

# Securing the best interests of the child in the Polish legislation on foreigners

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## Abstract

The study attempted to find out whether the Polish legislation acts provide the best interests of the child, due to the international standard in Article. 3.1 The Convention on the Rights of the Child, was taken into consideration. After a period of transformation in Poland, there was a change in the national procedure for determining refugee status, including unaccompanied children. Amended several times Act on foreigners, and recently implemented EU rules to the Act on foreigners in 2013 and amending the act of granting foreigners with international protection.

**Subject of research:** Analysis of Polish legislation on foreigners

**Purpose of research:** The subject of this thesis concerns whether the Polish legislation acts on foreigners has secured the best interest of the child.

**Methods:** analysis, synthesis

**Keywords:** children, the best interests of the child, protection of children's rights, Polish legislation on foreigners.

### Explanation of abbreviations:

**EU** – European Union

**UstCudz** – Act on foreigners

**Convention (KPDz)** – Convention on the Rights of the Child

**Constitution** – The Constitution of the Republic of Poland

**Art.** – Article

**Ust.** – Paragraph

**Dz. U.** – Journal of Laws

**Committee** – Committee on the Rights of the Child

**General Commentary** – General Comment of the Committee on the Rights of the Child

**Supreme Court (SN)** – Supreme Court of the Republic of Poland

**Voivodship administrative court** – Voivodship administrative court of the Republic of Poland

## Introduction

The process of political transformation in Poland started after 1989. Has created a quality ground for the issue of foreigners and its legal regulation. As a result of changes, one of the major issues was the situation and role of the individual and individual interests (individual rights) in relation with the state and other public and legal unions. This marked the need for a new look at the position of a foreigner in Poland. In this new situation, in force since 1963 the normalization of administrative – legal status of a foreigner were no longer sufficient and adequate to the existing realities (There was eg. the need to consider ratification of the Convention by Poland in 1991 relating to the Status of Refugees done in Geneva, 28 July 1951 and the Protocol on the Status of Refugees, done at New York, 31 January 1967 (*Dz. U. of 1991. No. 119, pos. 515 and 517*). Hence, quite significant changes in the law made in the early 90s – *cf. text. Act, Dz. U. of 1992, No. 7, Dz. U. Nr 114, pos. 30, zm. Dz. U. of 1995 No. 23, pos. 120*). It turned out the necessity to develop a new legal solutions, which are reflected in the Act on foreigners of 25 June 1997 (*Dz.U. No. 114, pos. 739*). This act definitely stimulated the legislature to develop a law on foreigners into direction of adapting it to the current needs and requirements. One of the most important impulses became the “context of the EU,” which means adjusting our regulations to the requirements and standards of Community law even in the pre-accession period. The so-called “Aspects of the EU”, related to the preparation of Polish entry into the EU have led to changes in the law on foreigners taken in 2001 and 2002. Europeanization and, above all, the conditions in the form of EU regulations on foreigners formed the basis of further transformations Polish legislation on foreigners, introduced in 2003, 2005 and 2006, and the effect of which is the present state of normative regulation in this area included in the acts of 2013. The normative system of the current Polish law on foreigners consists of Polish Constitution, which marks the most fundamental assumptions as to the legal position of a foreigner in our country. Of fundamental importance is the art. 37, according to which anyone who is under the authority of the Republic of Poland, enjoy the freedoms and rights ensured by the Constitution, and the exceptions to this principle with respect to foreigners determined by law. The protection of children’s rights has gained constitutional status. According to the art. 72 paragraph. 1 of the Constitution of Poland ensures protection of the rights of the child. Paragraph. 3 obliges public authorities and persons

responsible for the child to listen to and take into account the views of the child. In art. 47 The Constitution also guarantees the legal protection of family, motherhood and parenthood. It should be emphasized that protection is granted to everyone, regardless of their nationality, origin or legality of residence on Polish soil.

Focal point for the real dimension of the legal position of a foreigner in Poland lies in the specific statutory regulations relating to the areas of matters relevant to the foreigner. Although there are different normalizations of the foreigner situation, they depart from the status of citizen of Polish constitutional principle but retains its importance as compared to the general RP to treatment of foreigners in Poland based on respectfully the rule of law standards.

The legal situation of a child foreigner form legal acts that apply to the rules of entry and residence of foreigners on Polish territory. These are: the Act of 12 December 2013 on foreigners, the Act of 13 June 2003 amending the act of granting foreigners with international protection and the Act of July 14, 2006 on entering the territory of the Republic of Poland, residence and departure from this territory of nationals of Member States of the European Union and their family members (*Dz. U. of 2013, pos. 1650; Dz. U. of 2003 No. 126, pos. 1176; Dz. U. of 2006 No 144, pos.1043*). The last act applies to nationals of the Member States of the European Union, and other categories of foreigners, who are generally subject to EU freedom of movement. As a rule, children- foreigners are subject to the same procedures regarding entry into Polish territory, legalization of stay, as well as expulsion from the territory, which relate to the total number of foreigners. Children participate in procedures for granting refugee status. Children – foreigners remaining in these procedures therefore require special protection by the Polish state.

In Poland are currently in force the provisions the Act on foreigners of 12 December 2013 (*Dz.U. of 2013, pos. 1650*), specifying the terms and conditions of entry of foreigners on the territory of Poland, their transit through, stay in and departure from it, the procedure and the competent authorities in these matters. The provisions of the previous Act of 2003. due to multiple revising become unreadable and casuistic, which in turn caused problems of interpretation in the application of the Act. Changes made by the current Act include modification of rules for the control illegal immigration. The Act makes implementation into the Polish legal system the provisions

of acts of the European Union. The Act regulates the residence of foreigners in Poland for humanitarian reasons (Art. 348-359). Under this Act were amended the separate legal acts concerning, inter alia, the Education System Act of 7 September 1991 (*Dz.U. of 1991r. No. 95 pos. 425*), The Family Benefits Act of 28 November 2003 (*Dz.U. of 2003 No. 228, pos. 2255*).

## 1. The best interest of the child

It should be taken into consideration the best interests of the child contained in Article. 3 paragraph 1 of the Convention, which gives the child the right to have the assessment and securing his best interests to become a primary consideration in all actions concerning him or decisions in both the public and private area. It should be noted that it expresses the basic values contained in the Convention and the Committee on the Rights of the Child recognizes Article 3, paragraph 1 as one of the four general principles of the Convention in the interpretation and implementation of the rights of the child next to the art. 2 obliges the State to respect and ensure the rights of the child provided in the Convention to each child within the jurisdiction of the State without discrimination for any reason. Art. 6 expresses the inherent right to life and ensure the best conditions for survival and development, and art. 12 to hear his views on the way due to all matters affecting the child and give these views proper weight.

Committee on the Rights of the Child released several General Comments on issues of interpretation of the provisions contained in the Convention, including the General Comment of the Committee of the Rights of the Child No. 5 (2003) on general measures of implementation of the Convention – Article. 12 and No. 12 (2009) on children’s rights to express themselves – art. 2; General Comment No. 13 (2011) on children’s right to protection from all forms of violence; General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration- art. 3, paragraph 1 (adopted at the 62 meetings of the Committee 14.01-01.02.2013r.).

Committee in General Comment No. 5 (2003) on general measures of implementation of the UN Convention on the Rights of the Child in the paragraph 6 states that it is expected that States Parties shall interpret the development as a “holistic concept, embracing the child’s physical, mental, spiritual, moral, psychological and social development.” Committee on the Rights of the Child in General Comment No. 14 (2013) concerning

the right of the child to protect his best interests as a matter of the parent is (art. 3, paragraph. 1) paragraph. 4 indicates “The concept of the child’s best interests is Aimed at Ensuring both the full and effective enjoyment of all the rights recognized in the Convention and the holistic development of the child”. As previously indicated, the assessment of the best interests of the child shall be made by an adult cannot have the overriding value in relation to the obligation to respect all children’s rights under the Convention. The Committee recalls that in regard to the rights contained in the Convention does not apply to the order of importance, all taken from the view of “the best interests of the child” and that none of the rights cannot be infringed by the incorrect interpretation of the best interests of the child”. However, in the art. 5, the full application of the concept of the best interests of the child requires the development of appropriate rights-based approach, involving all stakeholders, aimed at securing a holistic physical, psychological, moral and spiritual integrity of the child and promote the human dignity. In paragraph 12 The Committee stresses that “the main objective of this general comment is to improve the understanding and application of the right of children to ensure that the assessment and protection of the best interests of the child to become a primary consideration, or in some cases, it is of utmost importance to that indicated in paragraph 38. The overall objective of this commentary is to promote a real change in approach leading to full respect for children as people who have rights, which in a more detailed dimension refers to:

- a) all the implementing measures created by governments;
- b) decisions taken in individual cases by the judicial authorities, administrative or public institutions and their representative entities in relation to a child or group of children;
- c) the decisions taken by civil society and private sector organizations, including for-profit organizations and not-for-profit, providing services for children or having an impact;
- d) guidelines for the activities undertaken by those working with children and for children, including parents and guardians.

In paragraph. 6 The Committee emphasizes that the concept of the best interests of the child has a threefold nature:

- a) Substantive law: The right of the child to have his or her best interests assessed and taken as a primary consideration when different interests are

being Considered in order to reach a decision on the issue at stake, and the guarantee That this right will be Implemented whenever a decision is to be made concerning a child, a group of Identified or unidentified children or children in general. Article 3, paragraph 1, Creates an intrinsic obligation for States, is Directly applicable (self-executing) and can be invoked before a court.

- b) A fundamental, interpretative legal principle: If a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen. The rights enshrined in the Convention and its Optional Protocols provide the framework for interpretation.
- c) A rule of procedure: Whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child require procedural guarantees. Furthermore, the justification of a decision must show that the right has been explicitly taken into account. In this regard, States parties shall explain how the right has been respected in the decision, that is, what has been considered to be in the child's best interests; what criteria it is based on; and how the child's interests have been weighed against other considerations, be they broad issues of policy or individual cases.

In the present general comment, the expression "the child's best interests" or "the best interests of the child" covers the three dimensions developed above.

The Committee in General Comment states in paragraph 43, that "the assessment of the best interests of the child must include respect for the child's right to express those views freely in all matters affecting the child, and these views must be taken with due weight. This is clearly stated in General Comment No. 12, which also emphasizes the inextricable link between the provisions of Article 3, paragraph 1, and the provisions of Article 12. Both articles are complementary: the first aim is to ensure that the best interests of the child, and the purpose of the second – delivery methodology hear the views of the child or children and their inclusion in all matters concerning them, including the assessment and determination of their best interests.

Article 3, paragraph. 1 cannot be properly used, if they are not met the requirements of Article 12. Similarly, Article 3, paragraph. 1, strengthen the functioning of Article 12, supporting the important role of children in all decisions affecting their lives included in the paragraph 70–74 General Commentary No. 12. Paragraph 46 indicates that “the best interests of the child” is the law, policies and procedures, based on an assessment of all components of the interests of the child or children in a particular situation. In assessing and determining the best interests of the child in order to decide what the specific measure should take the following steps:

- a) first, in the actual context of a particular case must determine the relevant elements of the assessment of the best interests of the child, give them specific content and each of them assigned a weight in relation to other elements;
- b) second, to this end should be implemented a procedure to ensure legal guarantees and the correct application of the law.

Committee identified the elements to be taken into consideration during assessing the best interests of the child such as: the child’s views, identity, preserving the family and maintaining relationships difficult situation of the child, the child’s right to health, education, to express their views, the facts, the perception of time, securing legal representation, proper legal argumentation, to assess the impact of the decision on the rights of the child protection mechanisms appeals and verification decision and the professional preparation of specialists dealing with child. At the same time highlighted in the paragraph 48, that the assessment of the best interests of the child is an act of an exceptional nature to be taken in each individual case, in the light of the particular circumstances under which the child, group of children or children in general were found. These circumstances relate to the individual characteristics of each child or children, such as m. In. age, sex, level of maturity, experience, due to minorities, physical disability, sensory or intellectual, and social and cultural context in which is located the child or children, for example, the presence or absence of parents, the question of whether the child lives with parents, the quality of the relationship between the child and their family or guardians, the environment in terms of security, available opportunities for the family, distant relatives or guardians.

The right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law in the determination of rights and obligations is also guaranteed by art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ratified in 1993.

On the content of the right to a court consists of ensuring real access to justice, the establishment of a procedure that ensures respect for the rights of the participant and to obtain a reasonable timeframe of the case.

Right to be heard is one of the most important aspects of the right to a court binds to the active participation of the parties to get the truth being the basis of the decision. It can be traced to the influence of right to be heard also in the international sources, ie. mainly in the art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (*Dz.U. of 1993 No. 61, pos. 284*) and art. 14 of the International Covenant on Civil and Political Rights of 19 December 1966 (*Dz.U. of 1997 No. 38, pos.167.*). In view of the international agreements as sources of national legal system and the possibility of their direct application of the regulation and understanding of the right to a hearing in international law it is important. Therefore art. 6 paragraph. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms emerges the concept of “the right to a fair hearing” is often understood as the right to a fair trial (Habscheid, 1997, p. 40.). In addition to the literal meaning of the word “hearing”, ie. The trial, the etymology of the word also refers to the word to listen (Redelbach, 1999, p. 247.). It is therefore a moment of hearings the parties and participants in the proceedings in terms of the status quo and relevant circumstances. In the framework of international regulations also children should be guaranteed the opportunity to express themselves freely. The Convention on the Rights of the Child adopted on 20 November 1989 by the UN General Assembly (*Dz.U. of 1991 No. 120, pos. 526 i 527.*) already in the art. 3 of the Convention recognizes the child considered by internal law as having sufficient understanding, in relating his proceedings in front of a judicial authority should be granted, and may request to grant the right to receive all relevant information, the right to the question about opinion and to express their views, the right to be informed about the possible consequences of his statement and the possible consequences of any decision. Similarly, Article 12 paragraph.



1 includes the right to express those views freely in all matters affecting the child, the views of the due weight in accordance with the age and maturity of the child, and art. 12 paragraph 2 gives the child the right to express themselves, either directly or through a legal representative, in any judicial or administrative proceedings, which it applies in accordance with the procedural rules of the proceedings and, therefore, including the right to a hearing. The directive of the Convention has been included in the jurisprudence of the Supreme Court, which has accepted that guided by expediency, taking into consideration level of maturity of the minor nature of the case and the care, the competent court should hear the views of the minor, in view of its good (*vide: Postanowienie SN z 15 XII 1998 r., I CKN 1122/98, OSN 1999, Nr 6, poz. 119.*). It should be stressed that the right to be heard, understood broadly as the right to active participation of the parties and participants in the ongoing proceedings, in order to guarantee respect for their rights is of such importance that it encompasses all judicial proceedings, as well as administrative proceedings, not only civil proceedings. Right of a participant to explain the state of affairs and the accompanying circumstances and unfettered action in the proceedings is very important for the regularity and legality of the issued decision or judgment. According to the ruling of the Voivodeship Administrative Court of 24 November 2010, The demonstration of the violation by a public authority principle of the active participation of the parties in the administrative proceedings by failing her about gathering evidence and opportunities to familiarize with it and the ability to submit evidence, made it impossible to take specifically indicated process activity, mostly in the sphere of evidence, and to show that the infringement had a significant impact on the case result gives grounds to assume that there has been a violation of Article. 10 KPA (*Wyrok WSA w Warszawie z 24 XI 2010, I SA/Wa 1233/10, LEX nr 863631*). It is situated not only in the national regulations, but also within the European standards of administrative proceedings (*Zasada I Rezolucji nr R (77) 31 Komitetu Ministrów Rady Europy z 28 IX 1977 r.*).

It is reasonable to say that children's rights are a special category of individual rights and the ontological status of child rights in general does not differ from the ontological status of individual rights (Lang, 2014, p. 201–202; and Mik, 1992, p. 18–19).

## 2. Securing the best interest of the child in the polish legislation on foreigners

The Polish legal system does not formulate the definition of “child’s welfare”, but in the Polish legal doctrine attempts have been numerous attempts to construct. And so it is believed that the child’s welfare is the “set of values, both spiritual and material, which are necessary for the proper: physical and spiritual development of the child, both in terms of intellectual and moral, and to prepare it to work for the good of population.

Taking into consideration the interests of the child in terms of family law W. Stojanowska defines it as “a complex of intangible and material necessary for the proper physical and spiritual development of the child and to properly prepare it to work according to his abilities, these values are determined by many different factors, the structure of which depends on the substance used and the specific legal norm, the currently existing situation of the child, assuming the convergence of so-understood term interests of the child with the public interest (Stojanowska, 1999, p. 98).

The principle of the child’s welfare is a specific constitutional clause general expressed somehow in the art. 72 paragraph. 1 sentence 1 of the Polish Constitution. Its reconstruction should be done by reference to the constitutional axiology and the overall design of the system. It is a guiding directive content of many regulations. Besides the Act on Ombudsman for Children is contained in numerous laws, such as the Family and Guardianship Code, the Act on civil status, the Civil Code, the Code of Civil Procedure and the Act on foreigners.

The order to protect the child’s welfare is a fundamental, overriding principle of Polish family law system, as well as a reference to a variety of other legal acts, which contain provisions apply to children. The concept of “protection of the rights of the child” in provisions of the Constitution should be understood as an order to protect the interests of the minors, which in practice alone can it occur in a very limited extent. The principle of the child’s welfare is also the value that determines the shape of other institutional arrangements. It is primarily exposed as a special in the regulations ratified by Poland, the United Nations Convention of 20 November 1989 on the Rights of the Child in art. 3 paragraph 1 stated that “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts, administrative authorities or legislative bodies, the a primary consideration

is the best interests of the child”. “The welfare of the child” in this context as a concept is at the core of all the provisions of the Rights of the Child, being the proverbial “spirit of the law”. It is an instrument for the interpretation of both the standards contained in the Convention and the national law of the countries that signed it. It is also a directive for the creation of the law and its application and should be a criterion for assessing during making decisions regarding to the child.

Moving on to discuss the acts relating to foreigners – children, I would like to focus primarily on the procedures for granting refugee status.

Minors in the procedure for granting refugee status is a kind of modification of the proper procedure, which is carried out to adults and it expresses itself through the person of the applicant. Child in accordance with Art. 2 point k of the procedural directive (Dublin III) belongs to a category of applicants with special needs to adopt and means a person with special needs, who need of special guarantees in order to exercise the rights and fulfill the obligations referred to in this Directive. This procedure should be subject to additional guarantees and its primary purpose is to safeguard the best interests of the child.

The right to apply for a minor refugee status, guaranteed in Article 22 of the Convention on the Rights of the Child while the States-Parties are obliged to provide protection and humanitarian assistance, when such a child will be on the status of the claim. Unfortunately, the Polish legislator has not yet formulated the concept of “welfare of the child” but in the Polish doctrine had already tried to cope with this task.

Analyzing the acts it should be stated that the legislator took into account, although not in the full-range right of the child to protect his best interests, as a matter of the overriding, arising from the international standard contained in the Convention.

Essential legislative acts regulating the issue of foreigners, including children and unaccompanied minors are: Act of foreigners, the Act amending the act of granting foreigners with international protection and the Act on entering the territory of the Republic of Poland, residence and departure from this territory of nationals of Member States of the European Union and their family members. Analysis of the above acts leads to the conclusion that the legislature used the term “interests of the child” using not in the law on foreigners phrases: not in the art. 158 paragraph 2 point 3 – “important

interests of the child”, not in the art. 167 point 1 in connection with art. 159 paragraph 1 “takes into account the interests of minor children” not in the art. 260 paragraph 1 the phrase “interests of the child”. Moreover, not in the art. 187 point 7, Art. 332 point 1 and 348 point 3, are referred to the Convention on the Rights of the Child.

In the Act amending the act of granting foreigners with international protection there is the lack of appeal to the general principle of in the Convention “best interests of children as a matter of the overriding.” Despite the fact that art. 3 in the Convention on an individual basis, but at the same time also requires that in all actions taken into consideration the best interests of children as a group. Art. 3 enhances the functionality of art. 12 facilitating essentially the role of children in all decisions affecting their lives.

In the Act on entering the territory of the Republic of Poland, residence and departure from this territory of nationals of Member States of the European Union and their family members reference was made to Convention and the concept of “welfare of the child” and “public interest”.

Taking into account the provisions on the use of detention against foreigners-children (<http://interwencjaprawna.pl/wp-content/uploads/analiza-przepisow-detencja-dzieci.pdf>; [access: 25.06.2015]) should be concluded that there is a worrying discrepancy regarding unaccompanied minors, because the Act on foreigners allows for placement in guarded centers unaccompanied minors who are under 15 years of age (*art. 397 ust. 3, Dz. U. of 2013 pos. 1650, Dz.U. of 2014 pos. 463, 1004*). It seems that such regulation, i.e. differentiation the legal situation of children in Poland without care, depending on the type of administrative procedure which takes place in their case (proceedings for granting refugee status or proceedings to oblige a foreigner to return) is contrary to the expressed in the art. 2 of the Convention on the Rights of the Child and in the art. 32 of the Polish Constitution – the obligation of equal treatment by public authorities. as invalid regulation should be assessed admission in the Polish legislation the possibility of detention of minors (regardless of age), who are under the care of their parents. Unfortunately, the legislature continues despite many instances of the Ministry of Internal Affairs and reports to both the Ombudsman for Children (*Wystąpienie generalne do Ministra Spraw Wewnętrznych z dnia 27 czerwca 2012 r., sygn. ZSM/500/5/2012/AJ*) and the Ombudsman (*Wystąpienie generalne do Ministra Spraw Wewnętrznych z dnia 4 kwietnia 2012 r., sygn. RPO-695531-V/12/MS*;

*Wystąpienie generalne do Ministra Spraw Wewnętrznych z dnia 12 grudnia 2012 r., sygn. RPO-695531-V/12/ŁK*) has not taken to amend those provisions taking into consideration the best interests of the child.

Certainly deserves recognition the fact that, despite regulations allowing detention of minors according to the Article 397 paragraph 2 of Act on foreigners made a kind of exemplum, that the courts should be guided by the best interests of the minor when considering an application for inclusion in the guarded center of a minor foreigner, and in the having particular regard to: the degree of physical and mental development of a minor foreigner; personality characteristics; circumstances of the detention of a minor foreigner; and personal conditions in favor of putting minor foreigner in a guarded center.

Undoubtedly interesting fact is that the legislator refers to the minors in Act on foreigners – 67 times, which of course part refers to children seeking refugee status, while the Act amending the act of granting foreigners with international protection legislator mentioned 62 times about the minors. These numbers in some way emphasize that minors are an important part of the Polish legislation concerning international protection, including procedures for granting refugee status, although, of course, what matters most is the context and the sense in which they are placed.

The most sensitive and requires special procedure, good practice and professional approach is a group of unaccompanied minors, whose legal position is protected by international law. The Polish procedure for granting refugee status provided for separate regulations that result from the Geneva Convention, as well as the recommendations of the UN High Commissioner for Refugees on standards refugee procedures. The report of the Head of the Office for Foreigners clearly states that Poland in 2014 has realized in full the obligations under the Geneva Convention and the New York Protocol (<http://udsc.gov.pl/sprawozdanie-2014-z-wykonywania-ustawy-o-ochronie-cudzoziemcow-w-rp/> [dostęp: 25.06.2016]). There is no doubt regards to minors, who are often undergoing the procedure, there is no equivalent statement that the Office for Foreigners would take responsibility for the implementation of commitments on behalf of the Polish Republic regarding the rights of the child enshrined in the Convention on the Rights of the Child. Unfortunately, as noted in the Polish literature Jacek Chlebny (Chlebny, 2011, p. 334-335) “protection of procedural rights of the unaccompanied minor

in the Polish legislation does not go as far as it provide recommendations in [...] Commentary Committee on the Rights of the Child”.

According to the data included in the information of the Head of the Office for Foreigners of the implementation of Act amending the act of granting foreigners with international protection indicates that statements from individuals such as unaccompanied minors “is received in conditions suited to their needs and abilities of perception. Steps in the proceedings are carried out with the participation of a psychologist or a teacher (in the case of unaccompanied minors) or a psychologist or a doctor (in the case of victims of violence and people with disabilities), by qualified staff in this respect” (<http://udsc.gov.pl/sprawozdanie-2014-z-wykonywania-ustawy-o-ochronie-cudzoziemcow-w-rp/> [access: 25.06.2016 r.]).

## Summary

State operates through established authorities, institutions, mechanisms, procedures, organizations that represent the structure of the state. The total task of respect for, and observance of human rights and fundamental freedoms, including the foreigners on the first line is an administration employee In carrying out a responsible and difficult task in action constituting the image of administration and the perception of foreigners. During contact with the government bodies responsible for granting refugee status is expressed in the principle of the rule of law. Administration employee must pay attention to the fact that decisions concerning the rights and interests of the refugees, including unaccompanied child have a basis in law and that their content complies with the law. The actions should be impartial, fair and reasonable, protecting the right to be heard and to make statements in the course of all proceedings.

Has to be ensured the implementation of non-discrimination and prohibition of abuse of power. During the proceedings must be disclose objectivity. Any issued decision must be justified and contain the grounds on which it is based and indicate the possibility of appeal against the decision. The basis for regulation of the Code of Administrative Procedure and the special Acts on foreigners matters. For this purpose the authorities conducting the proceedings (the Office for Foreigners, the Council for Refugees) and the authorities participating in the proceedings (the commanders of departments of Border Service, Internal Security Agency) need to ensure protection of

the rights of foreigners, including unaccompanied children granted them permission may only be used for the purposes for which it was established and entrusted by the relevant provisions. To protect the rights of foreigners and refugees, including unaccompanied children a very important role to fulfill in the administrative, judicial and administrative has Office of United Nations High Commissioner for Refugees (UNHCR) on the rights of parties involved in the proceedings – the prosecutor, social organizations, the Commissioner for Human Rights and the Ombudsman for Children.

Various type of support, including legal assistance to refugees give non-governmental organizations conducting humanitarian programs. After a period of transformation in Poland, there was a change in the national procedure for determining refugee status, including unaccompanied children. Amended several times Act on foreigners, and recently implemented EU rules to the Act on foreigners in 2013 and Act amending the act of granting foreigners with international protection. However, still is not included in the full range of concepts contained in Article 3 of the Convention on the Rights of the Child, which mentions about the right of the Child to protect his best interests.

## References

- Chlebny J., *Postępowanie w sprawie o nadanie statusu uchodźcy*, Warszawa 2011;
- Habscheid W. J., *Europeizacja prawa cywilnego procesowego*, [w:] *Jednolitość prawa sądowego cywilnego a jego odrębności krajowe*, red. M. Sawczuk, Lublin 1997;
- Lang W., *Prawa podmiotowe i prawa człowieka* [w:] *Księga Jubileuszowa Profesora Tadeusza Jasudowicza*, Toruń 2014;
- Mik C., *Zbiorowe prawa człowieka*, Toruń 1992;
- Redelbach A., *Sądy a ochrona praw człowieka*, Toruń 1999;
- Stojanowska W., *Dobro dziecka jako instrument wykładni norm konwencji o prawach dziecka oraz prawa polskiego i dyrektywa jego stosowania* (w:) *Konwencja O Prawach Dziecka. Analiza i Wykładnia*, Poznań 1999.

## Others

- <http://interwencjaprawna.pl/wp-content/uploads/analiza-przepisow-detencja-dzieci.pdf> [dostęp: 25.06.2016]
- <http://udsc.gov.pl/sprawozdanie-2014-z-wykonywania-ustawy-o-ochronie-cudzoziemcow-w-rp/> [dostęp: 25.06.2016]

<http://udsc.gov.pl/sprawozdanie-2014-z-wykonywania-ustawy-o-ochronie-cudzoziemcow-w-rp/> [dostęp: 25.06.2016]

Wystąpienie generalne do Ministra Spraw Wewnętrznych z dnia 27 czerwca 2012 r., sygn. ZSM/500/5/2012/AJ.

Wystąpienie generalne do Ministra Spraw Wewnętrznych z dnia 4 kwietnia 2012 r., sygn. RPO-695531-V/12/MS.

Wystąpienie generalne do Ministra Spraw Wewnętrznych z dnia 12 grudnia 2012 r., sygn. RPO-695531-V/12/ŁK.

### **Rulings**

Postanowienie SN z 15 XII 1998 r., I CKN 1122/98, OSN 1999, Nr 6, pos. 119.

Wyrok WSA w Warszawie z 24 XI 2010, I SA/Wa 1233/10, LEX nr 863631.