

## **Consequences of illegal stay in the territory of Poland**

### **Illegal stay**

Illegal stay - stay which is contrary to the legal provisions regarding the conditions of entry the territory of the Republic of Poland by foreigners and their stay in that territory. Illegal stay in the territory of the Republic of Poland takes place, in particular, in a situation where a foreigner:

- does not hold a valid visa or another valid document entitling him or her to enter and stay in the territory of Poland,
- has not left the territory of the Republic of Poland after the laps of the permissible duration of his/her stay within that territory,
- illegally crossed or attempted to cross the border illegally,
- illegally performs or performed work illegally,
- undertook business activity in breach of legal regulations,
- does not hold sufficient means of subsistence for the duration of the intended stay in the territory of the Republic of Poland,
- is a person for whom an alert has been issued in the SIS (Schengen Information System) or in the national data base for the purposes of refusing entry.

### **Obliging to return**

In case of an illegal stay of a foreigner in the territory of Poland the administrative proceedings on obliging a foreigner to return are commenced.

Proceedings on obliging a foreigner to return are commenced and conducted by the Commander of the Border Guard Post or Commander of the Border Guard Division.

- **Voluntary return**

The return decision may provide for a period for voluntary departure of between 15 and 30 days, counting from the date of notification of the decision. In that case a foreigner is obliged to leave the territory of the Republic of Poland within the time limit specified in the issued decision (leaving for the other EU/Schengen Member State does not make the decision executed).

A foreigner, who has been issued a decision provided with the period for voluntary departure has the right to benefit from an assistance in return. Financing of such an assistance may be ensured by the Commander in Chief of the Border Guards and may, in particular, include covering expenses of travel costs, administrative fees of obtaining a travel document and necessary visas and permits, costs of food during the travel as well as the costs of medical care.

- **Forced return**

The period for voluntary departure shall not be specified in the return decision if the authority adjudicating in that case considers that there is a risk of absconding or it is required for the reasons of national security or defense, the protection of public order and safety. Such decision shall be subject to forced execution.

The forced execution may also apply to the decision in which the period for voluntary departure has been granted, if, after the issuance of that decision:

- a risk of absconding arises,

- further stay of a foreigner is considered as a threat to national security or defense, the protection of public order and safety,
- a foreigner has not complied with an obligation to departure within the time limit indicated in the return decision.

If the decision on return is enforced, a foreigner shall be obliged to cover the expenses of its execution. The costs shall be determined in an administrative decision. If the expenses change the decision in this matter will be amended accordingly.

The expenses of removal, depending on circumstances which are basis of issuance of a return decision may also be bear by:

- a person inviting a foreigner,
- an entity entrusting a foreigner with work or performing a function,
- a research institution, which accepted a foreigner with a purpose to conduct a research.

Forced execution of the return decision results in an entry of foreigner's personal data in SIS for the purposes of refusing entry. Thus, the imposed entry ban will cover not only the territory of Republic of Poland but also the territory of other Schengen states.

### **Detention**

In case of a commencement of return proceedings a foreigner may be detained for a period up to 48 hours. However if the authority which detained a foreigner decides to forward a motion to a court to place a foreigner in a guarded centre or in arrest for foreigners, a time of detention may be prolonged for a period no longer than 24 hours.

### **Measures of securing enforcement of a decision**

If the issued return decision does not provide for the period for voluntary departure or there is a probability that the return decision will be issued without the period for voluntary departure, Border Guard may not forward a motion to a court to place a foreigner in a guarded centre or in arrest for foreigners, and instead of that oblige a foreigner, in a way of ruling, up to the moment of enforcement of the return decision to:

- 1) report at specified intervals to the indicated Border Guard authority,
- 2) lodge a security deposit in a specified amount of money,
- 3) surrender his/her travel document for custody,
- 4) reside at an indicated place/venue.

If the circumstances of a case reveal that the foreigner will not comply with the aforementioned obligations or does not fulfill those obligations he may be placed in a guarded centre or arrest for foreigners. The decision will be taken by a court upon a hearing of a foreigner.

As a rule a period of stay in a guarded centre for foreigners or arrest for foreigners lasts up to 3 months. This period may be extended for a specified period of time (each time for a period not longer than 3 months) in case where period to enforce return decision is prolonged or if a foreigner who was issued such a decision does not co-operate with Border Guard authority in respect of its enforcement.

### **Extending of a period for voluntary departure**

A period for voluntary departure indicated in a return decision may be extended, if the foreigner is obliged to appear in person before the Polish public authority or if his/her presence within the territory of the Republic of Poland is required because of the interest of the Republic of Poland or exceptional

personal situation of the foreigner, resulting in particular from the length of the foreigner's stay within the territory of the Republic of Poland, from the foreigner's family and social ties or a need to continue education by a minor child of the foreigner.

For the reason of the aforementioned circumstances the period for voluntary departure may be extended once, which can take place also after issuance of a return decision.

The period of voluntary departure after extension may not be longer than a year.

In case of extension of the period voluntary departure a foreigner may be obliged (up to the time of leaving the territory of the Republic of Poland) to:

- 1) report at specified intervals to the indicated Border Guard authority,
- 2) lodge a security deposit in a specified amount of money,
- 3) surrender his/her travel document for custody,
- 4) reside at an indicated place/venue.

### **Entry ban**

The return decision shall be accompanied by an entry ban for the territory of the Republic of Poland or for the territory of the Republic of Poland and other Schengen states. The length of an entry ban shall be determined depending on circumstances which were basis for the issued decision, and may last from 6 months to 5 years.

An entry ban for the territory of the Republic of Poland and other Schengen states shall be imposed, if:

- 1) it does not provide for a period for voluntary departure,
- 2) it does provide for a period for voluntary departure – in case where a foreigner within this period:
  - has not left the territory of the Republic of Poland,
  - crosses or attempts to cross state border illegally.

### **Revocation of an entry ban**

An entry ban may be revoked upon request of a foreigner, if the foreigner proves that:

- 1) he/she has complied with obligations resulting from given decision,
- 2) his/her return into the territory of Poland or other Schengen States will take place due to justified circumstances, especially due to humanitarian reasons,
- 3) a foreigner was granted an assistance in voluntary return.

### **Other consequences of the return decision**

A national visa shall be invalidated and a temporary residence permit and a work permit shall expire by virtue of law on the day on which the decision on imposing the return obligation for a foreigner has become final.

If the return decision was issued due to a breach of legal provisions regarding the stay under the local border traffic regime, a local border traffic permit shall be invalidated on day on which the decision has become final.

### **The most important rights of a foreigner within proceedings on obliging to return**

During the proceedings on obliging to return a foreigner has a right, in particular, to:

- appeal against a return decision issued by Commander of Border Guard Post or Commander of Border Guard Division to The Head of the Office for Foreigners within 14 day following the date of notification of the decision,
- forward a motion on extending the granted period for voluntary departure,
- assistance of an interpreter,
- comment on the collected evidences before a decision is issued,
- act through a representative,
- lodge an application for refugee status.

### **Criminal liability**

An illegal stay results in legal liability on the grounds of offence law as well.

A foreigner who stays illegally in the territory of the Republic of Poland not holding any legal title is liable to fine. The same penalty is used against a foreigner who upon demand of appropriate authorities does not reveal documents entitling him/her to stay within the territory of the Republic of Poland, means of subsistence or documents confirming the possibility to obtain them.

A foreigner who does not comply with the obligations imposed on him/her in return proceedings is liable to fine as well, i.e.:

- fails to fulfil the obligation to leave the territory of the Republic of Poland within the period specified in a return decision or in a decision to extend the period for voluntary departure,
- fails to fulfil the obligation to report at specified intervals to the authority indicated in a decision to extend the period for voluntary departure,
- leaves the place of residence designated in the decision to extend the period for voluntary departure.