) resumed the practice of readmission under the old rules of the agreement with the GDR (within 48 hours at the point of trespass), while the services of the Czech Republic and Slovakia continued the arrangements of the Czechoslovak-Polish agreement (Adamczyk, *op.cit.*, 6). The manner in which the agreements would be interpreted under new circumstances was left to the headquarters of the border guard services of respective states.

2. Poland-Schengen Agreement of 1991

2.1. *Origin and Conditions of the Poland-Schengen Agreement of 1991*

However, clearly the party that was most anxious to broaden the extent of obligations of Poland as the receiving state was the German government that had been under the domestic pressure of stemming illegal immigration. The topic was current as on the one hand the economic crisis due to reunification politicized the issue of existing large immigration: a large stock of the Polish and other East European illegal labour migrants had already been resident in Germany, and the country was receiving the largest number of asylum applications in Europe (reaching 428,000 in 1992 alone as its asylum law was one of the most liberal; Szonert 1995). Also, fears were common of the 'East European migration wave' due to the liberalization of exit controls in Poland and the Soviet Union.

In turn, Poland was interested in dropping tourist visa requirements against its nationals with the Schengen states. The tradeoff was that Poland would have to assume responsibility not only for its nationals crossing the border with Germany illegally (without a valid visa or residence permit), but also all third country nationals crossing the border without a valid Schengen visa or permit. The 'Agreement on the reception of persons residing without permission' was signed between the Schengen states⁷ and Poland on 21 March 1991. Article 2 expressly granted the right to any contracting state on whose territory the person resided without a valid visa or beyond the term of its expiry to readmit him or her to another state if at the time of entry that person had a valid visa or permit from another contracting state. However, the right was restricted in those cases where at the time of leaving the designated receiving state, the person had a valid visa or permit from the state that would later attempt to return him or her. Significantly, a state could send a person whose only claim for staying was the period of awaiting a decision regarding granting an asylum status or residence permit. The institution requested to receive a person was obliged to

⁷ At the time, Belgium, France, Germany, Italy, Luxembourg and the Netherlands.

process the request within 8 days, and upon granting the request to receive the person within one month.

2.2. Link Between Readmission Agreements and Visa Facilitation

The agreement of 21 March 1991 was a ground-breaking precedent as it allowed the return without time limits of all the persons without a valid visa of the Schengen states who were proven to have at the time of crossing the Polish-German border any 'permit to reside on' the Polish territory. The agreement with Poland was unique in that signing the document was a prerequisite for dropping a visa requirement unlike in the arrangements with Czechoslovakia or Hungary visas against whom were dropped prior to the conclusion of parallel agreements. The connection of the readmission issue with dropping of tourist visa requirements for the nationals of the receiving state represented the greatest shift compared to the Polish agreements with its neighbours in the Communist times. Although initially one of the clauses in the preamble stated the purpose of the Polish-Schengen agreement to be 'the equalizing of burdens that might ensue as a result of the non-visa movement of the citizens of the contracting Parties, it turned out that with the waiver of tourist visa requirements the Polish nationals were less inclined to breach the entry and residence regime.

Poland, which under the military dictatorship had been a closed country with strong controls on the foreign travel of its citizens (rationing of passports), favoured general liberalization of administrative restrictions. By the early 1990s Poland had mutual visa-free relations not only with all its neighbours but also with nearly all the European states and an increasing number of non-European ones. Consecutive Polish foreign ministers stressed the connection between visa-free travel and good neighbourly relations; the link was made most conspicuous in the insistence on the minimum requirements of travel for Ukrainians into Poland despite the EU's insistence and potential conflict with the Schengen accession standards.



The link with the visa facilitation was also clear in Poland's subsequent arrangements with two non-Schengen West European states with significant numbers of already resident Poles, Austria and Switzerland. In the case of Austria, the major issue for the decision to drop the visa requirement was Poland's obligation to take back its nationals (with valid or invalid travel documents)—the solution, which was settled through an exchange of diplomatic notes on 2 August 1991, did not cover third country nationals (Poland not being a neighbouring state). A month later readmission of both the contracting states' nationals and citizens of third countries was agreed upon as part of the Polish-Swiss agreement on mutual lifting of visa requirements. Article 7 placed no time limits on the readmission of the nationals of both states and the agreement also imposed an obligation to readmit third country nationals whose grounds for entry or residence in the sending state had expired while they still had a valid visa or residence permit in the receiving state.

Later all future readmission procedures modelled on the agreement with Poland would be primarily applied to control the transit migration of third country nationals. Actually, the Schengen and EU states have since asserted that no visa waiver could be achieved without a prior contraction of a readmission agreement. In fact, readmission agreements with countries in the EU's neighbourhood have been understood as the expressions of these states' commitment to control transit migration and as one of the so-called compensatory measures, needed for the security of the external border of the Schengen system of internal free movement of persons.

2.3. Modifying the Polish-Schengen Agreement to Limit the Obligations of the Receiving Side

The conclusion of the Poland-Schengen readmission agreement imposed considerable obligations on the Polish side. The agreement's general wording led to a series of differences of interpretation, which made it necessary to work out an executive protocol, signed at Goerlitz on 11 December 1991. This technical



document specified in particular the documents confirming the citizenship of the state called upon to readmit its nationals and the material evidence of crossing the external Schengen border (here, the Polish-German frontier).⁸ The signature of the protocol was particularly important for the border guards of the receiving side to limit the readmission only to persons proven to have crossed into the Schengen states from Poland.

The agreement and protocol of 1991 did not address the fundamental factors which made the challenge of transit illegal migration through Poland to Germany continuously relevant. They were respectively the pull factor of Germany's generous asylum policy, the insufficient level of technical and administrative capacity for controlling the border by the transforming Polish border guards and the lack of appropriate agreements with Poland's neighbours, countries lying further east and south on the illegal migrants' paths of transit and with countries of origin. The greatest threat for the new democratic Polish state and its border guard services was the possibility of being positioned as a buffer or even worse a reservoir of illegal migrants, attracted by the German welfare benefits associated with its asylum system but stranded to Poland which would be unable to return them further. That was particularly unwelcome as the Polish state was in the midst of systemic transition and economic change that saw its controlling role diminish and social demands from its own citizens rise (e.g. in the rise of unemployment).

⁸ The latter include entry stamps or notes in travel documents, tickets or other documents confirming the itinerary, bills, invoices and the testimonies of the border guards confirming the fact of crossing the border.

3. Negotiating a Tool to Manage Illegal Transit Migration and Implementing It

3.1. Polish Interest in Bilateral Agreements of a New Type

In fact, apart from the issue of visas for its own nationals (which had been the main bargaining issue during the negotiations), Poland shared the concerns about the transit migration from third countries. Thus, although over a year since the agreement entered into force with the Schengen states, the Polish nationals were granted a visa waiver all over Western Europe, both Germany and Poland had incentives to work out technical solutions to the issue of joint management of East-West transit migration.

Two parallel processes were at play: the German Ministry of Interior needed to alleviate the concerns of the opposition at home that the more restrictive asylum system would not leave the potential asylum-seekers from the access to effective solutions (in countries to the east and south of Germany, such as Poland, the Czech Republic or Austria), and the Polish Border Guards needed to be assured that it would be capable of undertaking its obligations (requiring assistance both in response to specific pressures and capacity-building).

After five months of negotiations, the Polish and German governments signed on 7 May 1993 the 'Agreement on the cooperation on the effects due to migratory movements'. The Agreement came into force on 1 July 1993, simultaneously with the new German asylum law, to which it had been a necessary prerequisite.

3.2. Polish-German Agreement of 1993 As a Working Compromise

The new Agreement represented a new quality in the readmission process as it responded to the needs of both the sending and receiving states and included the specific measures compensating for possible increased burden of work and building the capacity of the services of the receiving state. From the German point of view, it was crucial that since 1 July 1993 Poland could be considered a 'safe third country' so that the German authorities would not accept applications from the asylum-seekers arriving illegally and shown to be able to place their applications in Poland. Polish authorities in turn received a number of specific assurances modifying the broad scope of the Schengen-Polish agreement of 1991. Article 1 of the new agreement excluded from readmission the persons who, even if found to have overstayed their visas or entered Germany illegally, resided in Germany for over 6 months. Also no persons who had placed their applications under the old German asylum law (i.e. prior to 1 July) could be readmitted to Poland.

In addition, in the course of the negotiations over the Agreement, the German government agreed to several measures that responded to the Polish calls for 'burden sharing'. Firstly, the German government placed a cap on the number of persons that could be readmitted to Poland in the first six months of the agreement's operation on 10,000. Secondly, while Article 5 placed an obligation on both governments to 'notify each other of the tendencies or events that could lead to sudden or mass rise in the number of refugees or illegal migrants on their territories' (mirroring the standard early-warning systems within the EU), Article 6 contained an asymmetric pledge of the German government that in case of 'sudden or mass influx of refugees or illegal migrants to the territory of the Republic of Poland', it would 'allow the entry of certain groups of those persons' into Germany. Direct support for Poland in financial terms was envisioned for a number of fields considered to be in need of support and enumerated in Article 4 of the Agreement.⁹

⁹ The areas for financial assistance include: 'development of technical system of controls on the Polish state borders, financial burden borne by the Polish government related to the intensified readmission of foreigners from the Federal Republic of Germany to the states of their arrival or origin, creation of infrastructure for conducting asylum procedures, accommodation for asylum-seekers or refugee claimants in connection with a



3.3. Capacity-Building Component of the Bilateral Agreement

The executive protocol to the agreement set the amount of assistance at 120 million DM to be disbursed over 12 months (until mid-1994). The amount allocated to Poland should not be overestimated as, for instance, the Czech Republic, despite a much smaller size, received 60 million DM. Almost half of the sum went into the border guards for the development of technical infrastructure of border controls, while another 38 percent was allocated for the police co-operation. Critics note, however, that ‘this financial transfer was linked to the obligation for Poland to purchase German material’ (Dietrich 1998, cited in Lavenex, 126). On the other hand, an argument might be put forward that the investment into compatible equipment on both sides of the border will pay off not only in the approximation of technical standards resulting in the improved capacity for joint actions but also in the fastest transfer of best practices of the German border guards to their Polish colleagues.

rise in the number of such proceedings, the setup of a central register of foreigners’ data, the training of Border Guard and Police officers in charge of asylum proceedings.’



4. Shifting the Burden to Countries of Transit and Origin

4.1. Concluding Readmission Agreements with the Other Neighbours and Countries of Origin

Assumption of obligations to accept illegal migrants and asylum-seekers who had crossed through the Polish territory posed a risk of accumulating a large number of persons returned from Germany in Poland (Szonert 1995, 244). The obvious solution to the problem was quick negotiation of 'mirror arrangements' with the other neighbours, especially those countries through which illegal migrants had transited to Poland either on their way or as places of origin. This was achieved in 1993 through a series of agreements. On 12 January 1993, an agreement was signed with Ukraine on the legal relations on the Polish-Ukrainian state border and cooperation and mutual assistance in border matters. Articles 49 and 50 contained the clauses invoked from the Polish-Schengen agreement, 'allowing readmission of illegal border trespassers and the nationals of the contracting states if the latter fail to or have ceased to meet the conditions of entry or residence' (Adamczyk, *op.cit.*, 8). This solution allowed the Polish authorities to return the Ukrainian citizens not only in case they overstayed their Polish entry permits but also in case of their return from Germany on the formal grounds of breaching the Polish legislation on border entry or expiry of their residence rights.

A similar process of extending the norms negotiated with Germany to the other neighbours was in place in the second half of 1993 when within four months of the conclusion of the Polish-German agreement, Poland signed parallel agreements allowing the readmission of the nationals of the contracting states as well as of third country nationals with three other neighbours (Czech Republic, Ukraine, Slovakia) and two important countries of origin and transit (Romania, Bulgaria).¹⁰ The speed with which these agreements were concluded indicates that the solutions worked out

¹⁰ The Polish-German agreement of 7 May 1993 was followed by Poland's agreements with the Czech Republic (10 May), Ukraine (24 May), Slovakia (8 July), Romania (24 July), Bulgaria (25 August).

in the negotiations with Germany were wholesale transferred to the agreements with the other neighbours and that a standard format was adopted (Szonert 1995, 248).

The pace of concluding agreements could be so quick thanks to two factors: firstly, Germany signed similar agreements with its other neighbours (Czech Republic and Austria), providing direct incentives (financial for the Czechs and training for the Austrians who were on their way to join Schengen in 1995); secondly, countries in the region had their own bilateral arrangements which required modification once the agreements with Germany were concluded: thus Slovakia was interested in maintaining facilitated visa relations with the Czech Republic and Ukraine with Poland (as the readmission agreement of 1993 paved the way for the conclusion of a bilateral visa-free agreement of 1996). As the contemporary UNHCR study¹¹ concluded, each of the four Central European states with which Poland signed a readmission agreement was a party to a number of other bilateral agreements of the kind with its neighbours and in some cases with the more distant countries.¹² Notably, however, only Poland signed a readmission agreement with the Schengen states *en bloc* and the reason could be the aforementioned link with visa exemption which was absent in cases of countries which were considered relatively safe as places of origin of migration (such as the Czech Republic, Hungary or Slovakia) or were not scheduled for visa liting yet (Bulgaria, Romania, Ukraine).

4.2. Content of Poland's Readmission Agreements with Selected Central and Eastern European States

The agreements reaffirmed the condition for readmission which was key for the requesting country: the absence or loss of grounds for entry or residence in the sending state. Once this is established, it is necessary to prove the link to the receiving state, either in the form of the determination of the person's citizenship of

¹¹ *Overview of Re-admission Agreements in Central Europe*, 30 September 1993, following Szonert 1995, 252.

¹² As of September 2003, the Czech Republic had concluded agreements also with Austria and Slovakia, while negotiating with Germany and Hungary; Hungary had agreed on readmission with all its neighbours except Serbia; Romania had agreements with Austria, Germany and Hungary while negotiating with Sweden; and Slovakia had agreements with all its neighbours, including Ukraine. See Table 29 in Szonert 1995, 252.



that state or, in case of illegal crossing of the state border, the proof of entry from the receiving state, applying to the stateless persons permanently residing in the receiving state or nationals of third states. The agreements also define the 'illegal crossing of the border' as applying to the crossing outside of authorized entry points or at those points outside of the required procedures or passing controls on the basis of invalid, forged or modified travel document. As Adamczyk notes, 'illegal border crossing may be demonstrated on the basis of photographic documentation, material evidence, testimonies of third parties and other evidence found to be credible in the circumstances' (*Op.cit.*, 11).

The agreements specified the obligations of the receiving state. It is obliged to accept without formalities a third country national or a stateless person if she or he is its resident in cases of transfers of up to 48 hours since the time of the illegal crossing. Unlike in the agreements with the Czech Republic and Slovakia, Ukraine agreed to accept such persons without a prior notification. As regards cases of returns of persons beyond 48 hours since the trespass, a limit of 90 days was placed for the possibility of readmission. In this respect, Ukraine also accepted stricter deadlines for reacting to the request of the sending state: 72 hours (3 days) compared to 7 days found in the agreements between Poland and the Czech Republic or Slovakia (*Adamczyk, op.cit.*, 12). It can be seen that the Polish-Ukrainian agreement placed higher expectations on the Ukrainian side than those imposed on the Polish side in the agreements with Germany (3 rather than 8 days' time for replying to the request), while not foreseeing any direct assistance for the Ukrainian border services.

However, some important obligations were placed on the requesting state as well. All the five agreements stated that the contracting states pledged to escort through their territories third country nationals or stateless persons upon request from the other party. An important protection for the recipient was the clause which made the requesting state responsible for ensuring that the person would continue its travel to the country of destination. In particular, in case it turned out that the receiving state could not send the person to its destination for any reason, the sending state was obliged to take the person back (*Ibid.*, 13). Transport could be refused in cases of persons destined for locations where they could be subject to persecution or death



penalty or risk their lives or liberties in the scope of Art. 51 of the Geneva Convention (*non-refoulement*).

The grounds for readmission of third country nationals were reiterated in Poland's agreements with Lithuania (7 May 1993) and Estonia (26 February 1994), but important protective clauses were introduced. The states that were asked to receive third country nationals could lawfully refuse to do so not only in cases when the persons in questions had entered the requesting country legally or were subsequently granted a visa or residence permit from that country but also if they either had stopped in another country or if they could possibly travel to another country (*Ibid.*, 14). Thus these agreements implied a key concept of a 'safe country' to which the migrant could be sent instead.

The concepts of 'safe countries of origin' and 'safe third countries' were introduced first in the amended German asylum law of 1993 in reference to those neighbours of Germany or countries of migrants' origin that had acceded to the Geneva Convention and could accept persons whose asylum applications had been rejected in Germany. These countries then guaranteed the readmitted persons access to effective asylum procedures either within their own systems or in another country to which they would send the person further provided that the latter country would be a 'safe' one itself for the purposes of access to asylum (Szonert 1995, 243).



5. Impact on the Illegal Migration Situation in Poland

5.1. Burden of Readmission

Generally, the numbers of persons readmitted to and from Poland proved to be lower than the expectations. For instance, if the quota for the first six months of the implementation of the Polish-German agreement was set at 10,000, the actual numbers of persons readmitted under the agreement from Germany into Poland did not exceed 5,000 annually in the years 1994-1996.¹³ The low numbers partly reflect the capacity of both the Polish and German border guards to apprehend trespassers: if in 1994, 10,225 persons were detained on the common border, in 1995 and 1996 the numbers rose to around 11 thousand. First, a steady rise in readmissions could be observed in the years 1994-96 (in 1995, nearly 30 percent more cases were recorded than in 1994, and in 1996 the annual growth rate was close to 20 percent),

Table 1. Foreigners readmitted to Poland and expelled from Poland, 1998-2004

	1998	1999	2000	2001	2002	2003	2004	Total
Readmitted	2817	2072	2414	2224	1856	2086	2091	15560
Expelled	7079	6518	6487	5954	4836	5943	6199	43016

Source: Kepinska 2004, 92; Polish Border Guard statistics (for year 2004)

The numbers of persons readmitted from Germany to Poland stabilized in 1997 at over 4.7 thousand and dropped by 43 percent to 2710 in 1998 (Adamczyk 2000, 70) and by another quarter in the following year standing at fewer than 2 thousand persons. After a temporary rise in 2000 to 2318 persons, the numbers of persons readmitted from Germany stabilized between 1.7 and 2.1 thousand. As they represented over 95 percent of all readmissions to Poland,¹⁴ the overall numbers (shown in Table 1) followed the figures for Germany, stabilizing at a bit over 2 thousand persons.

¹³ 3135 persons in 1994, 4064 in 1995 and 4848 in 1996. See table 5 in Kuczynski 2000, 20.

¹⁴ With a little over 500 persons between 1998 and 2003 the Czech Republic was a distant second origin of readmitted persons (compared to over 14600 persons from Germany).



Table 2. Foreigners apprehended on Poland's borders with and readmitted to Lithuania, Belarus and Ukraine, 1994-1996

Country	Lithuania		Belarus		Ukraine	
	Apprehended	Readmitted	Apprehended	Readmitted	Apprehended	Readmitted
1994	503	226	357	142	252	490
1995	627	367	144	65	336	1262
1996	450	382	128	178	417	1860

Source: Kuczynski 2000, 20,28.

On Poland's eastern borders, readmissions over time became more frequent than apprehensions. Table 2 illustrates the numbers of apprehensions and readmissions on the common borders with Lithuania, Belarus and Ukraine in 1994-1996. The imbalance was most evident on the border with Ukraine where the numbers of readmitted persons exceeded fourfold the numbers of apprehensions in 1995 and 1996. Cases of readmission also rose sharply so that by 1996 the number of persons returned to Ukraine was close to 2 thousand or four times that recorded two years earlier and in 1998 amounted to 3163 persons (Adamczyk 2000, 71).

Table 3 summarizes the numbers of apprehensions, expulsions and asylum applications by the top nationalities in Poland for the period of 1994-1996. Expulsions here refer to the decisions of the provincial governmors, including those cases where the foreigners were found to be illegally staying in Poland. The difference between the number of persons apprehended and readmitted reflects the fact that a significant number of persons avoided expulsion by placing an asylum application. As Kuczynski notes (2000, 22) in mid-1990s nearly all applicants for refugee status in Poland were illegal migrants. Applications were placed as a matter of norm by persons who had been either apprehended by the Polish Border Guard while crossing the state border illegally or by the Police within the country without valid residence permits or readmitted from Germany. This strategy could be applied most effectively by the citizens of some distant, especially Asian, states whose expulsion would be costly or



require ensuring that all the transit states were safe (as in the case of Sri Lanka, Afghanistan, Iraq, Bangladesh, India or Pakistan).

Table 3. Numbers of apprehensions, expulsions and asylum applications (by citizenship)—selected nationalities, 1994-1996

Country of origin	Apprehensions	Expulsions	Asylum applications
Armenia	3216	1260	1070
India	1718	582	351
Pakistan	866	275	212
Sri Lanka	995	295	698
Afghanistan	1326*	71	567
Iraq	1164	33	451

*In 1995-96 alone.

Source: Kuczynski, *op.cit.*, pages 21, 24, 29.

5.2. Effectiveness of Readmission Agreements

The results for the first three years of readmission agreements with neighbouring states show that further readmission from Poland was most effective towards the nationals of European CIS states but it proved far more difficult with the citizens of Southern Asia. In 1994, 826 citizens of Ukraine, 151 Russians, 149 Armenians, overall 159 Belarussians, Lithuanians and Latvians, and 21 Moldovans were expelled but only 6 persons from the Indian subcontinent (India, Pakistan, Sri Lanka and Bangladesh). By 1996, the numbers of Ukrainians and Russians remained stable (887 and 187 respectively), those of the Belarussians, Lithuanians and Latvians nearly doubled to the total of 281, while those of the more distant states rose sharply: 357 Moldovans, 606 Armenians and 1106 persons from the Indian subcontinent (Kuczynski, *op.cit.*, 29).



The effectiveness of expulsion and readmission procedures varied with nationality but even in the more difficult cases of some Asian nationalities, it improved over time. The lag in expulsions relative to apprehensions can be explained by the need to review the applications from the citizens of evidently unsafe states of origin and for whom there was not an easy return route. For instance if in 1994, none of the nationals of Sri Lanka, Bangladesh, Iraq and Afghanistan were expelled from Poland, the total number of the citizens of those four states that was returned reached 63 in 1995 and 614 in 1996. Similarly, if only six citizens of India and Pakistan were subject to expulsion in 1994, their numbers rose to 288 the following year, doubling to 553 in 1996 (*Ibidem*).

Since 1998, the first year when the first substantial amendment of the law on aliens, introducing the concepts of 'safe third country' and 'safe country of origin' was in force, a measure of the effectiveness of readmission mechanisms may be observed. Table 4 compares the numbers of citizens of various countries readmitted to Poland to those expelled from the country, including those nationalities that constituted significant portions of the total of readmissions. Countries marked in red exhibit temporary or continued surplus of readmissions over expulsions, thus indicating the residence of some of these nationals in Poland which constitutes a challenge to the Polish institutions.

Table 4. Foreigners readmitted to and expelled from Poland by citizenship, 1998-2003 (biannually)– selected nationalities

Country	1998-1999		2000-2001		2002-2003	
	Readmitted	Expelled	Readmitted	Expelled	Readmitted	Expelled
Afghanistan	973	434	788	50	376	92
Armenia	167	847	199	577	56	461
Azerbaijan	83	66	225	97	11	18
Belarus	104	488	126	732	52	615
China	11	47	35	21	188	259
Georgia	139	164	116	161	18	49
India	86	141	16	44	276	179



Iraq	146	61	166	122	103	14
Moldova	593	739	676	1044	296	459
Pakistan	97	117	28	33	115	51
Russia	222	429	729	448	915	374
Serbia	574	92	11	18	0	11
Sri Lanka	422	235	26	9	48	15
Ukraine	578	3026	746	4591	821	4282
Vietnam	71	218	282	275	413	170

Based on: Kepinska, op.cit., 89, 92.

The nationals of the countries which produce **surpluses** of readmissions over expulsions may be placed in two categories for the purpose of predicting the scale of the pressure on the Polish system of managing migration. Afghanistan, Iraq and Sri Lanka represent the traditional sources of migrants as it is evident in the considerable imbalances over the entire six-year period: 2137 Afghans were readmitted while only 536 were expelled, 415 Iraqis were received and 197 were returned and 496 Lankans were readmitted as opposed to 259 expelled. Considering the instability in the countries of origin, they can be hardly considered 'safe' for purposes of readmission, and Poland is likely to continue granting asylum to those nationals. The other countries could be seen as temporary places of origin of readmitted migrants and the conclusion of domestic asylum procedures could lead to the return of those persons to their homes. Some of those countries witnessed civil warfare (Azerbaijan, Russia, Serbia) while others are the source of economic migrants (Vietnam). The temporary character of hostilities and the absence of provision for illegal economic migration allow the return of migrants to those countries of origin in the long run.¹⁵

5.3. Border Guards' Challenges in Realizing Obligations due to Readmission Agreements

¹⁵ However, it needs to be noted that Poland continues to grant tolerated status to the Chechen nationals of the Russian Federation originating from the insecure area of Northern Caucasus.



In 1998, the Polish Border Guard conducted an internal evaluation of the operation of the Polish-German readmission agreement. The territorial units of the Guard submitted their reports on the matter to the Commander General. The Polish Border Guards reported that they refused to accept foreigners from the German side for the following reasons: it could not be manifestly proven that the foreigner had resided in Poland or that he or she had crossed the border illegally; the person was still a minor or had no legal guardian; or that it was established that the foreigner had resided in Germany for over 6 months.

The reports display a consensus that few problems were recorded in the course of actual transfers of persons. This was explained by reference to the field techniques developed in contacts with the German counterparts. For instance, to avoid the cases of accepting persons on invalid grounds (and returning them to the German side), interpreters were used in all cases of readmission of foreigners. This proved cumbersome, however, with the relatively large groups of South Asian (e.g. Tamil or Afghan) illegal migrants who, once intercepted, usually denied knowledge of any European languages.¹⁶

In turn, the Border Guards pointed to challenges in managing the readmitted persons. It should be admitted that the cooperation with courts proceeded smoothly: no request for detaining the readmitted foreigners was denied. Also the requests for initiating and assisting in the expulsion procedures were granted by the relevant authorities (the courts, prosecutor's offices, the police and the regional governors' offices). However, as of 1998, the Border Guards faced constraints in executing detentions and expulsions. The central Police-run detention center in Lesznówola near Warsaw was frequently full, requiring searches for alternative facilities but by August 1998 the Guards ran out of available space in detention centers. In general, the Border Guards noted that delivering the foreigners to detention centers was

¹⁶ Reports from territorial units of the Border Guard were collected by the Department of Border Traffic and summarized in a letter to the Commander General of March 1998.



made difficult by financial constraints.¹⁷ Women with children were found to be the group for which space was in particularly short supply. It was postulated that special facilities should be set up for housing the readmitted minors (especially little children and infants). By a temporary arrangement, goodwill services of the police were sought so that the foreigners were placed in facilities for Polish minors. It was concluded, however, that dedicated facilities for foreign minors had to be constructed as well.

As in the case of detention centers generally, proper execution of the obligations of readmission agreements proved to require additional investments into the domestic infrastructure, which were not envisioned in the original documents or executive agreements with the other states. Furthermore, as the issue of Poland's own capacity to manage transit migration became an important element of testing its ability to meet the obligations of the EU *acquis* in the Justice and Home Affairs area, significant investments were needed both in the period leading up to the accession and since then as part of the so-called Schengen Action Plan.¹⁸

¹⁷ Based on the letter from the Department of Border Traffice to the Commander General of the Polish Border Guard.

¹⁸ The overview of Poland's negotiations in the Justice and Home Affairs and the assistance offered to Poland can be found in the author's section in the volume, *An Enlarged Europe Policy. Evaluation of the Dutch Policy concerning the Accession of Central European Countries to the EU 1997-2003. Country Case Poland*. Working Document, published by the Policy and Operations Department of the Dutch Foreign Ministry, pp. 41-49, available at:
<http://www.euforic.org/iob/docs/200507131331264671.pdf?&username=guest@euforic.org&password=9999&groups=IOB>



6. Critique of Readmission Agreements

Readmission agreements modelled on the Poland-Schengen agreement have been criticised for possible restricting of the right to seek asylum in countries able to offer effective solutions, which results in either shifting the burden of servicing asylum claims by transit countries that are hardly prepared for the task or in eventual placing of the applicant in jeopardy by readmitting him or her back to the areas where they could be subject to persecution.

Lavenex (1999) identifies the agreement of 1991 as one without precedent in the earlier generations of readmission agreements. Although the agreements concluded earlier made it possible to return the citizens of the receiving state and third-country nationals who had crossed the border illegally, they differed from the 'new' generation of agreements substantially. Firstly, as Lavenex notes, 'the readmission was made conditional on the requirement that the person had previously spent a certain period in the requested country' (*Op.cit.*, 79). In contrast, the new agreements require only that the person has entered the requested country legally and could be shown to have received any sort of authorization for entry and/or residence from that country. Secondly, the old agreements 'could only apply to asylum seekers whose applications had been rejected in last instance' (*ibidem*). The new arrangements allow the sending state to deny entry to asylum seekers and refuse to consider the substance of their claims by reference to the 'safe third country' principle. Thirdly, the sending states aim at avoiding 'the imposition of time limits in readmission agreements' so as to facilitate the expulsion of persons at whatever time after they are apprehended either on the border or in the interior (*Op.cit.*, 80). Finally, as in Article 2 of the Poland-Schengen agreement, the grounds for readmission shift from the crossing of the common border to the cases where 'a person entered the requesting country lawfully, provided that the person is now remaining unlawfully' (*Op.cit.*, 81).

The new type of agreements has also some unfavourable effects in the political sense. The old-type arrangements were concluded between West European



immigration countries whose court and asylum systems were well-functioning and in the majority of cases, readmissions concerned own nationals. Thus, the bilateral agreements were merely matters of mutual convenience, based on long-standing trust in the other country's legislation and institutions. However, the new agreements were drafted in reflection of the sending states' inability or unwillingness to carry the burden of immigrants or asylum-seekers originating from outside the EU. As a result, domestic concerns outweighed the consideration of actual impact of the agreements on the other party. Most of the new agreements were concluded without taking into account of the ability of the states of transit or origin to absorb the rising influx of the immigrants. The new agreements therefore include an element of inequality from the outset, which instead of building the necessary trust between the parties introduces strong element of mistrust.

Of particular importance is the question of the distribution of burden in these new arrangements. Unfortunately, in the short- to medium-term, the sending states are clearly those that make the most use of the agreements. Germany is a clear example: Lavenex cites Schieffer, describing the effectiveness of return of Romanian nationals on the basis of the German-Romanian agreement of 24 September 1994. If in 1992, some 100,000 asylum seekers from Romania resided in Germany, their number dropped to only 3,500 in 1995; clearly, this was achieved thanks to the air transport of 85,000 asylum seekers back to Romania between 1993 and 1995 (Lavenex, 81-82). Germany also signed readmission agreements with other countries of origin: Bulgaria, Croatia, the Federal Republic of Yugoslavia as well as Algeria, Pakistan and Vietnam. As Lavenex notes, the possibility of swift return of the nationals of those countries is crucial to the effectiveness of the so-called 'accelerated procedure' in cases of 'manifestly unfounded applications' originating from those 'safe countries of origin' (*ibid.*, 81).



Selected Bibliography

Adamczyk, Marek (2000), „Irregular migration: law, policies and reality” in: Kari Hakola (ed.), *Articles on Migration Management on the Eastern Border of the EU*, University of Jyväskylä, 65-73.

Adamczyk, Wiesław (1994), *Readmisja w świetle porównawczej analizy umów i porozumień międzypanstwowych zawartych przez Polskę*, Materiały i Dokumenty M-144, Bureau of Studies and Expert Papers, Chancellery of the Sejm: Warsaw.

Chlebny, Jacek and Wojciech Trojan (2000), “The Refugee Status Determination Procedure in Poland”, *International Journal of Refugee Law*, Vol. 12, No. 2.

Dietrich, Helmut (1998), „Deutsch-polnische Polizeikooperation. Fluechtlingspolitik als Schrittmacher”, *Buergerrechte und Polizei/CILIP* Vol. 59, No. 1, 4-15.

Głąbicka, Katarzyna (1994?), “Migracja jako nowa kwestia społeczna”, in: Julian Auleytner (ed.), *Polityka społeczna: stan i perspektywy*, 86-96.

Głąbicka, Katarzyna (2000), “Illegal migrant trafficking across Poland”, in: Kari Hakola (ed.), *Articles on Migration Management on the Eastern Border of the EU*, University of Jyväskylä, 51-64.

International Organization for Migration (1994), *Transit Migration in Poland*, Budapest.

Kępińska E., Recent trends in International Migration. The 2004 SOPEMI Report for Poland, Centre of Migration Research: Warsaw 2004
<http://www.iss.uw.edu.pl/osrodki/cmr/wpapers/pdf/056.pdf>

Kozłowski, Tomasz Kuba (1994), “Between Transit, Asylum Seeking and Immigration. Legal and Institutional Consequences of the Phenomenon of Involuntary Migration” in: *International Symposium on Protection of Refugees in Central and Eastern Europe*, Regional Bureau for Europe and the Division of International Protection: Geneva.

Kuczyński, Maciej (2000), “Rozwój sytuacji migracyjnej w Polsce w latach 1993-1997” in: Jan E. Zamojski, *Migracje polityczne XX wieku*, Series: Migrations and Society 4, Neriton: Warsaw, 14-33.

Lavenex, Sandra (1999), *Safe Third Countries: Extending the EU Asylum and Immigration Policies to Central and Eastern Europe*, Central European University Press.

Noll, Gregor (1998), “Readmission and the protection of refugees—bilateral arrangements and NGO surveillance” in: Kari Hakola (ed.), *Migration and Refugee Policy on the Eastern Border of the European Union*, University of Jyväskylä, 27-39.



Nowicka, Ewa, Sławomir Łodziński (1998), „Cudzoziemcy w Polsce—sytuacja prawna i społeczna”, in: Halina Grzymała-Moszczyńska, Ewa Nowicka (eds.), *Goście i gospodarze: problem adaptacji kulturowej w obozach dla uchodźców oraz otaczających je społecznościach lokalnych*, Nomos: Warszawa.

Szonert, Marek (1995), *Europejskie polityki azylowe a reakcja na migracje uchodźców, poszukiwaczy azylu w Polsce*, unpublished doctoral thesis, Institute of Applied Social Sciences, University of Warsaw.

Szonert, Marek (2000), “Rok 1990—początki opieki nad uchodźcami” in: Jan E. Zamojski, *Migracje polityczne XX wieku*, Series: Migrations and Society 4, Neriton: Warsaw, 34-65.

United States Committee for Refugees (1997), *At Fortress Europe’s Moat: The ‘Safe Third Country’ Concept*, Washington.

Zdanowicz, Mieczysława (2000), “Entry into and Departure from Polish Territory by Aliens: the Strong and Weak Points of Legislation in Force” in: Kari Hakola (ed.), *Articles on Migration Management on the Eastern Border of the EU*, University of Jyväskylä, 74-78.