

*Ukrainian Migrants
on the Polish Labour Market*

Kyiv 2008

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TABLE OF CONTENTS

1. Executive Summary	4
2. Introduction	6
2.1. Objective and Scope of the Study	6
2.2. Migratory Profile of Poland	6
2.3. Ukrainian Labour Migration to Poland	12
2.4. Overview of Migration Research in Poland	18
3. Methodology	22
4. Findings/Analysis of Results	24
4.1. The Migrants' Position on the Labour Market	24
4.2. Relations with the Poles	46
4.3. Discrimination	57
4.4. Awareness among Employees and Employers	64
4.5. Institutional and Community Support	76
5. Conclusions	85
6. Recommendations for Polish and Ukrainian Institutions	90
Selected bibliography	96
ANNEXES	98

1. Executive Summary

- Ukrainian migrant workers have been present on the Polish market since the beginning of the 1990s, attracted by wage differences and sustained economic growth. They continue to occupy certain niches on the market—construction, agricultural work, baby-sitting and house-cleaning—establishing their position through low cost and proven quality.
- The migrants have filled up mainly the gaps in unskilled labour, which quickly emerged and deteriorated as native workers were scarce and unwilling to work at such low prices. For several years a definite majority of Ukrainian workers were employed irregularly, entering the country as ‘tourist visitors’ thanks to a visa-free agreement in force from 1996 to 2003. There was little interest in legalising employment either on the part of employers (who would have had to bear high administrative and social security costs) or employees (who would have become uncompetitive).
- Since 2003, two factors have influenced the increase of interest in the legalisation of long-term residence and employment of Ukrainians. Firstly, a large-scale exodus of the Poles themselves exposed labour gaps in both the public and private sectors of the fast-growing Polish economy. This led to a series of initiatives, aiming to reduce the costs of the administrative procedure of employing foreigners and opening the most vulnerable sectors to third-country nationals. Secondly, Poland’s entry into the EU (2004) and Schengen (2007), which raised the entry barriers for visitors from non-EU states, might provide incentives for the Ukrainians intending to work in Poland to regularise their residence and employment.
- While a significant part of the Ukrainian labour force remains irregular, Ukrainian migrants are increasingly present among legally employed service personnel (nurses, teachers), highly-skilled professionals (computer scientists, doctors, analysts) and managers.
- The current challenges facing Ukrainian workers are different for the regular and irregular employees. Without a legally enforceable employment contract, the whole range of workers’ rights (guarantees of limited working time, vacation, medical examination, access to health care and social security) is not protected. As working without a permit is a criminal offence liable to sanctions both for the employer and the employee, potentially leading to the foreigner’s deportation and a temporary ban on re-entry, illegal migrants are under pressure to avoid contacts with state authorities and their own consular services. This results in the ‘invisibility’ of the situation of irregular migrants to labour inspectors, the police and trade unions.

- The position of legally employed Ukrainians on the labour market is fundamentally safer than that of the irregular workers, additionally reinforced by their higher qualifications. However, they remain at a disadvantage in comparison to Poles due to the costly and complicated administrative procedure for the access of third-country nationals to the Polish labour market. On the one hand, the procedure is in line with comparable regulations in other EU member states, which seek the reasonable objective of preventing the imbalance on the domestic economy, and cannot be claimed to be discriminatory. On the other hand, the lengthy and unpredictable administrative practice forces the skilled Ukrainian migrants to accept worse conditions of employment. Their qualifications are sometimes not recognised, preventing migrants from working in positions matching their skills and making them agree to lower wages. Temporary contracts (limited to one or two years) hamper migrants' settlement in Poland.
- As increasingly more Ukrainians are interested in entering regular employment in Poland, the administrative disincentives to their sustained presence on the Polish labour market must be removed unless Poland is to lose the competition for skilled Ukrainian migrants with other EU member states. This would be particularly unfortunate considering the fact that the interviewed employees and employers generally report good relations and the absence of direct discrimination. Public opinion survey also points to the improvement of the image of Ukrainians among Poles, and today it is far more positive than a few years ago when Ukrainian migrants were present on the Polish labour market in much greater numbers.

2. Introduction

2.1. Objective and Scope of the Study

The report analyses the opportunities and challenges faced by Ukrainian migrants on the Polish labour market. It presents the socio-economic overview of structure and the actual forms of employment of Ukrainians in Poland and reviews the legal and institutional framework for their entry, residence status and access to legal employment. The report also describes guarantees of the rights of both legal and illegal (irregular) workers from Ukraine and the scope and implementation of various legal agreements related to protection of their rights. The analysis then focuses on the migrants' position on the labour market, at the workplace and within the society, tracing the incidences of barriers to entry and instances of discrimination.

The review of the legal, administrative and socio-economic conditions is based on desk research consisting of the analysis of the basic laws on foreigners, labour market management as well as the broader set of human rights guarantees, and of the assessment of the conclusions of previous research on Ukrainian immigration and presence on the labour market in Poland.

The legal-institutional and socio-economic overview forms the background to the sociological study of the level of awareness of migrants' rights among the employees, employers and labour market experts. The conclusions of the research identify various aspects of discrimination (wage, conditions of work, access to public services), instances of prejudices, existing forms of protection (available from government institutions), mobilisation of immigrants and incentives for potential return to the country of origin.

2.2. Migratory Profile of Poland

The collapse of the communist system resulted in significant political changes in Poland. Among other phenomena, the transformation and opening of the borders initiated a flow of migrations. Poland became a host to legal and illegal immigrants, refugees and Polish repatriates and return migrants. It has been related to the continuous fast economic growth and the steady transformation of the domestic economy. Today Poland still is the country where emigration still far exceeds immigration.

Poland Still A Country of Net Emigration

Poland has a long history of emigration. The last two major waves of outflows took place in the 1980s (following the imposition of martial law in Poland in 1981) and in the period since the EU accession in 2004 until the present day. The latest wave of migrants is distinctive, as it is believed to have a temporary character and its directions do not follow the traditional destinations (such as the United States or Germany). It is a consequence of both the decision of several EU states to open their labour markets and a strong demand for Polish labour force. Thus, the United Kingdom and Ireland became significant destinations for Polish labour migration. Recent analyses show that annually (depending on the season) around 150,000 Poles work in UK, while in 2006 around 100,000 to 120,000 Poles worked in Ireland.¹ The estimates of all the Polish emigrants to various Western European countries vary: the higher figure of 1,950,000 refers to the likely number of Poles temporarily staying abroad;² the total number of Poles employed in Western Europe may stand at 900,000.³

In contrast to the continuing large outflow, the inflow of migrants is far less numerous. According to the National Census, 85,525 people immigrated to Poland between in the years 1989 and 2002 (defined as people who settled in Poland and previously were living abroad). They were mostly returning migrants; only 14303 of them did not have Polish citizenship. The Census also revealed that 49,221 foreigners (people who did not have Polish citizenship) resided in Poland at the time (2002). In addition, 445,000 people claimed dual citizenship (mainly German, American, Canadian and French; only fewer than 1,000 people indicated Ukrainian citizenship as their second one). In total, immigrants constituted 0.22% of the 38,161,000 population of Poland.

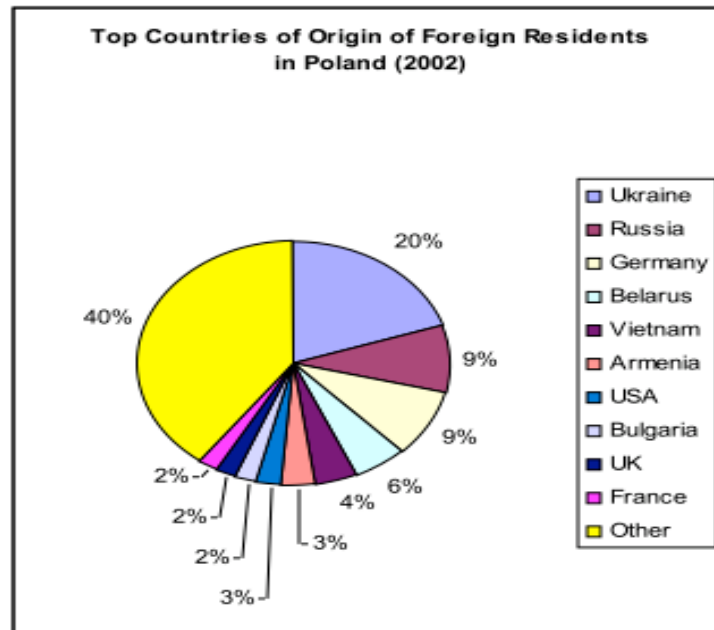
Figure 1 shows the distribution of foreigners residing in Poland for over a year by nationality. The top four nationalities are the citizens of states neighbouring Poland: Ukraine, Russia, Germany and Belarus, with Ukrainians accounting for 20% of the total. While the census may have underestimated the number of migrants, the high representation of Ukrainians is confirmed by most qualitative research studies, including ours.

¹M. Duszczyk, J. Wiśniewski: *Analiza społeczno-demograficzna migracji zarobkowej Polaków do państw EOG po 1 maja 2004 roku* [Socio-demographic analysis of Polish labour migration to EAA countries since 1 May 2004], Institute of Public Affairs, Warsaw 2007.

² Information on Size and Directions of Emigration from Poland in years 2004-2006 (*Informacja o rozmiarach i kierunkach emigracji z Polski w latach 2004 – 2006*) of Central Statistical Office.

³ Estimates of the Institute of Public Affairs, Warsaw.

Fig. 1.



Source: National census, Central Statistical Office.

We lack sufficient data for the period since 2002, although the number of issued residence permits indicates that the number of immigrants is permanently growing. However, the growth is slow, e.g. in 2005, 9,364 people immigrated to Poland (long-term migration according to the UN's definition). The largest groups of immigrants granted temporary stay in Poland in 2005 were Ukrainians (12,914), followed by Germans (3965), Belarusians (3308), citizens of the Russian Federation (2066; many of whom were Chechen refugees), and the Vietnamese (1677).⁴

Migrants on the Polish Labour Market

The issue of immigrants working in Poland practically did not exist before the beginning of 1990s.⁵ As of 2007, the number of immigrants working in Poland is still quite low compared to other European countries, although a growth can be observed every year. The growing number of immigrants present on the Polish labour market shows that there is a demand for their work.

⁴ Calculations based on the statistics of The Head of the Office for Foreigners' (UDSC) statistics. See <http://www.udsc.gov.pl>

⁵ K. Iglicka, O. Olszewska, A. Stachurski J. Żurawska: *Dylematy polityki migracyjnej Polski*, Working Papers, Centre for Migration Research, University of Warsaw 2004.

The Polish immigrant labour market can be divided according to the legal status of employment into two sectors: regular and irregular employment. The sector of regular employment is dominated by professionals, experts (market analysts, members of managerial boards, directors, doctors, scientists, etc) and qualified workers (such as teachers, nurses, bakers, welders, machine operators, etc.). It is characterised by a high market demand, relatively good salaries and labour mobility. The irregular sector does not require any special skills and qualifications and it includes low paid, manual work, petty-trade, simple services, etc., i.e. activities that are not particularly attractive for the native Poles. In Poland, similar to other countries, this sector attracts many immigrants, mainly from Eastern European countries. It is called irregular since it is dominated by people who work without required work-permits.⁶

Three basic groups of irregular immigrants can be identified, according to the type of their activity: (1) seasonal workers from Eastern Europe dominating agriculture and construction; (2) shuttle migrants, rendering services to households in larger cities (caring for children and the elderly, cleaning), mainly recruited through informal networks from western Ukraine and Belarus⁷; and (3) employees of businesses legally established in Poland who are either not registered as employees or whose employment contract is not properly formalised.⁸

The number work permits issued every year to foreigners is rather steady; before 2004 it oscillated around 20,000, and for the last three years it has been falling (12,381 in 2004 to 10,304 in 2005, and 10,754 in 2006).⁹ The sudden decrease in 2004 and latter decrease in 2005 are related to exempting several categories of foreigners from the obligation of having a work permit. The tendencies observed in the first half of this year (5750 permits issued) confirm that the total number of the work permits remains more the less the same. A considerable number of foreigners also work in Poland legally, without requiring a permit. The estimates of the Ministry of Labour and Social Affairs and representatives of the regional offices (*Urząd Wojewódzki*) that issue the work permits point that the total

⁶ Further discussion of this division can be found in: K. Iglicka: *Ethnic Division on Emerging Foreign Labour Markets in Poland during the Transition Period*, [in:] *Europe-Asia Studies*, Vol. 52. No. 7, 2000, M. Duszczyk J. Korczyńska: *Zapotrzebowanie na pracę cudzoziemców w Polsce*, Institute of Public Affairs, Warsaw, 2005.

⁷ See also: *Regulacja migracji zarobkowej – wyzwania dla Ukrainy w kontekście polskich doświadczeń. Raport z badań socjologicznych przeprowadzonych wśród migrantów ekonomicznych z Ukrainy w Warszawie i okolicach*, Institute of Public Affairs, Warsaw: 2005; N. Parkhomenko: *Ukrainian Labour Migration in the Enlarged Europe*, Kyiv: CPCFPU/IPA 2005.

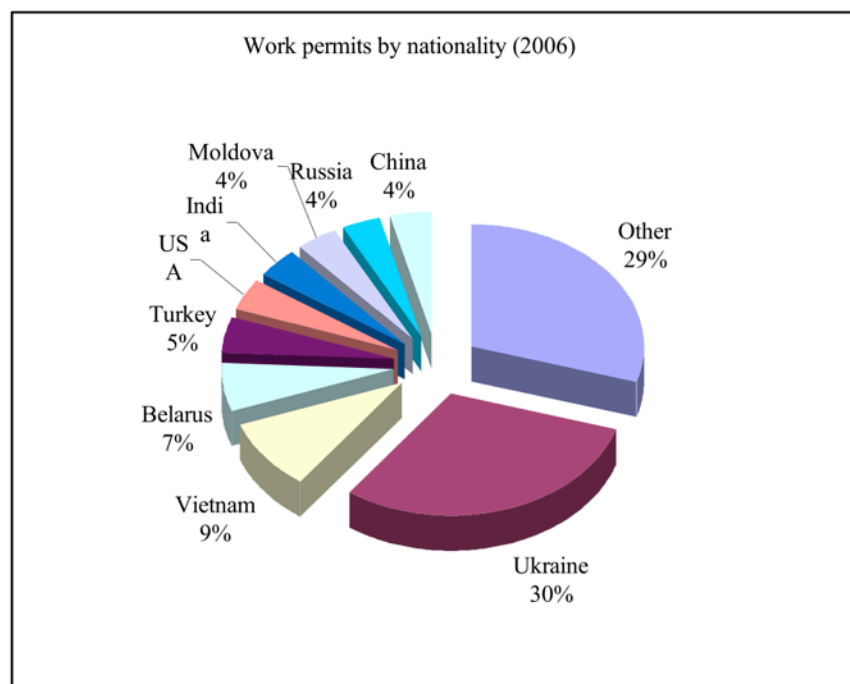
⁸ M. Duszczyk J. Korczyńska: *Zapotrzebowanie na pracę cudzoziemców w Polsce*, Institute of Public Affairs, Warsaw, 2005.

⁹ Statistics of the Ministry of Labour and Social Affairs

number of foreigners who can legally work in Poland may be much higher (even up to 100,000).¹⁰

According to chosen section of economy, as for 2006, the greatest number work permits issued to foreigners was in trade (2699) and industrial processing (2491) (see Fig. 2). Moreover, 1033 permits were issued in financial services and real estate, 848 in hotels and the restaurant business, 616 in education, 475 in the construction industry and 222 in the health and social services.

Fig. 2



Source: Office for Foreigners

Ukrainians dominate in these statistics. The number of work permits issued for them oscillates around 3000 a year (2588 in 2004, 2697 in 2005, 3275 in 2006 and 1739 in the first half of 2007).¹¹ They are followed by immigrants from Vietnam (999 permits in 2006) and Belarus (704 permits in 2006).

¹⁰ That does not mean that all of them do actually work in Poland; many may not even stay in Poland anymore. Look also: M. Bieniecki, M. Pawlak, 'Impact of Immigrants' Integration on Local Communities: the Polish case, Synthetic Report, (manuscript) Warsaw, October 2007

¹¹ Statistics of the Ministry of Labour and Social Affairs

The scale of irregular employment of foreigners is far larger, although precise estimates are lacking. Some analysts give the range of 50,000 to 300,000 persons annually taking up informal labour.¹² Irregular employment is found not only in the sectors where immigrants traditionally used to work in (construction industry, agriculture), but also in the professions that require specific qualifications (drivers, teachers, computer scientists). Available data show, that 10% of households that employed housekeepers, hired foreigners.¹³ Those foreigners are mostly women from Ukraine that help with cleaning and taking care of children or the elderly.

¹² S. Golinowska, *Popyt na pracę cudzoziemców. Polska i sąsiedzi* [Demand for Foreign Labour. Poland and Its Neighbours], Institute of Labour and Social Studies, Warsaw 2004.

¹³ Center of Social Opinion Research (CBOS).

Greater Openness of Policymakers to Labour Immigration

The recent outflow of Polish workers, the acceleration of economic growth and growing demand on the labour market all demonstrate that the Polish labour market needs foreign workers and that the foreign labour force may be one of the ways of filling the gaps on the labour market.

This situation can be illustrated by the recent opinion poll conducted in the construction industry. According to this poll there is a shortage of 200,000 of workers, basically due to emigration to EU countries. Almost a third of the respondents of the cited poll mentioned a situation where an employer wanted to hire an extra employee but could not find anybody with adequate qualifications or ready to accept the offered salary.¹⁴ A more recent analysis by KPMG revealed that 50% of companies suffer from the lack of potential workers on the labour market.¹⁵ A similar situation concerns agriculture and labour agencies that are searching for welders, mechanics, electricians, and ironworkers.

These gaps in the labour market are mostly filled by foreigners from the European part of the former Soviet Union (Ukraine, Belarus, Russia). Unfortunately, most of them work without necessary permits. Current regulations do not provide real incentives for them to legalise their employment. Without introducing any institutional solutions this situation may lead to the problem of a growing number of illegal immigrants in future.

The current restrictive system has been seen as becoming inadequate for the needs of the Polish market. The new situation on the labour market served as a catalyst for the limited liberalisation of some sectors of the Polish labour market. Finally the demand for foreign workers has become a subject of government interest. The first sign of this new way of thinking was the implementation of regulations allowing for seasonal work for Polish neighbouring countries, including Ukraine, Russia and Belarus. The regulations implemented on 1 September 2006¹⁶ have allowed citizens of these countries to perform seasonal jobs in agriculture without a work permit and in 2007 it was extended to the seasonal employment of Ukrainians, Belarusians and Russians in all sectors.¹⁷

In 2007, the public debate on how to address labour shortages in various sectors continued. It has been widely expressed by experts and practitioners that only cheap workers from abroad can ensure the relatively low and competitive level of salaries and

¹⁴ Communiqué: *Obcokrajowcy pracujący w Polsce*, Public Opinion Research Centre, Warsaw, October 2006, <http://www.cbos.pl>.

¹⁵ Migracje pracowników – szansa czy zagrożenie? KPMG report, Warsaw 2007.

¹⁶ Regulation of the Minister of Labour and Social Policy of 30 August 2006 on employment of foreigners without the need to obtain a work permit

¹⁷ Regulation of the Minister of Labour and Social Policy of 27 June 2007, amending the regulation on employment of foreigners without the need to obtain a work permit.

guarantee the profitability of foreign investment.¹⁸ In order to introduce more favourable conditions of employment of third country nationals, Poland had to fully open its labour market to the citizens of all EU countries first. The nationals of the two new EU member states, Romania and Bulgaria, have been granted access to the Polish labour market since 1 January 2007.

Additionally, at the beginning of 2007 the Ministry of Labour and Social Affairs announced plans to replace/amend the bilateral agreement between Poland and Ukraine¹⁹ and further regulations that would make the employment of foreigners at lower costs, faster and more flexible. The October decision to lower the cost of the work permit for foreigners from the level of a minimum salary (around 930 PLN) to 100 PLN was the next sign of the liberalisation.

Poland's entry into the Schengen area might have an impact on the supply of labour force from outside the EU. Considering significant gap in wages in construction or services, a part of the workers from the CIS might opt for travelling further westward on Schengen visas. While it is too early to conclude how many of the migrants from the CIS who have been coming to Poland are going to leave for other EU countries, the Polish press pointed to the threat already prior to Poland's Schengen integration in December 2007.²⁰

2.3. Ukrainian Labour Migration to Poland

Total Inflow of Ukrainian Migrants

Ukraine is the most important country of origin of non-EU nationals entering Poland. Ukrainians are the largest group among the citizens of the three CIS states neighbouring Poland. As many citizens of Ukraine enter Poland each year as the nationals of Belarus and the Russian Federation (mainly the Kaliningrad Region) combined (Fig. 3). Nearly 6 million entries were recorded in 2006 through the Polish-Ukrainian border, and this number has been increasing since 2004 (a rise of nearly 25% was recorded over those two years).

¹⁸ K. Bachmann: *Bez imigrantów Wrocław nie pociągnie*, Gazeta Wyborcza, 1 April 2007, www.gazeta.pl

¹⁹ A. Tyczyńska: *Bracia Kozacy, przyjeżdżajcie do pracy*, Dziennik Łódzki, 16 March 2007

²⁰ G. Miecznikowski: *Ukraińcy wyjadą, budowy staną*, Gazeta Wyborcza, 13 December 2007; E. Różańska, *Będziemy błagać Ukraińców: Zostańcie u nas*, Gazeta Wyborcza, 15 December 2007, www.gazeta.pl

Fig. 3.



Source: Polish Tourism Organisation (www.intur.com.pl)

Ukrainian economic migration to Poland started in the beginning of the 1990s, when the border regime was liberalised and both countries entered the process of free-market transformation. The differences in the economic development and wages (20-30 USD per month in Ukraine compared to over 200 USD in Poland at the end of the decade) stimulated cross-border trade and labour migration. In 1996, Poland and Ukraine signed an agreement that allowed Ukrainians to travel to Poland without a visa; the regime lasted until October 2003 when visas were introduced free of charge to Ukrainian citizens entering Poland.

Ukrainian migration to Poland tends to fluctuate in response to two major factors: the demand for labour and administrative procedures for entry. The slowdown of economic growth in Poland at the beginning of the decade was accompanied by a sharp decline in the arrivals of Ukrainians (by a quarter from 6.5 million in 2001 to 4.8 million entries in 2003). Despite a strong economic recovery taking off in 2003, the introduction of visas in October 2003 depressed the number of arrivals, which dropped further to 4.5 million entries in 2004. The introduction of free visas and the opening of two new consulates in Ukraine contributed to a much stronger recovery of traffic for Ukrainians compared to the other two eastern neighbours of Poland. However, the introduction of fees (35 EUR for Ukrainians and Russians and 60 EUR for Belarusians) is expected to dampen the interest in travelling to Poland again.

Still, Ukrainian migration is more resilient to the changes in the administrative regime than the other two eastern neighbours. The introduction of visas reduced the number of Ukrainian arrivals only temporarily. Ukrainians are the top nationality of recipients of Polish tourist visas (in 2004, 46% of all visas worldwide were issued in Polish consulates

in Ukraine, and the share rose to 47% by 2007). The interest in visas is not subsiding: while in 2004 575,000 visas were granted, the numbers rose by 9% to reach around 630,000 in 2006. In the first full year of the new regime, Ukrainians received over twice as many Polish visas as Belarusians and nearly three times as many as Russians.

Purpose of Entry

Throughout the decade of the 1990s, cross-border trade represented the dominant form of activity of travellers from Belarus, Russia and Ukraine to Poland. The Polish Ministry of Foreign Affairs estimated this purpose to account for half of the arrivals of the nationals of Russia and as many as 75% of the travels of Ukrainians and even 80% in the case of Belarusians. As long as no visas were required to enter Poland, the traders would visit Poland quite often, with a minimum frequency of 20 times a year and a maximum of even 300 occasions.

Throughout the 1990s, Ukrainians became an important element of the social landscape in all Polish border towns and the surrounding villages.²¹ By the end of the 1990s, hundreds of thousands of Ukrainians came to sell, buy and work.²² The border traffic was then dominated by shuttle traders (called by the locals ‘ants’) – people crossing the border there and back, many times a day, each time carrying the ‘legally allowed amount’ of spirits and cigarettes (1 litre of vodka and 10 packs of cigarettes) and other goods that they were later selling on local markets near the border.²³

Until the end of the 1990s the differences in salaries between Poland and Ukraine were so significant that any kind of work in Poland seemed very attractive to Ukrainians. It was partially caused by the fact that the western regions of Ukraine faced many economic challenges, including the fall of collective farming, the restructuring of coal mining and the collapse of the pension system among others. Therefore, those who came to sell goods on the local markets very often ended up also selling their labour—getting hired by Polish private people and entrepreneurs predominantly in the area of construction and agriculture. Out of those who found jobs in Poland, only a few worked legally.

Since the introduction of visas for Ukrainians in 2003, the border traffic has changed and many of the “Ukrainian markets” have disappeared from local landscapes. Nowadays, practically only alcohol and cigarettes are still carried across the border. Moreover, because of the new visa regime, the structure of the traffic has changed and now more Poles, who do not need visas to enter Ukraine, are shuttle traders rather than Ukrainians. The shrinking role of cross-border traffic has been accompanied by more Ukrainians

²¹M. Bieniecki, *Ukrainian labour migrations to Poland*, in: Marie Jelinkova, Ian Cook (ed.) *Visegrad Moves*, Multicultural Centre Prague, Warsaw 2007

²² K. Iglicka K., *Ethnic Division on Emerging Foreign Labour Markets in Poland during the Transition Period*, in: *Europe-Asia Studies*, Vol. 52. No. 7, 2000

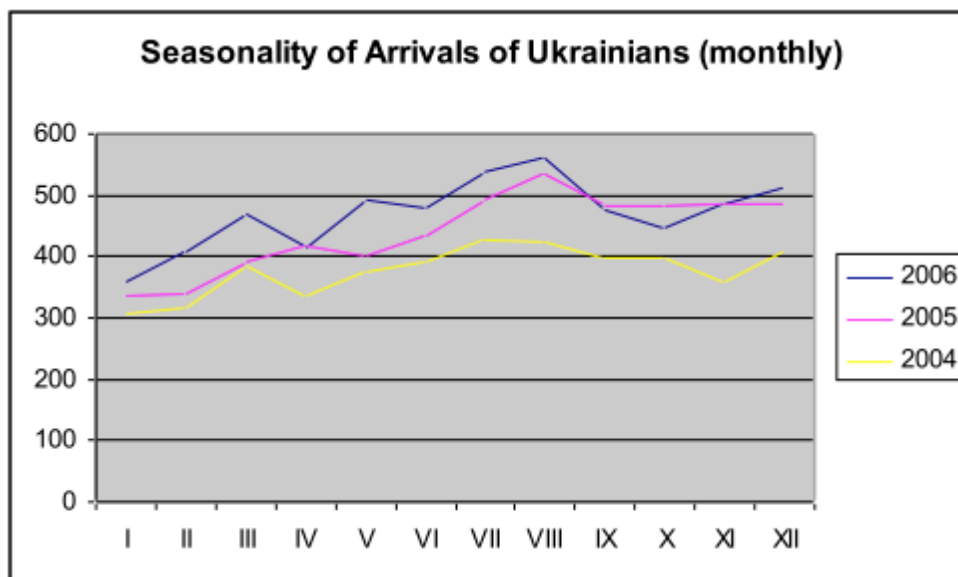
²³ M. Bieniecki, H. Bojar, J. Kurczewska, *Polish-Ukrainian Border Regions in the perspective of Polish Integration with the European Union. Diagnoses and prognoses*, Batory Foundation/PAUCI, Warszawa 2003

travelling further from the border to larger cities (mainly Warsaw) and agricultural regions (e.g. Warka, where there are many orchards offering a chance to work in agriculture).

The declining profitability of cross-border trade and the introduction of visas in October 2003 reduced the prevalence of this activity. However, as can be seen in Fig. 1, the impact of the shifting character of the trans-border movement affected the migration of the three nationalities to a varying extent. Compared to the steep decline and stagnation of the Belarusian migration, a dynamic recovery could be observed with regard to Ukrainian arrivals to Poland since 2004. Considering the reports of the continuing decline of interest among the eastern neighbours in cross-border petty trade, we may assume that much of the recovery is related to the growing demand for labour in several sectors (see Section 4.1 for further details). Although it is hard to estimate the prevalence of irregular employment, the higher numbers of travellers as well as the trends in regular work (see trends in work permits, Section 4.1.2.) indicate that Ukrainians can be assumed to account for a large part of the seasonal labour force.

Ukrainians' interest in short-term (seasonal) employment may be inferred from the analysis of the dynamics of their arrivals in various months of the year. The data for the past three years show a clear pattern (Fig. 4): July and August remain the top months for travelling into Poland, which are followed by the low season in September and October and reaching the lowest levels in the winter months of January and February. The trend reflects the high demand for labour in the warmer months in agriculture and construction. The seasonality of arrivals is reinforced by the administrative procedure for issuing tourist visas, which have been used to an overwhelming majority of Ukrainians for entering Poland since they were introduced in October 2003. Tourist visas allow Ukrainians to stay for 3 months in Poland within a consecutive six months, and a new visa may only be obtained for another quarter once the period of three months in which the person is away from Poland elapses. Thus, we may expect that these restrictions induce at least a significant part of the travellers to be away for several months during the year, concentrating their travel in the months when they can expect to generate the highest revenue.

Fig. 4.



Source: Polish Tourism Organisation (www.intur.com.pl)

The introduction of visas in 2003 has put some restrictions on the ability of travellers to cross the border as frequently, but a study conducted in 2004 reveals that Ukrainian travellers who have obtained a Polish visa tend to come to Poland far more often than German tourists. In fact, according to the surveys among Belarusians, Russians and Ukrainians, travellers from the CIS visited Poland 5.6 times a year on average (with 43% coming at least 5 times per year), compared to 2.1 times for Germans. They also came for longer periods of time—over three-quarters of the eastern visitors spent at least three nights in Poland (as opposed to short shopping sprees typical for Germans).²⁴

The arrival of CIS visitors (including Ukrainians) on tourist visas is not in fact related to tourism in most cases. This is evident from two characteristics of the applicants for Polish short-term visas. Firstly, most of them come from Poland's direct neighbourhood (and thus may be assumed to have visited the country previously). In 2006, nearly 450,000 visas out of a total of around 630,000 (or over 70%) issued were given out at two consulates near the Polish border: in Lviv and Lutsk, while fewer than 50,000 were processed at consulates in Odessa and Kharkiv (southern and eastern Ukraine).²⁵

²⁴ Eight rounds of surveys were conducted in 2004, commissioned by the Polish Institute of Tourism. See [<http://www.intur.com.pl/turysci2004.htm#wyd2004>]

²⁵ These results also apply for the other CIS states. In the first 15 months of the visa regime (October 2003–December 2004), over 68% of all visas issued to Belarusians, Russians and Ukrainians were processed at the consulates within 100 kilometres or less of the Polish border: Kaliningrad (Russia), Brest, Grodna (Belarus), Lviv and Lutsk (Ukraine). Source: *Raport z działalności polskiej służby konsularnej w roku 2003*; *Raport z działalności polskiej służby konsularnej w roku 2004*, Ministry of Foreign Affairs, Warsaw, 2004–2005.

Secondly, travel to Poland is rarely organised; instead, it has a largely informal character. While the travellers' statements may be considered only indicative, over 91% of the polled CIS nationals visiting Poland made individual arrangements, and nearly two-thirds sought accommodation outside of hotels or hostels. Here, the difference in the declarations of CIS residents and travellers from EU states to Poland is notable. If no visitors from the EU declared taking up short-time employment, 7% of those arriving from the CIS did so. As many as 64% of the eastern neighbours visiting Poland declared such reasons for entry as: business, individual or on behalf of a company. In contrast, half as many visitors from the CIS were interested in trade fairs, exhibitions or conferences as the German tourists were.²⁶

To conclude, migration from the CIS is largely economic in nature. Economic purposes for entry—work, shopping, and business—were named as the primary reason for entry into Poland by 41% of the surveyed visitors from the CIS. Only 24% of CIS visitors named transit as their primary reason for entering Poland. The declared destinations of travel do not coincide with tourist centres, but rather correspond to areas of seasonal employment. The majority of CIS visitors are interested in travelling to the central regions (Warsaw and Lodz areas) or to the eastern provinces, adjacent to Belarus and Ukraine (Podlaskie and Lubelskie). It is worth noting that the Warsaw area, and the Podlaskie and Lubelskie provinces are major agricultural regions. The crucial role of the demand for labour in attracting visitors from the CIS can be seen in the fact that another region neighbouring on one of the CIS countries, Warmia-Mazury, in the northeast of Poland, is not popular among visitors. The explanation might lie in the high unemployment rate and the low interest in an agricultural workforce in that region.

Incentives for Ukrainian Labour Migration to Poland

Based on our previous research, we can point out several factors that make Poland attractive for Ukrainian migrants:

- *Development of migratory networks.* Transition to a free market and democracy has stimulated cross-border economic, political and social contacts, including the development of personal ties. As a result, representatives of private companies, institutions, entrepreneurs, managers and consultants started arriving in Poland from Ukraine alongside other nations. Indirectly, greater demand for certain professions began to be observed in the late 1990s—such as doctors, nurses, teachers of foreign languages as well as shipyard and construction workers.
- *Wage gap between Ukraine and Poland.* However, the wage levels in countries of Western Europe remain far more attractive for Ukrainian migrants.

²⁶ Polish Institute of Tourism 2005 [<http://www.intur.com.pl/turysci2004.htm#wyd2004>]

- *Geographical location.* Since the borders were opened in 1989, Ukraine has turned into an important country, offering labour resources for the fast-growing Polish economy. Its workforce proved to be a match for the needs of the Polish market. The determining factors seem to be the geographical vicinity of densely-populated western Ukrainian regions (Lviv, Lutsk, Ternopil) and the availability of relatively cheap means of transportation (rail, bus, car). These aspects proved to be crucial for sustaining the seasonal shuttle migration, in which the migrants did not come to settle in Poland but chose to take up chance employment and return home periodically.
- *Access to the Polish market, especially the informal sector.* This is relatively easy due to the large scale of irregular forms of employment (unregistered, with oral contracts or untaxed) among Poles themselves. Migrants from the CIS continue to play an important part in the domestic help, construction and agricultural sectors.
- *Linguistic and cultural affinities.* Communication with Poles is relatively easy for the speakers of Eastern Slavic languages (Ukrainian, Belarusian, Russian), which is a favourable factor in integration. For residents of western Ukrainian regions, their long-standing historical and cultural ties, exposure to Polish mass media and culture and the presence of a large Ukrainian diaspora in Poland are additional factors helping migrants in overcoming the communication barriers.
- *Safety in the workplace and security in the neighbourhood.* These factors are appreciated by the migrants. Relatively small numbers of hate crimes or ethnically-motivated incidents as well as generally informal relations in small family-owned Polish companies have been beneficial for the integration process (see the sections on Relations with Poles and Discrimination).

There are, however, a number of disincentives for Ukrainian migration to Poland. First of all, Polish wages are not so attractive for Ukrainians anymore. Second, they can easily find more attractive jobs in Russia, Kazakhstan, Portugal (bilateral agreement on seasonal work) or other European countries (Czech Republic, Spain, Italy). Many of them perceive Poland as a stop on the way to the EU where they can earn more than in Poland. Among the respondents of the cited 2004 survey, around one-quarter of CIS residents declared transit as their reason for entering Poland.²⁷

2.4. Overview of Migration Research in Poland

In Poland, there are several institutions that focus on migration research. Among them there are:

²⁷ *Ibidem.*

Centre of Migration Research (CMR) is a research unit of the Faculty of Economic Sciences at Warsaw University.²⁸ The CMR was established in 1993 as an interdisciplinary group of researchers in order to undertake studies on migration in present-day Poland.

The Centre is focused on the international movement of people, integration and migration policy. It elaborates trends in international migration for the OECD and prepares the Polish chapter of the SOPEMI report. The results of its projects are presented in a series: the ISS Working Papers. Another institution of the Warsaw University dealing with migration issues is the **Institute of Social Policy** of the Department of Journalism and Political Sciences and Institute of Sociology.²⁹ Although migration is not the main field of interest of this unit, it has been involved in researching the problems of discrimination of immigrants and integration of refugees in Poland

Some research institutions in Poland specialise in various areas of migration: the **Silesian Institute**³⁰ in Opole concentrates on the migration of the Silesian population. **The Institute of American Studies and Polish Diaspora** (Jagiellonian University) focuses on diaspora studies and issues of multiculturalism. The **Institute of Labour and Welfare**, a scientific research institute under the supervision of the Ministry of Labour and Social Policy, undertakes research in the area of the labour market in Poland. The Institute issues the journal “Polityka Społeczna” (Social Policy).³¹

Two units of the Polish Academy of Sciences, **the Institute of Geography and History, Polish Academy of Sciences**, are also involved in the problem of migration. The former carries out research on the spatial structure of cities and its transformation, while the latter publishes analyses and organises events on migration in the historical perspective and issues the series “Migracje i Społeczeństwo” (Migrations and Society).

The Institute of Sociology at the Jagiellonian University of Cracow³² and the **Institutes of Sociology and Geography at Nicholas Copernicus University in Toruń**³³ conduct research projects on emigration as well as on the integration of Polish immigrants and they also carry out prepare studies on the legal status of migrants in Poland.

The Centre for International Relations (CIR) is a non-governmental research institute dedicated to the study of international relations issues. Its Migration and Homeland Security Program activities concentrate on the issues that concern the development of the

²⁸ <http://www.migracje.uw.edu.pl/>

²⁹ For more information see: www.ips.uw.edu.pl

³⁰ For more information see: www.instytutslaski.opole.pl

³¹ For more information see www.ipiss.com.pl, <http://weber.is.uw.edu.pl/>

³² For more information see: www-is.phils.uj.edu.pl/ang/index.html

³³ For more information see: www.soc.uni.torun.pl/; www.geo.uni.torun.pl/

European area of freedom, security and justice and migration problems.³⁴ Other research issues cover: migratory flows of workers and refugees and the transition of Poland from a country of emigration into a country of immigration.

There is also the office of the **International Organisation for Migration (IOM)** operating in Poland.³⁵ Together with the Foundation for Population, Migration and Environment, and the Institute of Geography and Spatial Organization of the Polish Academy of Sciences, it created the **Central European Forum for Migration and Population Research (CEFMR)**. It conducts research on various aspects (sociological, political, demographic, geographic, economic, legal, etc.) of internal and international migration.

And finally, **the Institute of Public Affairs (IPA)** is an independent, non-governmental research institute with its Migration and Eastern Policy Programme. It is focused on various issues concerning international migration, the foreign labour market in Poland, the integration of refugees as well as border and Schengen issues.³⁶

Apart from the institutions involved strictly in migration studies, there are also institutions that focus particularly on border migrations and transborder traffic. Among such institutions there are sociology departments of Bialystok University (involved in the Polish-Belarusian border studies), Rzeszow University (the Polish-Ukrainian border), Silesian University (the Polish-Czech border) and Zielona Góra University (the Polish-German border). In context of modern migrations, the border studies focus mainly on shuttle trade and migrations within the border regions (family related migrations, transborder shopping, use of services as well as various illegal and criminal activities)

Another field of research was also developed: the study on the trafficking of migrants in Poland. The research sponsored by the International Organisation for Migration revealed the dominant mechanisms of trafficking. Other research concluded that the mobility resulting from trafficking often leads to a longer undocumented stay of a migrant on the Polish territory. Poland is usually treated as a stopover to other countries.³⁷

Since the beginning of the current decade, immigration research has become more sophisticated. New areas were expanded that are interesting in the context of this research on foreign labour in Poland and other issues related to immigration, including integration, discrimination and the perception of immigrants.

The general conclusion of labour market research was that the market has become segmented (like in other EU states) with migrants from Eastern Europe employed as manual workers and those from developed rich countries working as managers, directors,

³⁴ For more information see: www.csm.org.pl

³⁵ For more information see: <http://www.iom.pl/iom-218.html>

³⁶ For more information see: www.isp.org.pl

³⁷ e.g. Głębicka K., T. Halik, A. Sawicka, *Studia nad przerzutem migrantów. CMR Working Papers*, No 23. Warszawa 1999

experts, specialists, etc. Immigrants from Asia (mostly Vietnamese) are concentrated in small-scale companies.³⁸

There is an agreement in the literature that there is a discrepancy between legal and illegal employment and that there has been a growing demand for their work.³⁹ Some provided an analysis of the demand for foreign labour in the Polish economy and concluded with a recommendation that there is a need to introduce an effective and selective migration policy targeting foreign workers.⁴⁰ Others defined niches and gaps of the labour market that have appeared recently due to a number of reasons: EU enlargement, economic growth and emigration of Poles and postulates concerning migration policy.⁴¹

The situation of Ukrainian immigrants on the labour market was the subject of a report published by the Institute of Public Affairs' report based on sociological research conducted in Warsaw.⁴² It confirmed the diverse division between legal and illegal workers and the consequences of this situation for their life strategies, relations with the hosting community, self-identity, etc. According to the report, there is a growing acceptance of Ukrainians at work and in everyday life. Poles in general do not treat Ukrainians as a threat on the labour market. The respondents confirmed the marginal role of the Ukrainian minority organisation perceived as a lobby of the Ukrainian ethnic diaspora.

The general negative opinion about regulations concerning access to the labour market and receiving work permits was expressed by a number of studies. According to this analysis, Poland was not perceived as a very attractive destination country and thus a majority of immigrants did not plan to settle there permanently.⁴³

Considering the largest groups of immigrants in Poland, migrants from Ukraine and other bordering countries of the former Soviet Union are not the subject of in-depth research. Surveys and studies carried out in 1990 targeted mostly Ukrainian petty traders and

³⁸ A. Kicinger, A. Weinart, State of the Art of the Migration Research in Poland, CMR Working Papers, Warsaw University, November 2007

³⁹ S. Golinowska, Popyt na pracę cudzoziemców. Polska i sąsiedzi Warszawa 2004, IPiSS.

⁴⁰ Korczyńska J., M. Duszczyk *Zapotrzebowanie na pracę cudzoziemców w Polsce*, Institute of Public Affairs, Warsaw 2005, J. Korczyńska, P. Kaźmierkiewicz. Regulacja migracji zarobkowej – wyzwania dla Ukrainy w kontekście polskich doświadczeń, Institute of Public Affairs, Warsaw 2005.

⁴¹ M. Bieniecki, J. Frelak, Analizy i Opinie nr 75- maj 2007. *Praca cudzoziemców w Polsce rozwiązaniem problemów na rynku pracy*, Institute of Public Affairs, Warsaw 2007;

⁴² Raport z badań socjologicznych przeprowadzonych wśród migrantów ekonomicznych z Ukrainy w Warszawie i okolicach, Institute of Public Affairs, Warsaw 2007;

⁴³ H. Bojar, A. Gąsior-Niemiec, M. Bieniecki, M. Pawlak, migranci na rynku pracy w Polsce wyniki badań przeprowadzonych wśród migrantów ekonomicznych i pracowników polskich, Institute of Public Affairs, Warsaw 2005.

shuttle migrants.⁴⁴ Other scientists provided a comprehensive overview of Ukrainian immigrants' settling in Poland with particular attention paid to mixed-marriages.⁴⁵

The research on the perception of immigrants in Poland became a subject of interest after 1989. On the whole, research on the attitudes of Polish society towards migrants included surveys monitoring the attitudes towards migrants and studies analysing the perception and relations between immigrants and the host society.⁴⁶ In general the results showed a shift from a relatively welcoming attitude at the beginning of the 1990s to increasing distrust at the end of the 1990s connected mainly with the economic downturn and unemployment. Around the time of EU accession there was an increase of tolerance towards immigrants in Poland.⁴⁷

Probably because of the relative novelty of this social phenomenon, research on different aspects of immigrants' presence in Poland, integration or discrimination is at the moment quite limited. Initial projects on discrimination against minorities and integration have been recently launched.⁴⁸

Some studies focusing on xenophobia and discrimination have been conducted by the Institute for Public Affairs.⁴⁹ An example is the research carried out for the project Xenophob by the Warsaw University and the Institute of Public Affairs.⁵⁰ According to this research, discrimination has become a visible subject of public debates in Poland in recent years, although it has not yet been defined by the institutional system of Poland. Immigrants do not experience any systemic and reoccurring practices of institutional discrimination in Poland neither in the sphere of the labour market nor in the educational system. The research has shown that accidents of direct discrimination (e.g. the attitudes of the civic servants, uninformed or having some resentments, opinions, and

⁴⁴ D. Stola. Rodzaje i mechanizmy migracji zarobkowych do Polski [Types and mechanisms of economic migrations to Poland], *CMR Working Papers*, No 11. Warszawa 1997; Antoniewski R. Przyczynę do badań nad nieformalnym rynkiem pracy cudzoziemców. Funkcjonowanie 'gieldy pracy' w jednej z podwarszawskich miejscowości, *CMR Working Papers*, No 3. Warszawa 1997.

⁴⁵ E. Kępińska, Mechanizmy migracji osiedleńczych na przykładzie małżeństw polskoukraińskich, *CMR Working Papers*, No 40. Warsaw 2002.

⁴⁶ Such public opinion polls are conducted every year by CBOS. .

⁴⁷ A. Kicingier, A. Weiner, State of the Art of the Migration Research in Poland, *CMR Working Papers*, Warsaw University, November 2007; Łodziński S. Opinie i postawy mieszkańców Polski wobec migracji i cudzoziemców w świetle badania opinii publicznej, *Ekspertyza BSE* No 200,. Kancelaria Sejmu, Biuro Studiów i Ekspertyz,,Warsaw 2002

⁴⁸ A. Kicingier, A. Weiner, State of the Art of the Migration Research in Poland, *CMR Working Papers*, Warsaw University, November 2007

⁴⁹ K. Iglicka, Integracja czy dyskryminacja? Polskie wyzwania i dylematy u progu Wielokulturowości, Institute of Public Affairs, Warsaw 2003

⁵⁰ Project website: http://www.multietn.uu.se/research/eu_dilemma/index.htm, Publications concerning Poland: www.isp.org.pl

ambivalences towards immigrant clients) or indirect discrimination (e.g. limited institutional access to workplaces) occur sporadically but that they do not take the form of institutionalised practices.

One may say that due to the limited number of studies covering both the labour market and the Ukrainian community, this new study will shed more light on the topic of economic immigration to Poland

3. Methodology

This report is the result of research aiming to investigate the working and employment conditions of migrant workers, with a special focus on Ukrainians who are the largest group of economic immigrants in Poland. In particular, attention is paid to abuses of foreign workers' rights and awareness of their rights among the Polish employers and Ukrainian employees, both legal and illegal.

The research report is based on analysed interviews supplemented by available secondary data. It is based on 41 in-depth interviews with Ukrainians working in Poland, employers and experts or practitioners involved in the issue of migration and the labour market in Poland. The majority of interviews were conducted in the Warsaw area, where the Ukrainian workers are concentrated and where they are employed in a variety of sectors. The secondary data included reports from previous sociological studies of Ukrainian migrant workers in Poland, official policy and statistical reports, a review of the press coverage as well as monographs and comparative studies.

Employee interviews were held with Ukrainian workers in several sectors and with different skill levels (e.g. domestic help, construction workers, farmhands, confectioners, Ukrainian managers, an investment risk analyst, a doctor, travel agent, a baby-sitter, and an employee of a non-governmental organisation). The sampling of the interviews with legal *workers and employees* was done on the basis of lists of enterprises that had received permits for the employment of Ukrainians, obtained from the regional labour office in Warsaw. The irregular employees were sampled on the basis of earlier research conducted among Ukrainians in Poland. Additionally, a set of informal conversations and observations was conducted at an informal labour marketplace in a Warsaw suburban area.

The choice of the *employers* was made on the basis of lists of enterprises that had received permits for the employment of Ukrainians, obtained from the regional labour office in Warsaw and supplemented with employers who hire Ukrainians illegally. A great diversity of sectors was investigated during employer interviews (construction development, cleaning, transportation, public and private education, catering, confectionery, health care, language study, agriculture).

Experts and practitioners were sampled from the circle of people involved in the problem of migration, labour market and Ukrainian issues. The expert interviewees included: an

official in charge of work permits, senior labour inspectors, a member of labour union authorities, an expert from the Ministry of Labour and Social Affairs, Ukrainian Consuls, NGOs assisting migrants, and Border Guards).

While conducting interviews the research team paid special attention to ensure the anonymity of respondents, especially since interviews with both employers and employees concerned sensitive issues. After coding the transcripts of interviews they were analysed thematically according to the classified patterns. The next step was to build a valid argument supported by reading the related literature and previous research experience on the topic.

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4. Findings/Analysis of Results

4.1. The Migrants' Position on the Labour Market

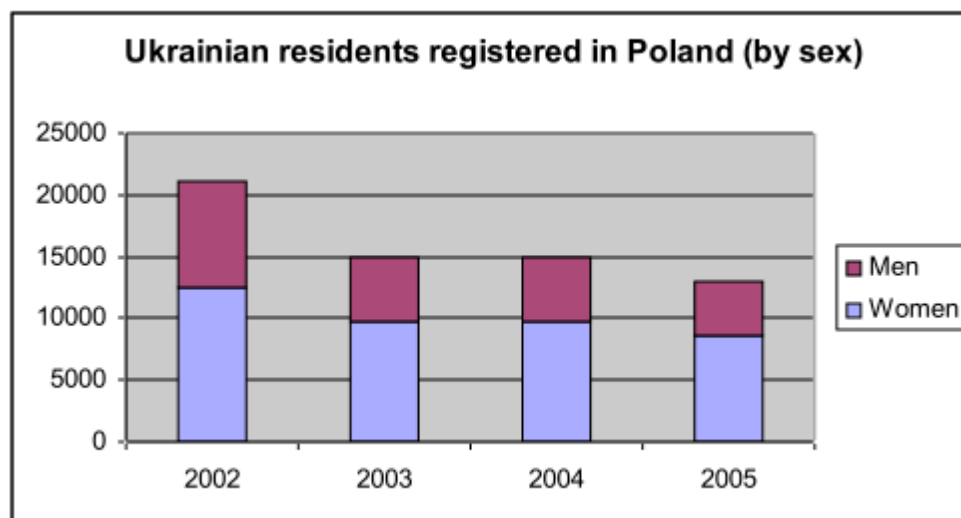
4.1.1. Legal Status of Ukrainian Workers

Ukrainians Legally Residing in Poland: An Overview

As we argue throughout the report, the legal status of residence and employment has a significant impact on the position of the migrants on the labour market. However, for a number of reasons enumerated below, many Ukrainians entering Poland and present in the labour market never register their activity. This produces a large gap in the statistics of the employment of Ukrainians who thus become 'invisible' to the state institutions responsible for the management of the labour market or the protection of workers' rights. The gap may be observed when the estimates of the Ministry of Foreign Affairs are compared with the numbers of persons arriving from Ukraine who register their residence for over 2 months. On the one hand, in 2004 over 4.5 million arrivals were recorded from Ukraine and a total of 575,400 visas were issued to the citizens of Ukraine.⁵¹ Since such visas can be issued only twice a year to the same person, conservative estimates would indicate that at least around 290,000 Ukrainians entered Poland, and the maximum count would go up to 900,000 (an average of 5 entries per person). On the other hand, in that year, a mere 15,000 Ukrainians registered a stay of 3 months and longer in Poland (Fig. 5).

⁵¹ The discrepancy between the number of arrivals and issued visas stems from the fact that virtually all the visas issued allowed multiple entries. Source: Ministry of Foreign Affairs, Report on the Consular Service 2005.

Fig. 5.



Note: Includes all persons who registered for a stay of over 2 months in Poland and indicated Ukraine as their previous country of residence. Source: SOPEMI Poland reports 2003-2006.

Thus, we may refer to two groups of Ukrainians actually residing and employed in Poland—those who enter Poland legally and either legalise their actual purpose of residence and those who choose to violate the residence and labour regulations by taking up employment while on a tourist visa. As evident from the statistics provided above, the latter group is much larger. Their decision violates Polish law and may potentially lead to expulsion and a temporary ban on re-entry, but is economically rational for them. Firstly, tourist visas to Poland were until November 2007 free of charge, available from five consulates throughout Ukraine, and the rejection rate was insignificant. In contrast, the opportunities for legalising employment or prolonged residence are far more difficult. Work permits are very difficult to obtain (the procedures are long, complicated and costly). Moreover, many Ukrainians do not even want to obtain a permit because that would mean having to pay taxes, and in that situation they would receive smaller salary and be less competitive. In turn, obtaining temporary and long-term residence requires proving secured accommodation and a stable legal source of income (in fact, a permanent job contract in most cases).

The scale of this illegal employment has never been properly estimated. However, the gap between the number of arrivals of Ukrainians and of work and residence permits granted to them since 1992 points to a stable phenomenon of mass irregular employment of Ukrainian nationals in Poland. The estimates of the number of foreign workers in Poland vary. Some analysts indicate a range of 50,000 to 300,000 persons annually taking

up informal labour;⁵² others estimate foreigners working seasonally in Poland to be much higher, stating that their number can reach between 100,000 and 600,000.⁵³

Categories of Ukrainians Taking Up Legal Employment in Poland

Basically, there are two routes for undertaking legal employment by non-EU nationals in Poland.⁵⁴ The majority of those choosing to take up legal work go through the procedure of obtaining a work permit. These include those Ukrainians who have been offered contracts by their prospective employers in Poland. They need the permit to legalise their residence with the purpose of employment as well as the holders of temporary residence permits, who may receive a work permit without the need to leave Poland. The other persons are those migrants from Ukraine who no longer need to apply for a permit to take up legal employment in Poland. These are, firstly, the holders of long-term residence permits (in particular, so-called settlement permits) and persons who have been granted Polish citizenship (in exceptional cases, they may retain their Ukrainian citizenship). Secondly, a list of sectors and categories of foreign workers who are exempt from the requirement to apply for a work permit has been developed and continually expanded.⁵⁵

The total numbers of the groups may only be estimated. The number of long-term residents originating from Ukraine is 11,530 persons, including Ukrainian citizens who have been granted permanent residence status in Poland since 1989. Between 1992 and 2006, 2358 Ukrainians have obtained Polish citizenship⁵⁶ and 9172 were issued permanent residence permits and permits for settlement in Poland.⁵⁷ However, some of them could have been counted twice (as settlers and as citizens) as some have obtained different kinds of permanent residence status. The group of Ukrainians staying in Poland

⁵² S. Golinowska (ed.) *Popyt na pracę cudzoziemców. Polska i sąsiedzi*, Institute of Labour and Social Affairs, Warsaw 2004

⁵³ P. Koryś, A. Weiner, "Poland" in: *Immigration as a labour market strategy - European and North American Perspectives*, Warsaw 2005.

⁵⁴ The procedures of employment of foreigners are described in Act on the Promotion of Employment and Instruments of Labour Market of 20 April 2004 (Journal of Laws 2004, no. 99, pos. 1001). This statutory law with updates and related documents describe conditions of employment of foreigners and define the categories of foreigners who are exempt from the obligation of obtaining the work permit. According to the most recent update, among those who do not need a work permit are: citizens of the European Union states, refugees who were granted asylum in Poland, foreigners with permanent residence status, and few other categories.

⁵⁵ See excerpts from the Ordinance of the Minister of Labour and Social Policy of 30 August 2006 in Annex F.

⁵⁶ Source: The Head of the Office for Foreigners (UDSC). The number accounts for the citizenships granted by President; in some years also regional offices were granting citizenships as an administrative decision).

⁵⁷ Source: own calculations based on UDSC statistics.

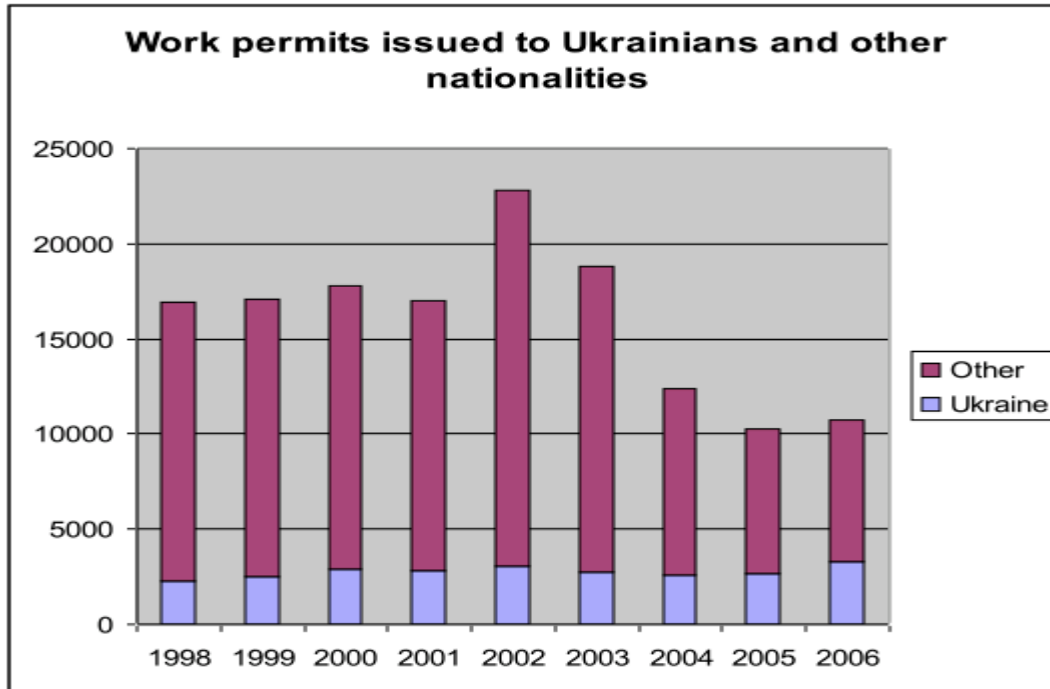
on the basis of temporary residence permits is much higher (i.e. 7733 in 2006).⁵⁸ These annual figures cannot be added up, since the holders of these permits need to renew them every two years.

Work Permits and Self-Employment

The number of work permits has decreased in recent years as more and more categories of foreigners are exempted from this requirement. However, the numbers of permits issued to Ukrainians actually rose by around one-third between 1998 and 2006 (from 2311 to 3275 permits) as it can be seen in Fig. 6. A brief decline between 2003 and 2004 was due to the restrictions on entry and strengthening of controls on the legality of employment, associated with Poland's entry into the EU. The number is growing again, with the strongest growth recorded in 2006 when over 21% more permits were accorded. The year 2007 promises to continue this rise (1739 permits were issued to Ukrainians in the first half of 2007 compared to 3275 in the whole of 2006). However, it remains to be seen whether the full integration of Poland into the Schengen area on 21 December 2007 is going to decrease interest in Polish work permits as Ukrainian migrants might opt to search for employment in other EU states once the border controls are removed on the borders with Germany, the Czech Republic and Slovakia.

Fig. 6.

⁵⁸ Source: UDSC statistics.



Source: SOPEMI reports 2000-2004. and data of the Ministry of Labour and Social Policy

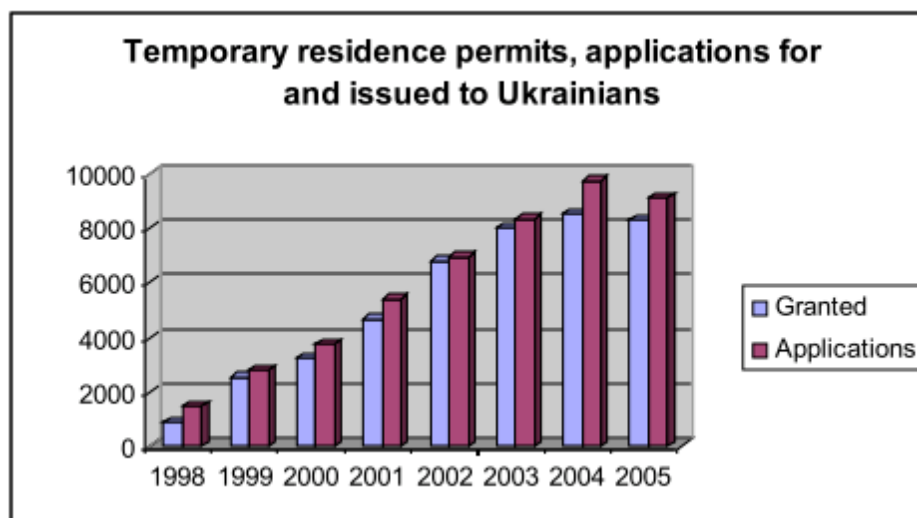
Self-employment is another legal solution for the regular economic activity of a foreigner in Poland. Because of the legal regulations, which make the legal employment of non-Polish citizens very complicated, it is easier to open one's own business than to go through the procedure of employment in any company. Self-employment is also the easiest way to obtain a temporary or permanent residence permit, and—as most of the immigrants we interviewed stated—this is the only way to make decent money in Poland. It is worth adding that such a form of employment is very popular not only among immigrants but also among Poles themselves.

Residence Permits

Residence permits have over time become important instruments for facilitating the non-EU foreigners' employment in Poland. The procedure for legalising residence assumes that a foreigner needs a source of financing his or her subsistence in Poland to obtain the first temporary residence permit valid for two years. It may be granted also to persons who can demonstrate other ties with Poland, such as asylum granted by the Polish government, studies, marriage to a Polish citizen or an EU long-term resident. The permit is renewable and allows for search for employment and applying for a work permit without the need to leave Poland.

As with work permits, various categories of foreigners no longer need to apply for temporary residence permits—in particular, since 2004, EU nationals have been placed in a separate, facilitated regime for residence registration. In contrast, as it is the sole entry into the system of legal long-term residence, a temporary residence permit has been increasingly sought after by the non-EU nationals. Between 1998 and 2004, the number of permits received by the Ukrainians rose over sixfold. By 2004, Ukrainians became the top nationality among the recipients of this type of permit, accounting for around one-third of all foreigners granted this permit (Fig. 7). Apart from establishment of a business, marriage to a Polish citizen became important grounds for awarding the permits, especially to Ukrainian women. This resulted in the increasing feminisation of Ukrainian long-term immigration – while fewer than 60% of Ukrainians registered in Poland for a stay of a year or more were women in 2002, the share rose to 66% in 2005. (see Fig. 5). It is worth noting that since Poland's accession to the EU the share of applications that were rejected rose—if in 2002 and 2003 the difference between the number of applications and permits granted amounted to 474 or 3.1%, it rose in 2004 and 2005 to 2060 or 10.9%. The greater restrictiveness could be attributed to the implementation of EU regulations on combating marriages of convenience and more stringent requirements on the available financial resources.

Fig. 7.



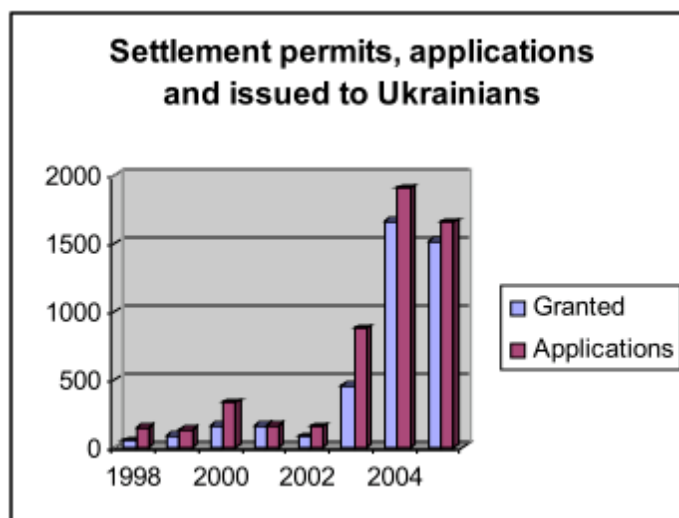
Source: SOPEMI reports; Office for Repatriation and Aliens (www.uric.gov.pl)

Another step towards securing the foreigners' residence status is acquiring a settlement permit (the Polish designation of a long-term residence permit). It is granted to the few foreigners who can document a five-year period of residence in Poland on the basis of temporary residence permits. During the procedure, the applicants are required to demonstrate their ability to sustain themselves and provide proof of accommodation (rental contract or mortgage documents).⁵⁹ The relative stringency of the requirements is justified by the wider range of rights accorded to the holders of the permit. They may conduct business or work without the need for an additional permit (with the exception of posts in civil service, restricted to Polish nationals). The status is the basis for applying for Polish citizenship in the future.

Few Ukrainians applied for the settlement permit until 2003 (Fig. 8). In the five years between 1998 and 2002 only 920 Ukrainian nationals placed their applications. In 2003 alone, nearly as many applied (877), and the number doubled in the year of accession. The high interest continued, albeit at a lower level, in 2005, when 1654 applications were made. Ukraine occupies the first place among the countries of origin of applicants for this status—accounting for over 37% of granted permits in 2004.

⁵⁹ Foreigners married to Polish citizens are entitled to a reduced waiting time for the settlement permit—2 years with a temporary residence permit and at least 3 years of marriage.

Fig. 8.



Source: SOPEMI reports; Office for Repatriation and Aliens (www.uric.gov.pl)

The recent dynamic growth can be explained by a combination of two factors: since 2003 more and more Ukrainians qualify for the status as they may prove residence on the basis of Polish temporary permits, and the increasing restrictions on entry on the basis of tourist visas leaves long-term residence as the only viable option for those who plan on retaining contact with Poland on a permanent basis.

Bilateral Agreements on Labour Migration

One instrument of managing the flow of labour migration from Ukraine could be a bilateral agreement. In 1994, Poland and Ukraine signed the bilateral agreement on employment of Polish and Ukrainian citizens.⁶⁰ However, this agreement has not had a significant impact on the labour migration between the two countries.⁶¹ According to the agreement, the employees are under the protection of the hosting state labour regulations, so in the case of Ukrainian workers they are under the protection of the Polish Labour Code. The agreement states that the employee is not allowed to perform any gainful activity except the one for which the work permit was issued. The employment can exceed 12 months only in special cases. The present procedure places the responsibility

⁶⁰ *Agreement between the Government of the Republic of Poland and the Government of Ukraine on mutual employment of workers*, signed 16 February 1994, entered into force on 19 December 1994..

⁶¹ A. Tyczyńska: *Bracia Kozacy, przyjeżdżajcie do pracy*, Dziennik Łódzki, 16 March 2007

on the Polish employers to submit all the necessary documentation as well as pay fees for placing the applications.⁶²

The document was the first in a series of three parallel agreements signed in 1994-1995 with the eastern neighbours of Poland. It could be praised for its generous provisions: it allowed employment for up to a year (and two years for delegated workers), which could be extended for another six months. Furthermore, no limits on the number of workers were placed. However, the agreement basically remained a dead letter and covered only a minimal numbers of workers. This resulted from the lack of interest of either the Polish employers or the Ukrainian workers. The employers have been dissatisfied with the fact that under the terms of the agreement they would still need to apply for individual work permits for their Ukrainian labourers. In turn, the potential employees chose to enter Poland as part of a waiver on tourist visas, introduced two years later.

Our research confirms the negative assessment of the implementation of the agreement. The interviewed experts were not referring to such agreements. They all stressed that all the regulations that deal with people working in Poland concern all workers, including foreigners. The only exemptions are the regulations concerning these immigrants who need a work permit in order to work in Poland. The agreement between Poland and Ukraine on seasonal work is not operating as it does not facilitate the labour migration between the two states and refers to national regulations as preconditions for employment.

Only the liberalisation of Polish legislation, on which the agreement is based, had an impact on the legal labour market for Ukrainians. This consisted of the entry into force of amended regulations on the management of the Polish labour market in 2004, followed by a set of sector-related measures, waiving the requirement of testing whether a given position could be occupied by a Pole and lowering the costs of the procedure for obtaining a work permit. The changes on the Polish market have been so fundamental, however, that a new agreement is needed, which would include a list of guarantees for the legal workers and address the current disadvantages. These are described in more detail in Section 4.1.3.

4.1.2. Composition of Ukrainian Labour Migration in Poland

When analysing the concentration of immigrants on the labour market, three main sectors can be distinguished. The first refers to trade and services, second to education, in particular of foreign languages and the third—to the industry sector. It is worth stating that immigrants originating in a particular country very often ‘specialise’ in particular

⁶² Bieniecki M., Frelak J., Non-Poles on the Polish Labour Market- Problems and Challenges, Gliwice 2006

sectors (the Vietnamese focus on clothes trade and food, Ukrainians work in agriculture, construction, and shipyards, etc.).

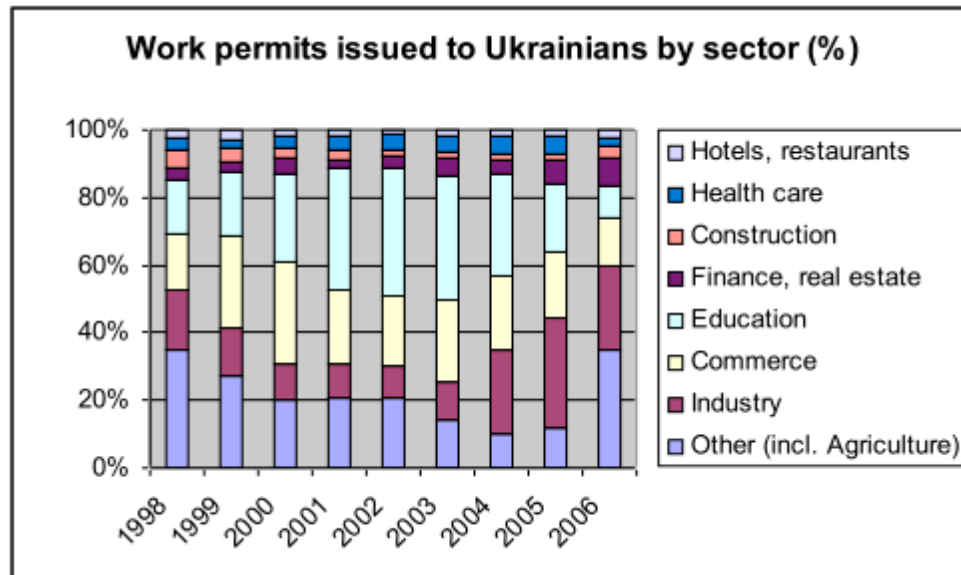
Legal Employment by Sectors

Analysing the presence of migrants in certain sectors one may say that no one sector in the Polish economy is closed to migrants; however, various regulations put considerable limits on foreigners' employment in the public sector. Only Polish citizens are entitled to work in civil service in Poland, though this regulation appears justifiable, especially that there are no obstacles for naturalised immigrants to enter it (there are a few foreign-born mayors and members of parliament). It should be stressed that they do not regard this sector as a target. There is also a considerable group of highly qualified foreign experts providing advisory services for public administration.

The analysis of the structure of work permits by sector indicates some trends regarding the legal employment of Ukrainians in Poland. Fig. 9 illustrates the dynamics of work permits issued to Ukrainians. Two phases can be observed.⁶³ Prior to the introduction of a visa regime in 2003, a continual shift away from the primary sectors, involving unqualified manual workers took place and more and more permits were issued in services and commerce. In 1998, the shares in the two sectors were comparable—37.5% of the permits were granted in industry, agriculture and construction, and roughly a similar part (39.5%) was issued in commerce, finance, health care and education. By 2000, the primary sector share dropped to 15% and remained at this level until 2003. In the same period, the four service sectors grew to account for 63% and 71% respectively.

Fig. 9.

⁶³ See also Golinowska, *op. cit.*, p. 156.



Source: Statistics of Ministry of Economy and Labour, 1998–2002, National Labour Office, 2003, Ministry of Labour and Social Policy 2004–2007.

Since 2004, the trend towards services has been reversed, with only one-third of permits granted for work in the four service sectors in 2006. Particularly large declines were observed in education (a decrease from 36% in 2003 to slightly above 9% three years later) and commerce (down from 24 to 14% in that period).

The analysis of these trends leads to several conclusions. Firstly, opportunities for legal employment of Ukrainians in Poland are closely dependent on the changes in the administrative regime. Although the observations of the demand for Ukrainian labour show that agriculture and construction have consistently attracted migrants,⁶⁴ the numbers of permits issued to Ukrainians in these sectors declined between 1999 and 2004. The striking rise in the numbers since 2005 may only be explained by the increased willingness of officials to approve these requests.

Secondly, remaining bureaucratic obstacles (such as complicated procedures of recognition of qualifications) continue to limit the employment of skilled migrants, especially in the public sector. The rise of legal employment in education that took place between 1999 and 2003 was not sustained in later years. Similarly, despite modest increases in the number of medical personnel from 2001 to 2005, the growing shortage of hospital staff is not likely to be addressed through Ukrainian immigration—in 2006, a drop in the number of permits to doctors and nurses from Ukraine was seen, and the data for the first half of 2007 are not much better.

⁶⁴ R. Antoniewski, I. Koryś, *Imigranci o nieuregulowanym statusie: społeczne i ekonomiczne aspekty funkcjonowania w Polsce* [Immigrants with unregulated status: social and economic aspects of their functioning in Poland], Warsaw University 2002

Finally, the structure of issued permits reflects the actual sectoral distribution of Ukrainian workers to a very limited extent. Some sectors are adequately represented in the sample of permits issued as it is virtually impossible to work in these parts of the economy in an unregistered manner. Education or finance and real estate are professional services which require certification of skills and are likely to be the object of controls of the legality of employment. In contrast, restaurants, domestic help, construction or agriculture are seriously underrepresented in the legal employment regime. A low number of Ukrainians employed in restaurants is due to the large scale of irregular employment in the sector in general, applying to the nationals of Armenia, China, Turkey or Vietnam.⁶⁵

Irregular work by sectors

A study by Korczyńska/Duszczyk identifies three groups within illegal foreign labour in Poland, according to the type of activity: 1) seasonal workers, mainly recruited in Ukraine and to a lesser extent Belarus or Russia, dominating agriculture and construction; 2) shuttle migrants, rendering services to households in larger cities (care for children and the elderly, cleaning), mainly recruited through informal networks (word-of-mouth advertising) from western Ukraine and Belarus⁶⁶; and (3) employees of businesses legally established in Poland who are either not registered as employees or whose employment contract is not properly formalised.⁶⁷

The unregistered Ukrainian workers have been active predominantly in the sectors that do not require any special skills and qualifications: manual work, petty-trade, simple services, etc. – in general, involved in these activities that are not particularly attractive for Poles. According to a poll taken in 2005, 10% of households that employed housekeepers, hired foreigners. Those foreigners are mostly women from Ukraine that help in cleaning, taking care of children or seniors. Current regulations do not provide real incentives for them to legalise their employment (as the required formal procedures

⁶⁵ M. Duszczyk, J. Korczyńska 2005, *op.cit.*, p.22

⁶⁶ Besides their niche character, some other factors that explain a large share of immigrants from neighboring Eastern countries in these sectors include: geographical proximity, easy access to the country (cheap or free as in the case of Ukrainians, multiple entry visas), well developed migratory networks, etc. See also: Bieniecki M., Bojar H., Frelak J., Gąsior-Niemiec A., Kurczewska J., Pawlak M. (2005b), *Regulacja migracji zarobkowej – wyzwania dla Ukrainy w kontekście polskich doświadczeń. Raport z badań socjologicznych przeprowadzonych wśród migrantów ekonomicznych z Ukrainy w Warszawie i okolicach* [Regulation of Labour Migration: Challenges for Ukraine In Light of the Polish Experience. Report from Sociological Research Conducted Among Economic Migrants from Ukraine In Warsaw and Surroundings], Warsaw: Institute of Public Affairs 2005; N. Parkhomenko, *Ukrainian Labour Migration in the Enlarged Europe*, Kyiv: CPCFPU/IPA 2005.

⁶⁷ M. Duszczyk, J. Korczyńska 2005, *op.cit.*, pp. 21-22

and social-security charges would make this category of workers uncompetitive versus the Polish counterparts who also remain in the grey economy).⁶⁸

4.1.3. Factors Hindering Labour Market Opportunities of Migrant Workers

The Ukrainian migrant workers on the Polish market are facing several barriers. The most important barrier is stated by the procedures of formal employment and residence status. Most of other barriers derive from this one (fewer job opportunities, additional costs of employment, difficulty in searching for work) or are related to bureaucratic regulations concerning recognition of qualifications, trainings, courses, etc. obtained in Ukraine. The first barrier disappears once a Ukrainian citizen obtains a permanent residence status; others may hinder a person's job opportunities for longer.

Other barriers are related to the legal status of Ukrainians in Poland and to their individual characteristics that allow them to adjust (or not to adjust) to different procedures, habits and customs related to searching for job opportunities and dealing with the Polish reality. Such barriers may include fewer job opportunities, fewer opportunities for training, poor knowledge of language, limited access to the public sector, ethnic prejudices, educational qualifications, etc. None of these barriers were pointed out as being particularly applicable to Ukrainian migrants working in Poland. Some were wider issues discussed by experts.

According to the interviewed employers, the most difficult factor restricting Ukrainians' access to the Polish labour market is the complicated bureaucratic procedure for obtaining a work permit. Some of the interviewed employers stated that after one experience of applying for the work permit for the foreign worker they are not going to do it again because it consumes too much time and resource. The impact of this effect as a bad experience cannot be measured. The migrants confirm these opinions, criticising the procedure in a number of points.

Although the system is far more liberal for the foreigners compared to the early 1990s, the process of obtaining a work permit is complicated and time-consuming, revealing a clear intention to protect the domestic labour market. The procedure places the responsibility on Polish employers to submit all the necessary documentation and pay high application fees. Another issue often raised by employers is the lengthy review period for the application, making the procedure inadequate for the seasonal employment of low-skilled workers.

Disincentives and Incentives of Seeking Legal Employment

⁶⁸ Communiqué of the Centre for Social Opinion Research (CBOS), No. 1 of January 2005.

On the basis of the analysis of the legal and administrative framework in force in Poland and the interviews with experts, employers and migrants themselves, we may identify several reasons why irregular foreign workers are unwilling to seek the legal status of employment. Firstly, the current Polish labour procedures do not fit the character of many migrants' work—remaining irregular, they may respond to the demand for their work in a flexible way by serving a number of clients (as in domestic work). Secondly, until recently no legal solutions were developed for seasonal workers who cannot wait for weeks to receive a permit but instead are often employed on the basis of ad hoc oral agreements. Finally, various taxes and tax-like financial burdens that would apply in the case the employer would like to legalise the migrant's employment would effectively make the contract unprofitable for both parties.

Few migrants are interested in taking up employment on the basis of long-term residence either. The migrants' unwillingness to legalise their permanent ties to the Polish market and society was evident in the failure of the regularisation programme that was offered in 1998 to attract Ukrainian migrants. They did not use the opportunity of declaring their illegal residence due to overstaying the period of their 90 days' stay in Poland and avoiding being included in the register of undesired persons and subsequent ban on entry.

So far, a large majority of Ukrainian migrant workers have used a tourist visa as the basis for entry and residence in Poland for up to 90 days.⁶⁹ The period was sufficiently long to allow seasonal work within a few days after entry through informal labour markets.⁷⁰ Thus many newcomers from Ukraine, Belarus or Russia combine legal residence with illegal employment.⁷¹ This situation continued until December 2007 when Poland fully implemented the Schengen visa regime. Until then tourist visas were free of charge and could be easily received again as long as the applicant did not overstay the previous visa. In contrast, temporary and long-term residence permits have been relatively difficult to obtain. The applicant needs to prove that he or she already has sufficient financial resources and a proof of accommodation to stay in Poland.

Unfortunately, so far few incentives have been prepared to attract migrants themselves—no quotas have been set for various national or professional groups and no premiums such as point systems have been developed to facilitate the arrival of high-skilled migrants. Instead, the system places an obligation on both the employer and the migrant to prove that they are eligible for the right to conclude a contract—and the migrant's work is assumed as a threat to the domestic labour force unless proved otherwise. Hence,

⁶⁹ P. Kaźmierkiewicz, *Integracja z Schengen jako wyzwanie dla polskiej polityki wizowej wobec wschodnich sąsiadów*, Analizy i Opinie Nr 42, Institute of Public Affairs, Warsaw 2005.

⁷⁰ D. Bagińska, M. Bieniecki, H. Bojar, A. Gąsior-Niemiec, I. Koryś, P. Koryś, J. Kurczewska, M. Pawlak, , *The European Dilemma: Institutional Patterns and Politics of 'Racial' Discrimination: WP4 Institutional Discrimination*, ISP, Warszawa 2004/2005

⁷¹ M. Duszczyk, J. Korczyńska, *Zapotrzebowanie na pracę obcokrajowców w Polsce: próba analizy i wniosków dla polityki migracyjnej*, pp. 21-22. Institute of Public Affairs/National Chamber of Economy Warsaw 2005.

the procedure focuses on control mechanisms, such as the visa and work permit systems and the strict requirements for obtaining residence permits.⁷²

However, irregular employment is fraught with various risks and leaves the migrant unprotected in many areas of employment. Among the problems related to the lack of written contract or documents proving the period of employment are: inability to enforce one's contractual rights (including the value and time of wage payment, working hours and access to required clothes or protective equipment), non-payment of social security contributions and loss of corresponding pension capital as well as the limitation of access to health care to emergency cases.⁷³

Apart from the derogations from fundamental labour rights that affect all workers in irregular employment, migrants who enter this type of work relationship remain vulnerable to a greater extent. Having entered on a tourist visa, a migrant who takes up employment violates residence as well as labour regime. Thus, he or she becomes subject to potential expulsion and temporary ban on entry into Poland for any purpose. Such cases are rare and have actually decreased over time (Fig. 10). However, the controls result in disproportionately high numbers of cases against Ukrainians, who in 2003 accounted for over half of all the investigations (1378 Ukrainians out of 2711 all cases of uncovered cases of illegal employment of foreigners). The overrepresentation of the Ukrainians does not necessarily reflect the actual distribution of irregular foreign workers, but may stem from the fact that they (as well as citizens of other CIS states, such as Belarus) are more easily expedited to the border than, for instance, the nationals of more distant states, or countries with which Poland has no readmission agreements.⁷⁴

⁷² The assumptions of the Polish migration policy are discussed further in: Koryś, Weiner 2005, p.20

⁷³ K. Iglicka, P. Kaźmierkiewicz, M. Mazur-Rafał, *op.cit.* Problems with actual access of unregistered workers to public services are further discussed in: J. Kurczewska, H. Bojar, et al., *op.cit.*

⁷⁴ See Annex for the list of countries with which Poland has signed readmission agreements.

Fig. 10.



Source: SOPEMI reports 2004-2006

A change in the policy approach towards labour migration from Ukraine could be observed recently, however. Starting from 1 September 2006 farmers were allowed to employ seasonal workers from Ukraine, Belarus, and the Russian Federation without work permits.⁷⁵ In order to receive a visa and be admitted to Poland, a potential employer was obliged to present a notarised statement that he would employ a particular person and a certificate from the local authorities proving that the employer is a farmer. In 2007, the simplified procedure covered all sectors of the economy.⁷⁶ Based on the new procedures, since July 2007 Ukrainians (Russians and Belarusians) can work in Poland without a permit for up to three months during each consecutive 6 months.⁷⁷

It would be interesting to observe the pattern of arrivals after the new regulations and analyse the impact of the new policies on labour migration from Ukraine, Belarus and Russia in Poland.

4.1.4. Working Conditions of Legal and Illegal Migrants

⁷⁵ Regulation of the Minister of Labour and Social Policy on the Procedures and Conditions of Issuing the Work Permits for Foreigners of 30 August 2006

⁷⁶ Regulation of the Minister of Labour and Social Policy on the Procedures and Conditions of Issuing the Work Permits for Foreigners of 27 June 2007

⁷⁷ Act on the Promotion of Employment and Instruments of Labour Market of 20 April 2004 (Journal of Laws 2004, no. 99, pos. 1001) and the regulation of the Minister of Labour and Social Policy on the Procedures and Conditions of Issuing the Work Permits for Foreigners from June 27, 2007

The basic rights of all workers employed in Poland are protected by the same regulations that are described in the Labour Code. According to these regulations, the difference between formal employment and irregular work is fundamental, especially for foreigners: legally employed Ukrainians enjoy all rights that Polish workers do and any violation of these rights is subject to legal action. At the same time, Ukrainians (as well as any other foreign workers) who work without a permit are not only more vulnerable to mistreatment but also can be persecuted for violating the immigration law.

In practice, the unregulated position of Ukrainians (they are most often ‘tourists’ – at least according to their visas) results in a situation in which a Pole is caught working without a contract, the employer is punished, and when the Ukrainian is caught – the employer is punished as well, but the Ukrainian loses his/her visa and is expelled from Poland.

While referring to differences in working conditions, the interviewed Ukrainians pointed out first of all differences in salaries. Ironically, working in the same position without a contract usually gives a higher income than working in the same position legally. The basic difference is that Ukrainians working legally work usually in higher qualified positions compared to those working illegally. Such a way of thinking was expressed mainly by those who did not regularise their employment and who stressed that eventual legal employment would be too costly and less profitable than unregulated employment.

It is also very hard to compare the conditions between legal and irregular workers because they work in a different environment. Ukrainian construction workers more often work on small construction sites (i.e. a single family house) without a contract and the whole social sphere of a large company. According to the respondents from this sector, there is a higher chance of employers behaving unfairly (not paying, not paying the whole remuneration etc.) in grey zones or in smaller companies.

In order to understand the whole picture, the situation of Ukrainian workers must be placed within a wider context: according to the National Labour Inspection many rights and safety regulations concerning all workers are commonly violated. According to the Central Statistical Office, in 2006 nearly 10% of employees worked in hazardous conditions. There were almost 100,000 work-related accidents;⁷⁸ Ukrainians constitute only a fraction of the labour force and their position in comparison to other employees within various sectors is generally the same (with the only difference that Poles caught working illegally cannot be deported and that many Poles who work in the shadow economy have medical insurance – as they are registered as unemployed). Considering such an extensive range of informal economic activities, it may be assumed that a significant number of work related accidents remain unreported. The underestimation is probably greater among immigrants, who face more serious legal consequences in case they are found employed without a permit.

⁷⁸ Sprawozdanie Głównego Inspektora Pracy z działalności Państwowej Inspekcji Pracy w 2006 r. [Report of the Chief Labour Inspector on the Activities of the National Labour Inspection for 2006] http://www.pip.gov.pl/html/pl/spr_06/spr_o6_02.pdf (pp. 13-14); English summary available at: http://www.pip.gov.pl/html/en/doc/2006_en.pdf

Considering the violations of workers' rights and safety regulations, in 2006 the National Labour Inspection has received 25,770 complaints. Two-thirds of them came from employees or former employees who decided to complain after they stopped working for their employers. The remaining one-third of complaints was filed by labour unions (4%), social labour inspectors, public institutions and organisations of employers.⁷⁹ According to the Labour Code (Art. 281, Art. 282, Art. 283), a sanction for an employer for violating the workers' rights is fine from 1,000 to 30,000 PLN (around 300 to 9,000 euros).

According to the annual report of the National Labour Inspection (PIP), the most common complaints in the field of workers' rights concerned wages, form of contracts and breaches of working time. The top category in 2006 referred to wages that were unpaid or paid late (38%). This category included unpaid overtime wages or payment for unused vacation time. The second most numerous category (18%) consisted of complaints considering recruitment and lay-off procedures (i.e. lack of specifications of terms of employment in a written contract). Moreover, 13% of complaints pointed out abuses concerning time of work (overtime, counting hours of work, work on holidays, Sundays, etc.), and 10% of complaints were related to abuses of safety regulations.⁸⁰

There is a common practice of working without a written contract within the secondary labour market (which is a violation of principles of the Labour Code⁸¹). Working without a contract and generally working without a permit results in the violation of all basic rules of the Labour Code. This situation results in a lack of insurance and, what follows, a lack of access to proper medical services (excluding emergency services), and no paid health nor vacation breaks. It is important to add, however, that even unregulated/illegal employment is based on at least a verbal agreement (contract) between the employer and employee. In the vast majority of the studied cases, when Ukrainians were asked about respect for the terms agreed for such contracts with their employers they did not report its violation.

Workplace Safety

As stressed by the representatives of the National Labour Inspection, all people legally employed in Poland are protected by the same regulations and all regulations concerning their safety and workers rights are identical.⁸² Considering the safety regulation, the Labour Inspection declares that safety issues are always controlled prior to any other,

⁷⁹ *Ibidem*.

⁸⁰ *Ibidem*, pp.13-14.

⁸¹ Labour Code of 26 June 1974 (with further amendments) is the legal act regulating all issues related to employment in Poland. See Annex.

⁸² These are referred to in the Polish legislation as BHP/OSH (Occupational Safety and Health)-, and are regulated by the Labour Code (Art.220 to Art.237). See Annex.

including legality of employment. They stress that no distinction is made on the basis of nationality.⁸³

However, it must be noted that the legal situation of foreigners working in Poland on the basis of a temporary work permit is less stable than the situation of Poles and those foreigners who do not need a work permit (e.g. EU citizens, but also i.e. Ukrainians with a residence status in Poland). It is the result of the general approach to the issue of the employment of foreigners: they are perceived as complementary on the Polish labour market,⁸⁴ and this influences their rights because they cannot execute some of their rights the same way Poles can.⁸⁵ For example: after a certain period Poles must be hired for an unlimited time, while foreigners can be hired only for as long as they have a valid job permit.

In terms of the allocation of Ukrainians in specific sectors of the Polish labour market, especially construction, it should be noted that this is the sector where the great number of accidents involving heavy injuries and deaths take place.⁸⁶ In the construction sector the violations of safety regulations (BHP, Occupational Safety and Health) are noted most often. The statistics do not show, however, any overrepresentation of migrant workers among the injured

At the same time, the situation concerning safety and Labour Code is improving every year. The inspectors point to rising consciousness among both workers and by-passers who very often call the Labour Inspection in order to report irregularities or dangerous situations on construction sites. In such cases, the Inspection is supposed to send the control team immediately and, supposedly, such interventions do take place. However, problems were noted with controlling the state of affairs in agriculture, which also attracts immigrants. As long as a farmer has not applied for the status of an employer the Inspection does not have a legal basis to impose controls.

Concerning additional protective measures focusing on migrant workers, the representatives of the National Labour Inspection do not see such a necessity. They state that when it comes to legal employment, the rights of migrants are well protected and any additional forms of protection would theoretically place Polish nationals in a worse position than migrants. According to the Inspection, it would be enough if Polish norms were obeyed and no additional regulations would be needed. Additionally, Poland has signed the International Labour Organisation convention⁸⁷ that guarantees equal

⁸³As a National Labour Inspection officer said: *If it comes to [safety regulations], it absolutely does not matter whether it is a Pole or Ukrainian. You cannot say to anyone that 'you will work without a hardhat, and a Pole will work in a hardhat.'*

⁸⁴ M. Bieniecki, J. Frelak, *Praca cudzoziemców w Polsce rozwiązaniem problemów na rynku pracy*, AiO nr 75, ISP, 2007

⁸⁵ That was confirmed in the experts' interviews, i.e. with the National Labour Inspection

⁸⁶ Annual report of the National Labour Inspection 2006, pp. 167-172

⁸⁷ http://www.mop.pl/html/miedzynarodowe_standardy/podstawowe_prawa.html

protection of the rights of all workers in Poland. It also regulates a minimum living (housing) standards, although the Inspection does not have a way to check and execute these standards (especially that there are not many signals concerning extremely bad living conditions, unlike it used to be in the late 1990s).

However, it must be remembered that the National Labour Inspection refers not as much to workers as to registered employers. Therefore, their comments are only valid for Ukrainians working in legally operating companies, not covering the great majority of unregistered workers. The problems are: 1) generally the Labour Inspection is perceived as ineffective (by workers, employers, experts), 2) the controls seem to be especially ineffective in the cases of smaller employers, where Ukrainians work most often, and 3) the controls do not target private individuals who hire workers for short-time contracts

Migrants in Hazardous and Unhealthy Jobs

Interviewed Polish employers claim that it cannot be said that Ukrainian workers take hazardous or unhealthy jobs. However, it should be kept in mind that Ukrainian irregular workers concentrate in construction and agriculture sectors that are more hazardous than others. None of the employers in the agricultural sector reported worse conditions of Ukrainian employees in terms of using worse tools or working in more dangerous environment.

According to interviewed employers, from the construction industry, safety regulations are very often not obeyed by the employers in the sector. Only in 2006, the Labour Inspection issued over 4000 decisions halting construction work due to various irregularities⁸⁸. This is the problem for all people employed in this sphere, both Poles and foreigners. On the construction sites in cases of accidents if there is no contract usually the problem is solved by a so-called 'deal' between the employer and employee – the employer gives his worker an amount of money as a compensation, and the worker is not reporting to the doctors that something happened to him during work, as that could cause the construction site to be investigated.

In the opinion of one foreman managing a team of construction workers, a lot of regulations on the safety of work are not obeyed at the sites equally for all workers. It is due to cutting on the expenses by the investors and also to cut on the time of work, because the whole project needs to be finished quickly. On the other hand, according to his opinion this situation is somehow accepted by the workers who also care about receiving higher wages rather than working in safer conditions.

⁸⁸ Annual report of the National Labour Inspection 2006

4.1.5. The Position of Ukrainian Workers in Experts' Opinions

The opinions of experts confirm our observation. According to the experts, the position of Ukrainian migrants on the labour market varies depending on the type of employment (legal or illegal) and the qualifications of the employee. In general, Ukrainians enjoy the same rights and share the same problems with Poles who have similar qualifications and work in similar sectors. Doctors working for state hospitals are paid according to the same rules; irregular construction workers receive the same hourly remuneration. The fact that more Ukrainians are working as irregular workers in lower sectors is related to the disproportion of wages between Poland and Ukraine that enhances the labour migrations from Ukraine to Poland and limited access to regular employment accompanied by an ineffective system of control.

Ukrainians who work legally occupy on the whole a position on the market that is similar to that of Poles working within these vocations, although those Ukrainians who need a work permit (not all of them do, many are exempt, i.e. as spouses of Poles) face additional problems. Some of these problems are directly related to the scarcity of foreigners working in Poland and the fact that many firms/institutions do not know how to deal with their cases (what documents are necessary, what they can/cannot do).

Considering the limitations of access to the labour market, the experts point out first of all restrictive procedures of limiting the access of foreigners to the Polish labour market justified with its protection that originates from the times of very high unemployment in Poland and, as the second reason - international arrangements resulting from Polish membership in the EU that limit the possibilities of opening the labour market for the citizens of the third countries.

Among the factors strengthening the position of Ukrainian workers, experts mention the decreasing level of unemployment and growing demand for a labour force in many sectors. The growing demand results in a change of attitudes of the employers. They need workers, and therefore they become active in searching for employers both in Poland and outside of the country (especially in Ukraine). Moreover, they are more and more willing to go through the procedures of formal employment of foreigners. On the other hand, the authorities seem to pay attention to the problem of the lack of the labour force and they open more possibilities for employment of foreigners and make the procedures less troublesome (i.e. cheaper, as the last regulations from 17 October).

Discussing problems in particular, a few most important problems impairing the position of Ukrainians were appearing in our interviews with the experts.

1) Institutional disincentives for employers and employees to legalise seasonal employment

The Polish system of seasonal employment creates the situation when a vast majority of seasonal workers are employed irregularly. As the representative of the Ministry of Labour and Social Policy stated, “our system does not support legal employment for people performing short-term works” (WEMPiPS05). This is the result of a lack of a definition of short-term employment in Polish law. For this reason, persons employed for a short term (i.e. to perform typical tasks that Ukrainian migrants perform, such as a 2-day job painting a house, a 3-day job in an orchard picking apples, etc.) must go through the same procedures of employment as the person who is employed for a long term. In particular, it means registering a worker in the National Health Fund (NFZ), Social Security Office (ZUS), Tax Office (*Urząd Skarbowy*), going through the medical check, receiving working clothes, after two days obtaining a right to a one-day vacation, and many other procedures including an obligation of employer to send registration forms and an adequate shares of taxes to a few institutions and storing workers’ files for the next 50 years after the end of the contract. Since July 2007 Ukrainians (and Russians and Belarusians) do not have to go through a 2-month procedure of obtaining a right to work in Poland that was necessary before in order to qualify for employment. According to experts, the legal/regular employment for a short term, in such a form, is absurd and practically impossible. Therefore, the legal employment for such jobs is estimated for even less than 1% of the total.

This is important in the context of Ukrainian migrants especially because this is the most typical form of their work in Poland, even though they constitute only a small share of the labour force employed this way (the vast majority are Poles). The problem is considered to be serious and it demands a change of all regulations concerning seasonal employment; since July 2007 Ukrainians can be employed for the short term practically without any additional procedures.

2) Low socio-economic position of migrants makes them more likely to accept illegal employment

Another issue pointed out by experts was the low socio-economic position of migrants that causes their willingness to accept work in worse conditions (without a written contract, social security guarantees, etc.). A representative of one of the NGOs said: *when a person comes from poverty, his expectations and standards are much lower* (WELaS10). This attitude is often strengthened by their formal status that does not allow them to have legal employment: *people are desperate, determined to find employment and they do not pay attention to formal conditions...they do not consider a regular contract as important* (WELaS10). While other reasons account for the overrepresentation of immigrants in the informal economy (e.g. unwillingness of Poles to take up certain kinds of work), the migrants’ low status seems one of the most important.

3) Migrants are handicapped by having limited access to information

The next issue that appeared in experts' interviews was the limited information received by Ukrainians working in Poland. The problem is described as limited access to information, but this does not describe the issue precisely. Theoretically, access to all information is open to everyone, and what impairs the position of Ukrainians in this context is not any regulation or procedure that restrains them from the information, but the fact that they are foreigners in an alien country and all the procedures are new to them. Ironically, they are expected to know all the procedures. Worsening that assumption is the lack of information flow between offices involved in the procedures; in fact, each office answers only the questions related to it, and do not know anything else outside of their office. As the representative of one of the Labour Offices put it, *“a foreigner comes [to Poland] and he has to know how to move, and here everything is crazy. You go to one office where you register self-employment [and you cannot expect there that the office worker will provide you any further information where and what else you should register]. Everyone focuses only on their own thing”* (WEMUP03).

Access to information is made difficult by insufficient knowledge of the formal Polish language. Even though most Ukrainians coming to Poland understand spoken Polish, the level of their language competence is rarely high enough to deal successfully with Polish bureaucracy and official institutions. As much as basic knowledge of Polish allows them to function among Poles, their accent and lack of “professional” language very often contributes to limitation of their access to information.

4) Current work permit restrictions place foreign workers at a disadvantage compared to the native workforce

As it was mentioned before, the limited access to the labour market places Ukrainians in a disadvantageous position compared to Polish workers. The experts point out difficulties that Ukrainians can have while opening a bank account (*“since they cannot have long-term employment, they may have troubles opening a bank account, and most companies want to pay only via a wire transfer”* (WEMPiPS05), obtaining loans, sometimes even telephone or Internet/TV access. All this is seen by experts as detrimental to workers' security and, as a result, to their vocational and social integration.

4.1.6. Assessment of procedures of employment

The current restrictive system is seen by experts and some officials as increasingly inadequate for the needs of the Polish market. The majority of labour immigrants who choose to work in Poland are being forced to accept illegal employment. The restrictive

procedure to obtain legal employment, relatively easy access to the Polish territory, and social acceptance of the shadow economy allow for a flourishing illegal immigrant sector.

Most of our interviewees expressed strong criticism concerning the procedures of obtaining legal employment and residence. Ukrainians mention all the steps of this procedure as troublesome, time-consuming and costly (the costs were reduced in October 2007 by the Regulation of the Ministry of Labour and Social Policy from the level of minimum wage (936 PLN) to 100 PLN in case of workers employed for longer than 3 months⁸⁹). Practically all Ukrainians who had to go through the procedure of employment hated it (it has to be stressed that the procedure of obtaining the work permit should be completed by the employer not the employee, so asking future employees to complete it is by itself a kind of abuse). Only a few very highly qualified Ukrainians, (so-called “expats”) had their employers organise legal assistants who went with them through most of the procedure. This saved them the stress and time related to the legal procedure. In most of the cases, they talked about long cues, hours spent in offices, piles of documents they had to bring, troubles with translations, interpretation, lack of information, unclear procedures, etc.

Employers who hire Ukrainian workers legally describing the procedures of obtaining the work permit were using expressions like: horror, paranoia, the worst thing I have ever passed through in my life, etc. The problem mentioned most often is the length of the procedure, which does not give the employer the possibility to react flexibly to the changes on the market. The quickest possible time to legally hire a non-EU worker is more than two months, which is too long for many entrepreneurs to respond to the orders of their clients. Quite often the employers have to start employing Ukrainian workers illegally while still waiting for them to finish the procedure.

Employers complain about the number of documents they have to collect for obtaining a work permit for their foreign employee. They are especially frustrated with the requirement of submitting the same documents when applying for the work permit for the person who already received it before. Large corporations are able to hire specialised companies dealing with obtaining work permits but managers from small firms cannot afford wasting time in the offices responsible for issuing work permits. In their opinion it is so time-consuming that it would block their business, so they send the foreigners (despite the fact that it is responsibility of the employer) to apply for the work permits.

Also the cost of the work permit was recognised as ridiculously high (they were reduced during the research period by the above-mentioned Regulation). Interviewees from the small companies were admitting that they are asking the Ukrainian workers to cover it. It has to be stressed that according to regulations it is an employer who is to cover the costs of work permit.⁹⁰

⁸⁹ Regulation of the Minister of Labour and Social Policy of 17 October 2007 on the amount of the fee for placing a permit for foreigner's employment (Journal of Laws 2007, no. 195 pos. 1409).

⁹⁰ Act of 20 April 2004 On Employment Promotion and Labour Market Institutions Art.88 par. 14.

Some of the employers complained about the lack of flexibility of the regulations. They are not able to check their foreign employees. In a normal situation, to employ a Pole, they would sign a contract with him/her firstly for 3 months to be sure that he/she really suits the company and work environment. In the case of foreign workers, they are not able to do it, because there is no point of applying for a work permit just for 3 months and then again for a longer time.

Some of the employers admit it is easy for them to avoid the regulations about searching for a Polish worker for the same position by adding to their requirements certain rare qualifications which certain foreign workers possess. They are justifying it by saying that when they are employing a new worker they want to employ a certain person chosen by them and not somebody sent by the employment agency.

4.2. Relations with the Poles

4.2.1. Societal Perceptions of Migrants

Perception of Foreigners—Changes and the Current State

According to public opinion surveys, at the beginning of the 1990s, Poles declared relatively strong xenophobic positions.⁹¹ Today, a positive attitude towards migration prevails in Polish society.⁹² More intensive contacts (including seasonal migration, petty trade and trade exchange in general) influenced the decrease of negative attitudes as stereotypes were confronted with the experience of direct contacts. Generally, there is a more positive attitude towards representatives of developed countries associated with political and economic reforms.

On the basis of opinion poll surveys from 1999 and 2004, we might state that Polish society tends to see the presence of people from the developed countries of the West, Czechs and, to a lesser extent, Lithuanians, as beneficial (Fig. 11). The plurality (in the case of Arabs the majority) considers the presence of the citizens of the former USSR, Vietnamese, Turks, Arabs and people coming from Africa as detrimental for the country.⁹³ Among the most liked nationalities, there are Americans, the British, and Italians.⁹⁴

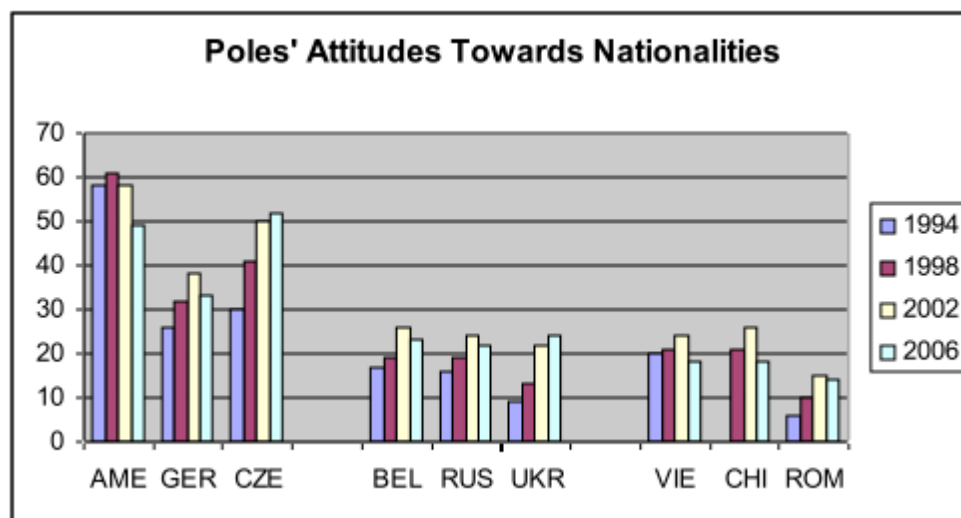
⁹¹ Here we take xenophobia to be “hate towards strangers, a total repulsion of strange culture based on its dissimilarity to one’s culture and a lack of respect treatment for this culture” (Kłoskowska) Further discussed in: Weiner A. *Tak daleko stąd, tak blisko – europeizacja a integracja legalnych imigrantów, uchodźców i repatriantów* in: Iglicka K. (ed) *Integracja czy dyskryminacja? Polskie wyzwania i dylematy na progu wielokulturowości*, Institute of Public Affairs, Warsaw 2003.

⁹² Wenzel M., *Societal attitudes towards foreigners living in Poland*, in: J. Kurczewska et al., *Socio-political developments and impacts. The European Dilemma: Institutional Patterns and Politics of 'Racial' Discrimination*, Institute of Public Affairs, Warsaw, 2005 (unpublished).

⁹³ Wenzel M., *Societal attitudes...op.cit.*

⁹⁴ Public Opinion Research Centre, Report from December 08, 2005.

Fig. 11.



Source: Polls of CBOS (Center for Social Opinion Research). Nationalities: AME(ricans), GER(mans), CZE(chs), BEL(arusians), RUS(sians), UKR(ainians), VIE(tnamese), CHI(nese), ROM(a).

The statistics concerning violence against immigrants and general violence based on ethnic prejudices, xenophobia, etc. provided by Ministry of Interior and Administration indicate only 11 cases of discrimination based on nationality, 13 cases of discrimination based on ethnic origin, 11 cases of racial discrimination and 4 cases of xenophobia noted during the first 10 months of 2007. Such a low level of cases results from both a lack of potential subjects of discrimination (few immigrants, no racial minorities) and the low awareness of these problems (it is practically impossible that the number of real offences is so low, and even with a limited number of immigrants and ethnic/racial minorities the data seems underreported). The fact, that there were no serious conflicts between Poles and immigrants is probably at least partially due to the relatively low number of foreigners living in Poland and low awareness of their presence among Poles.⁹⁵

Stereotypes, cultural difference and social distance⁹⁶

⁹⁵ I. Koryś, *Immigration Trends in Selected Applicant Countries*, in: *Dilemmas of a sending and Receiving Country, Volume III – Poland*, International Organisation for Migration, 2004; Kurczewska J. and others *Discourse Analysis of Politics The European Dilemma: Institutional Patterns and Politics of 'Racial' Discrimination*, Institute of Public Affairs, Warsaw, 2005 (unpublished).

⁹⁶ This issue was explored further in M. Bieniecki, J. Frelak, *Non-Poles on the Polish labour market*. Gliwice 2005

Polish society is rather open to foreigners/migrants on the labour market; however, the knowledge of them and any other migrants is very superficial and limited. Stereotypes in the workplace, visible in the media or TV, are still present, and many Poles are well aware of that fact.

Acceptance and attitudes depend on factors such as: the general perception of economic migration, the estimation of costs and benefits, the perception of country of origin and the state of public opinion on wider issues.⁹⁷ It is also closely connected with the stereotypes of nations and ethnic groups and proves the existence of negative and positive ones. The perception of the Vietnamese community is a good example of seeing the migrants in the context of their activities in Poland rather than their physical experience. As they are associated with ethnic food and petty trade, they are often described as hardworking, operative or entrepreneurial, but on the other hand also cunning and smart.⁹⁸

Interviews with employment agents confirm that both positive and negative ethnic and national stereotypes appear on some occasions, although infrequently, in the workplace. Appearance, such as ethnic features, might be both an advantage and disadvantage. For instance, immigrants from the West are considered well educated and well mannered as a rule, while those from the East—just the opposite. Ukrainians are often associated with illegal activities, although on the other hand they are also believed to be cheap and reliable labourers. There are also some other stereotypes that sometimes negatively influence the first contact with clients, e.g. a Russian accent.

Some experts pointed to cultural differences, which limit easy adaptation by some nations' representatives to the work ethic in Poland. This situation seems to concern in particular immigrants with an Islamic background. Moreover, because of 'cultural reasons', some employers may fear that an immigrant may cause trouble at work, not being accepted by other workers or being despised by them. However, co-workers do not find that cultural differences negatively influence the atmosphere at work and the quality of work conducted by them.⁹⁹

When Poles know migrants personally and maintain contacts, e.g. have a migrant housemaid or neighbour, the attitude changes. This shows that the general negative attitudes are related to the lack of contact with the actual representatives of other ethnic groups. Relations with real persons help improve these attitudes, especially when they Poles realise that migrants concentrate in niches and do not constitute any serious threat to the domestic labour market.

⁹⁷ S. Łodziński, *Acceptance, Distance and Threat: Some Issues in the Public Acceptance of Foreigners in Poland in the 1990s*, in: Iglicka K. (ed) *Migration and labour markets in Poland and Ukraine*, Institute of Public Affairs, Warsaw 2003.

⁹⁸ T. Halik, E. Nowicka, *Wietnamczycy w Polsce. Integracja czy Izolacja*, Oriental Institute, University of Warsaw, 2002.

⁹⁹ The cultural and political similarity to Polish society, previous conflicts and alliances between that nation (ethnic) group and Poles, and the presence and image of the nation/ethnic group in the Polish mass media play important role too. Łodziński S., *Acceptance, Distance...op.cit.*

To conclude, one may say that the migrants encounter some symptoms of discrimination, but the phenomenon is rather connected with the inflexible and imperfect state system of dealing with immigration. Single cases of discrimination of immigrants are unavoidable and do appear, but most of the experts agree that a phenomenon of active discrimination is not a significant social problem in Poland.¹⁰⁰ In the context of negative attitudes towards many other issues, the negative attitude towards immigrants in general appears as relatively low and insignificant.

It would be wrong to conclude, however, that the levels of conflict between the Poles and migrants are in any way higher than those found within the Polish society. We can refer to the Australian experience where there is much more prejudice against politicians, feminists and president of the US than against immigrants.¹⁰¹ In that sense, also in Poland many inter-group tensions are far more important than the relation between Poles and immigrants.

4.2.2. Perception of Ukrainians Compared to other Nationalities

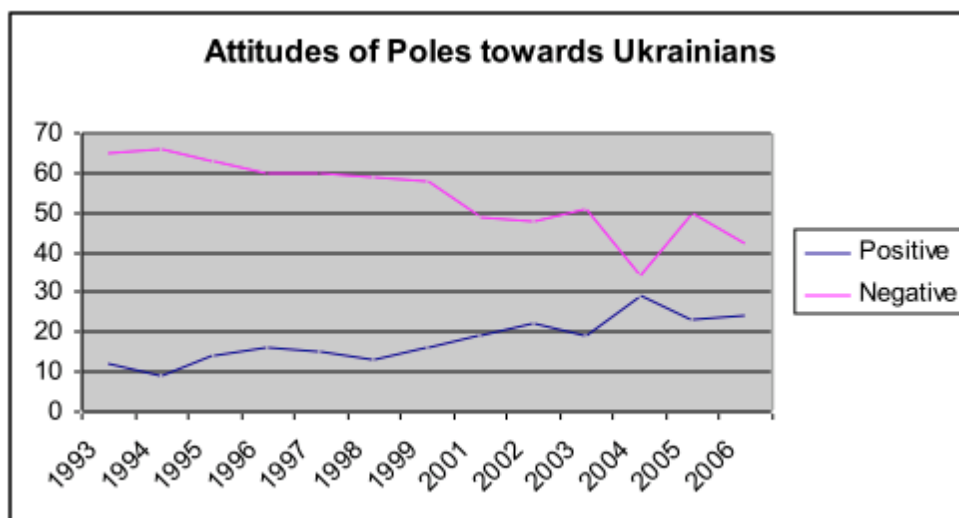
In many terms, Ukrainian newcomers can be seen as ideal immigrants for Poland. They are geographically and culturally close, speak a Slavic language, and, in a vast majority of cases do not intend to stay permanently. When they do – they integrate rather quickly and are virtually indistinguishable from Poles by the second generation. Moreover, they have quite a well grounded position in Poland: they already are present on its labour market and are accepted by most Poles. Moreover, up until recently all ideas for the liberalisation of the Polish labour market for foreigners focused on Ukrainians in the first place. It seemed to be implied that when politicians talked about opening the labour market for teachers, nurses, and labourers they thought about opening it for Ukrainians.

It must be kept in mind, however, that Ukrainians used to be perceived quite negatively, but public attitudes toward Ukrainians have improved only over the last decade (Fig. 12). Still, when asked about Ukrainians as a nation in general terms, more Poles express rather negative feelings than positive ones: positive feelings of 9% in 1994, 13-16% in 1995-1999 and 19-22% in 2001-2003, with a clear rise in 2004 to 29%, and a corresponding decline in negative attitudes: drop from 66 to 58% between 1993 and 1999 to 48-51% in 2001-2003 and abruptly to 34% in 2004 (CBOS 2005). While positive attitudes have declined recently, their levels remain much higher than only a few years ago.

¹⁰⁰Cf. M. Bieniecki, H. Bojar, A. Gąsior-Niemiec, M. Pawlak, *Migranci na rynku...op.cit.*; J. Kurczewska et al., *Institutional Discrimination...op.cit.*

¹⁰¹ M.D.R. Evans and J. Kelley, *Prejudice, Discrimination, and the Labour Market: Attainments of Immigrants in Australia*, in: Australian Sociological Journal Vol. 97 no.3, 1991.

Fig. 12.



Source: Polls by CBOS (Centre for Social Opinion Research), "Attitudes of Poles towards Other Nationalities"

Such a perception of Ukrainians is the result of a historical conflict between Poland and Ukraine. This conflict went through its peak in the 1940s when drastic ethnic cleansing took place and several thousand people were murdered on both sides. After World War II, communists played this ethnic card in order to create persisting divisions between Poles and Ukrainians. Today's lack of sympathy visible in the opinion polls reflects a great success of communist propaganda in Poland: Poles declare negative attitudes towards abstract Ukrainians but they tolerate the Ukrainians they know personally quite well.

Relations between the Polish Host Society and Ukrainian Migrants in the Polish Press

Factors influencing attitudes towards other nations and immigrants are not connected only with the frequency of contacts and their intensity. In recent years a growing interest in migrant-related issues could be observed in the Polish media. The number of publications on Ukraine, Ukrainians and the relations between Poland and Ukraine has been also increasing. The most popular and influential newspapers both comment on the concrete situation and try to voice an important opinion in the debate.¹⁰²

According to press analysts, nowadays foreigners are perceived as a less important threat than in the 1990s. More attention is paid to their economic activity and life in Poland than to crime and other illegal activities. This significant change in the style and tone of

¹⁰² J. Konieczna, *Tożsamość narodowa a wartości polityczne, religijne i moralne w transformacji ustrojowej Ukraina na tle Polski i innych krajów Europy Wschodniej*, Warsaw University.

publications seems to be only partially connected with growing tolerance and openness. The initial concerns about an expected flood of immigrants from the former Soviet Union did not materialise at the beginning of the 1990s. Instead media realised that a slowly growing number of immigrants could be beneficial for the Polish social life and culture. Ukrainians have been a group of immigrants that were the main subject of articles relatively often both in the 1990s and the beginning of the current decade.¹⁰³

Immigrants from Eastern Europe (Ukraine, Russia, Belarus) have usually been presented in Polish media as *petty traders and unskilled workers* who come to Poland for short periods, either legally or illegally. The reports noted that there were both those with a university degree or only primary education level among them. The press pointed to a difficult economic situation in their home countries as the incentive for their emigration. They were typically divided into two groups: petty traders and unskilled workers. The first one was reported to be naturally more visible thus they interact with state institutions more often. The texts concerning this group appeared less and less frequently as the role of market trade diminished. On the contrary, the media coverage of the presence of the unskilled foreign workers on the Polish labour market has been growing. In the 1990s they were perceived rather negatively (spoiling the labour market, increasing unemployment). Nowadays, they are presented in a predominantly different light. Apart from a friendlier attitude connected with becoming accustomed to immigrants, additional factors should be mentioned: EU enlargement, the emigration of Poles and economic growth that resulted in growing gaps on the labour market. According to media specialists, the press started to present immigrants from Ukraine as a remedy for the labour shortages and recently the press tends to underline their advantages as good, cheap and reliable workers, devoted to their work. They are often confronted with Poles unwilling to take the same positions and numerous references have been made to strong demand for their work. The press note that the Polish employers are increasingly looking to irregular labour markets in search of the workforce. At the same time, the press reports about poor housing conditions and working long hours – which is typical for seasonal workers that aim to accumulate funds, minimise costs and return home.¹⁰⁴ The articles covering conflict situations between Polish and Ukrainian co-workers are very rare, and what appear in the texts are unfair employers that sometimes do not pay illegal foreign workers.

Another aspect is also highlighted by the press – the illegality of work and stay which is a result of difficulties in obtaining a work permit, complicated procedures or the seasonal character of this migration.¹⁰⁵ At the same time, the press positively sees steps towards a

¹⁰³ M. Mrozowski, *Obrazy cudzoziemców i imigrantów w Polsce w prasie polskiej*, in: K. Iglicka (ed) *Integracja czy dyskryminacja? Polskie wyzwania i dylematy na progu wielokulturowości*, ISP, Warszawa, 2003.

¹⁰⁴ J. Wilczak, *Bratnia pomoc*, Polityka, 24-03-2007

¹⁰⁵ D. Wielowieyska, *Jak co trzy miesiące udręczyć przedsiębiorcę*, Gazeta Wyborcza, 6 July 2007

more effective migration policy and often criticise government moves as ineffective and not attracting a foreign labour force.¹⁰⁶

As far as we observed, Polish newspapers presented the negative consequences of joining the Schengen area for this group.¹⁰⁷ Firstly, according to press reports it will be much more difficult for Ukrainians to obtain visas. Secondly, Schengen visas may cause many Ukrainians to go further, to France, Spain or Germany, where they can easily earn more. As a result, journalists have been predicting that companies (especially in the construction sector) and households employing nannies and cleaners may be seriously affected by this new situation.¹⁰⁸

4.2.3. Acceptance of Foreigners on the Labour Market

In the years 1999-2004 the perceived balance of costs and benefits from the presence of migrants has positively changed. The opinions about the people from the countries of the former USSR, Czechs, and the Vietnamese improved, while the opinions about the people from the developed countries changed very little.¹⁰⁹

The perception of the overall balance of costs and benefits from the presence of immigrants is dominated by their (perceived) economic role.¹¹⁰ On the other hand, the importance of cultural exchange is noted much more often. The view that foreigners may be a source of crime and anarchy is decreasing, but the fear that they might be terrorists has risen. The negative opinions about immigration and immigrants are internally contradictory. On the one hand, Polish people overwhelmingly believe that everyone should have the right to come and settle in Poland; on the other hand they believe Poland does not need these people. They accept the principle, but see no interest in its implementation.¹¹¹ Another important feature of the public perception of immigrants is a relatively small role of cultural and racial differences in relations with foreigners.¹¹²

¹⁰⁶J. Ćwiek, Ukraińcy na ratunek Euro 2012, *Gazeta Wyborcza*, 6 July 2007

¹⁰⁷ E. Różańska, G. Miecznikowski Będziemy błagać Ukraińców: Zostańcie u nas, *Gazeta Wyborcza*, 15 December 2007

¹⁰⁸ G.Miecznikowski, Ukraińcy wyjadą, budowy staną, *Gazeta Wyborcza*, 13 December 2007

¹⁰⁹ The findings are based on public opinion surveys conducted by Public Opinion Research Centre in Warsaw, available at: www.cbos.pl.

¹¹⁰ M. Wenzel, *Societal attitudes...*op.cit.

¹¹¹ M. Wenzel, *Societal attitudes...*op.cit

¹¹² I. Koryś *Immigration Trends...*op.cit.

However, issues connected with tolerance and xenophobia tend to change over time and have varied throughout the 1990s in Poland.

To sum up, with the increase in contacts between Polish people and foreigners, the acceptance of people from other countries rises.¹¹³ However, pessimistic attitudes connected with economic decline might strain the relations, create a conflict of interests and radicalise the feelings about foreigners.¹¹⁴ It is notable that while 62% of Poles accept immigrants settling in Poland, 80% do not think Poland needs immigrants.¹¹⁵ Polish society sees benefits in the presence of persons from Eastern and Central European countries; foreigners on the labour market are generally accepted even by the people who work in the same sectors as they do and who are affected by their competition.¹¹⁶

Currently, the majority of Poles accept the presence of migrants on the domestic labour market (Fig. 13). It is probably connected with the fact that a growing numbers of Poles benefit from the free movement of people within the EU and thus accept this similar situation in Poland. It is also generally known that emigration has created shortages in certain sectors of the Polish labour market. Compared to research from 1992 the acceptance of the full liberalisation of the labour market increased fourfold. According to 34% of respondents, foreigners should be allowed to undertake all kinds of positions or selected posts (47%). Around 70% of Poles state that foreigners should be offered a job if there is no Polish citizen willing to accept the position.¹¹⁷ Furthermore the poll showed that Poles were not afraid of competition even in sectors dominated by foreign workers. This trend shows that there is a general positive attitude towards the foreign labour force and that the relaxation of regulations would be welcome.

Fig. 13.

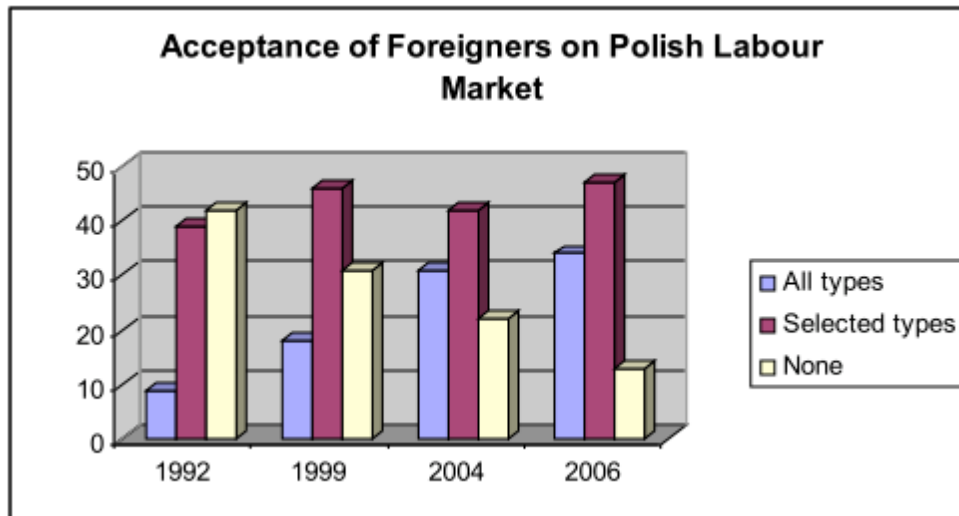
¹¹³ Comparative research conducted within the framework of European Social Survey shows that Poles are more open to immigration compared to most other EU societies. For extensive analysis, see publication *Attitudes towards Migrants and Minorities in Europe* of European Monitoring Centre on Racism and Xenophobia, www.eumc.eu.int.

¹¹⁴ A. Jasińska – Kania A., M. Morody (ed), *Polacy wśród Europejczyków*, Scholar, Warsaw, 2002.

¹¹⁵ M. Wenzel, *Societal attitudes...op.cit.*

¹¹⁶ M. Bieniecki, H. Bojar, A. Gąsior-Niemiec, M. Pawlak, *Migranci na rynku pracy w Polsce. Wyniki badań przeprowadzonych wśród migrantów ekonomicznych i pracowników polskich*, Institute of Public Affairs, Warsaw 2005.

¹¹⁷ Communiqué: *Obcokrajowcy pracujący w Polsce*, Public Opinion Research Centre, Warsaw, October 2006, available at: www.cbos.pl.



Percentage of respondents answering the question: Should foreigners be allowed to take up employment in Poland (all types of work, selected types of work, should not be allowed at all). Source: CBOS (Centre for Social Opinion Research) 2006.

Polish Employers and Co-workers' Attitudes towards Ukrainian Migrants

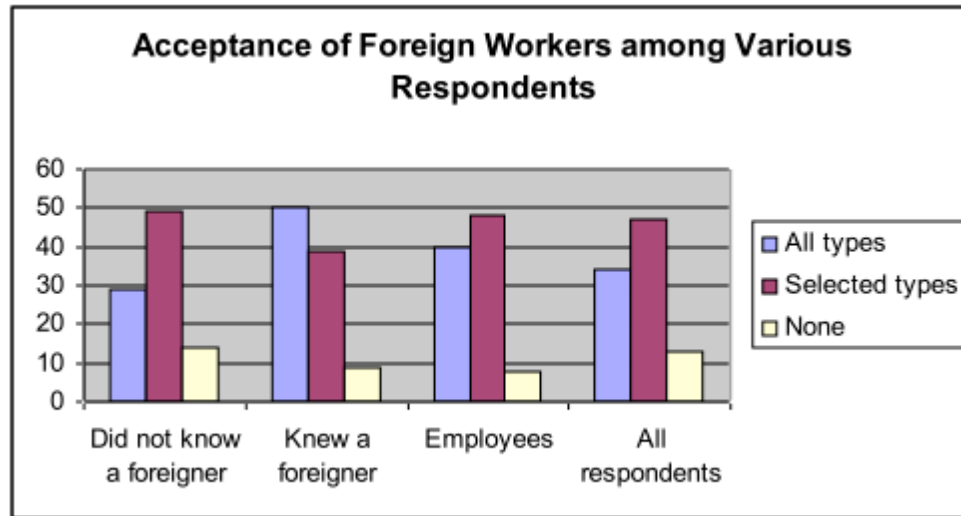
According to the research Ukrainians do not create any real competition for Poles.¹¹⁸ It is in fact due to the market for household help which developed in large cities like Warsaw not because of a special demand, but because at a certain moment Ukrainians appeared and offered these services thereby creating the market. This has also happened with childcare. Construction labour is slightly different. There has always been a grey zone in construction in Poland and Ukrainians are employed simply because they are cheap and because of a lack of Polish workers, clearly visible in this sector.

The public opinion results presented in Fig. 14 confirm also that a great majority of Poles (81%) accept the presence of foreigners on the Polish labour market. Moreover, one third of them (34%) agree that there should be no restrictions on that. To compare – only 13% are against foreigners on the Polish labour market. This acceptance for foreign workers has been growing steadily since 1992. The trend reflects the acceptance of the presence of Ukrainian workers in Poland, as Ukrainians are in most of the cases a synonym of a

¹¹⁸ M. Bieniecki, H. Bojar, J. Frelak, J. Konieczna, J. Kurczewska, A. Gąsior-Niemiec, *Regulacja migracji zarobkowej – wyzwania dla Ukrainy w kontekście polskich doświadczeń. Raport z badań socjologicznych przeprowadzonych wśród migrantów ekonomicznych z Ukrainy w Warszawie i okolicach [Regulation of labor migration – challenges for Ukraine from the perspective of Polish experiences. A research report]*, Institute of Public Affairs, PAUCI, Warsaw 2005

foreign worker. Such a situation is visible especially in the sectors which absorb a majority of these migrants: construction, domestic help, and agriculture.

Fig. 14.



Source: CBOS poll "Foreigners Working in Poland", October 2006

The willingness to open the labour market to non-Poles is higher among those who have had the experience of meeting foreigners. While less than one-third of the respondents from the general population favoured allowing foreign workers into all sectors of the Polish economy, half of those familiar with foreigners did so.

The thesis of the fear of competition from foreigners has not been confirmed among employees. In fact, half as many employees as respondents in general fundamentally opposed the foreign presence on the Polish labour market. Employees are also more willing to see all the sectors of the economy open to foreign labour than is the general population.

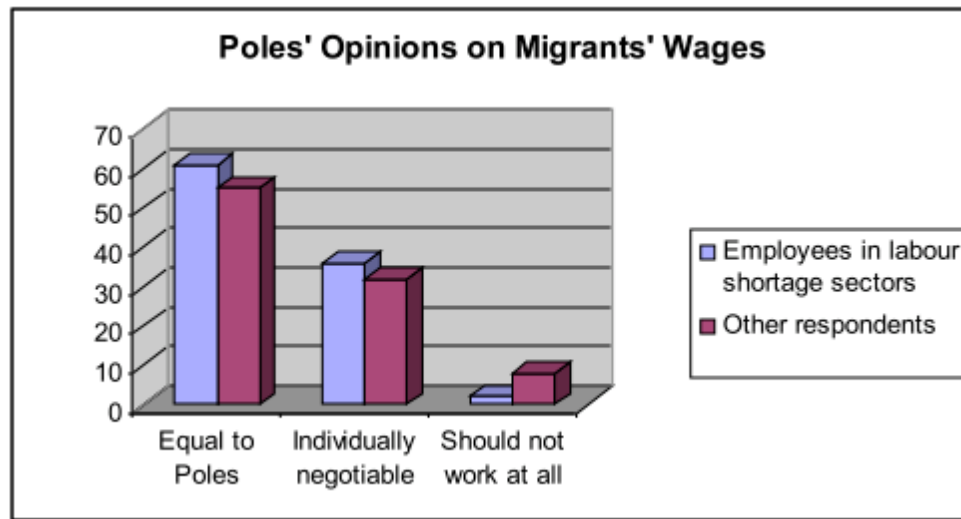
This situation was confirmed during the conducted interviews. Polish employers have not observed that their Polish employees fear competition with their Ukrainian colleagues. They recognise Ukrainians as a labour force compensating the shortages on the Polish labour market not a competitor dumping with expectations for lower salaries. The examples of negative attitudes or offences toward Ukrainian workers are explained by the employers as not being caused by the fear of competition but rather by the lack of culture or narrow mindedness. The leader of a migrant association stated that there are hidden stereotypes and attitudes that exist in Polish society in general.

According to the opinion of a representative of the largest Polish Labour Union, NSZZ Solidarnosc, legally working immigrants are not a problem on the Polish labour market. They become the problem when they decide to work illegally and for much less money than Poles would do. It must be remembered that in some sectors Poland lacks workers

because vocational schools are not working and it is cheaper to bring Ukrainians than to train the unemployed. Such a situation can be observed in some areas of construction, welding, shipyards, etc.

Results of public opinion research (Fig. 15) reveal that Poles acknowledge the right of foreign workers to wages equal to those of the native employees working in the same positions. Over half of the respondents supported the postulate of wage equality. The support for this right comes also from the realisation of the growing demand for foreign work. Employees working in sectors where labour shortages appeared are more interested in ensuring the equality of terms in wages for migrants than other issues. Significantly, workers in businesses in need of labour force do not show significant opposition to the presence of foreigners on the Polish market—only 2% of them compared to 8% of the other respondents are opposed to foreigners' work.

Fig. 15.



*Percentage of respondents asked on the wages that immigrant workers should receive.
Source: CBOS (Centre for Social Opinion Research) poll of October 2006, "Foreigners working in Poland"*

The interviewed Polish employers were generally expressing positive attitudes towards their Ukrainian employees and all Ukrainians. As the research concerned mostly the employment situation and obeying legal regulations on labour, there were no direct questions on attitudes asked. Bearing in mind that during the interview such topics are not always explicitly referred to by the interviewees, we have attempted to analyse the attitudes towards Ukrainian workers by observing the way they were talking about them, about co-operation with them, etc. Their answers to the question about comparing Polish and Ukrainian workers were also very useful.

It should be stressed that majority of the interviewees were expressing at least neutral opinions. They range from friendship of the owner of a small company with her qualified employee – *"we have been working together for so long, that it is rather friendship than an employer-employee relationship"* to neutral opinions *"people are everywhere the same"*. Some employers were claiming that when comparing employees other factors of a social nature were more important than nationality *"people from villages, both Ukrainian and Polish, respect work much more than people from cities, also both Ukrainian and Polish"* or *"You know people of working-class origins are everywhere the same, if they are in a privileged position how it is now in my industry they do not respect their employers. I have problems both with Poles and Ukrainians"*.

4.3. Discrimination

4.3.1. Legal Framework for Discrimination¹¹⁹

Polish Labour Code implements three Council of Europe directives regarding discrimination (Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex; Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation).

According to the Council of Europe directive of 29 June 2000 (2000/43/EC), discrimination is an unequal treatment on the basis of racial or ethnic origin. The definition distinguishes between direct and indirect discrimination. Direct discrimination takes place when a person is less favourably treated than someone else in a comparable position. Indirect discrimination is found when a seemingly neutral regulation, criterion or practice may produce a disadvantageous result for persons of a certain racial or ethnic origin compared to other persons unless there is a justifying legal objective and the measures used to achieve this objective are adequate and necessary.

Protection against discrimination is guaranteed by several legal acts in Poland. The acts of greatest significance are the Constitution of 2 April 1997¹²⁰ and the Labour Code of 26 June 1974.¹²¹ The Constitution states equality of all before the law, the universal right to equal treatment by public authorities and prohibition of discrimination in the political, social or economic life for any reason whatsoever.¹²² Article 113 of the Labour Code states that “*any discrimination in employment, direct or indirect, is inadmissible, in particular because of sex, age, disability, race, religion, political beliefs, trade union membership, ethnic origin, religious affiliation, sexual orientation, and due to the temporary or permanent, full-time and part-time form of employment.*” Such an approach to the issue of discrimination fulfils Poland’s obligations resulting from international agreements. Although, it must be stressed that a lack of court cases resulting from this regulation reported in the applied, tested or interpreted by courts.

¹¹⁹ The description of the legal framework is based on: M. Bieniecki, J. Frelak, *Non-Poles on the Polish Labour Market. Problems and Challenges. An overview of the issue of racial/ethnic discrimination in the private sector in Poland*, Caritas Polska/Lublin, Gliwice 2005)

¹²⁰ Journal of Laws, No. 78, item 483 with later amendments.

¹²¹ Journal of Laws No. 1998, No. 21, item 94 with later amendments.

¹²² The Polish Constitution bans the existence of political parties and other organisations, whose programs contain references to totalitarian methods and practices of Nazism, Fascism and Communism, and of those whose program or activity assumes or allows racial and ethnic hatred.

RAXEN Network suggests that the key concepts of antidiscrimination legislation concerning ethnic/racial discrimination have not been yet ¹²³

Institutional Discrimination

It must be noted, however, that the legal ban on discrimination enshrined in the Polish law does not cover the restrictions on foreigners' access to the Polish labour market. The regulations in force do not consider these restrictions as discriminatory. Their objective is to protect the domestic labour market, and they are thus comparable to the regulations in force in other EU member states. A comparison of the Polish legal and administrative framework with the EU standards does not therefore lead to the conclusion of a discriminatory character of these regulations.

Some regulations may sometimes result in institutional discrimination. Institutional discrimination is described as routine, systematic discrimination and the exclusion of particular categories of people: denial of opportunities, respect, and rights available to host population. In some countries belief patterns play an important role in excluding even second and third generations of migrants, while in Poland restrictive laws concerning employment of non-Polish citizens dominate.¹²⁴

Such cases take place when, regardless of their intentions, employers act in a discriminatory manner due to the structure of labour market institutions and the regulations. If a work permit is granted just for one year, it is more risky to invest in the new qualifications of the employee (in fact all respondents declared that they treat Polish and Ukrainian workers equally in that matter). According to our interviews, it cannot be said that Ukrainian workers are treated worse because they are recognised short-term employees, but employers expressed that they have to take into account the risk that Ukrainian workers will more likely quit either because they will not receive another work permit or because migrants are less bonded with the place of living and may travel somewhere else for new and better opportunities.

While actual discrimination may not be an issue, broader negative stereotypes may play a role. In this context, even the intentions to 'protect' from conflict in the workplace may put the migrant worker at a disadvantage. This was observed in the approach of a schoolmaster hiring a Ukrainian English teacher in a small town in the vicinity of Warsaw. The employer, aware of possibility of negative reactions of parents of the pupils, is not hiring the Ukrainian teacher as a class tutor. The schoolmaster does it 'to protect' the Ukrainian employee, but in consequence the Ukrainian loses chances for additional

¹²³ Report on Racism and Xenophobia in the Member States of the EU, prepared by the European Union Agency for Fundamental Rights (FRA), 2007

¹²⁴ H. Flam, B. Beauzamy, *On the Institutional and Agentic Discrimination*, presentation in the DG Research, Brussels, 2005.

income from being a class tutor. The headmaster was arguing that the majority of her students are of working-class origins and their parents share non-tolerant views on other nations.

4.3.2. Discrimination against Foreigners in Employment

Rights of Legal Migrant Workers

The basic rights of an employee are described in the Labour Code (see the annex for relevant sections). The Labour Code provides rules and regulations concerning the relations between the employer and employee, remuneration, and the employer's and employees' duties and responsibilities. It regulates time of work, parental and vacation leaves, employment of young people, safety regulations, collective agreements, procedures of solving conflicts and so forth.¹²⁵

Some of the basic regulations included in the Labour Code assume that an employer has to respect the dignity and personal rights of his employee. Employees have equal rights on the grounds of executing the same duties. Any kind of discrimination in employment, direct or indirect, on the grounds of gender, age, disability, race, religion, nationality, political view, trade union membership, ethnic origin, belief, sexual orientation, and definite term or indefinite term contract, and full-time or part-time contracts is prohibited.

An employer has to provide and secure hygienic work conditions. An employer has to facilitate the improvement of employees' professional qualifications. The work contract arrangements cannot be less beneficial for the employee than the Labour Code regulations. If such arrangements are contracted they are invalid. Employees have the right to create organisations to represent them and to defend their workers' rights.

Regulations concerning time of work and type of contract state that once a third subsequent fixed-term contract is signed, it is deemed to have become an indefinite term contract. For overtime hours worked, the employee is entitled, in addition to his normal salary, to a supplement of: 100% of pay for working nights, Sundays and bank holidays, which are not, under his work schedule, the employee's working days, or days off given to the employee in lieu of Sundays or bank holidays worked in accordance with his work schedule; 50% of his salary for working overtime on any day other than those mentioned above; 100% of his salary for every overtime hour worked above the average weekly norm in the reference period, unless the norm was exceeded as a result of overtime for which the employee is entitled to receive the supplements mentioned in the points above. The right to undisturbed rest: all employees are entitled to at least 11 hours undisturbed rest in every 24 and at least 35 rest hours each week. All employees are entitled to an annual unbroken paid vacation.

Protection of Victims of Forced Labour

¹²⁵ See: Statute of the National Labour Inspection, <http://www.pip.gov.pl>

On the whole, the interviewed experts, employers or employees did not report cases of trafficking. The exception was the leader of non-governmental organisation that provides assistance to victims of human trafficking and prostitution. She described a story of a Ukrainian woman forced to prostitution who testified in a court against her perpetrators. It was possible only because of her determination and support of this organisation.

The press has reported a number of cases of labour trafficking and involuntary servitude in recent years. It should be noted that such stories do not appear very often in the media and the issue of labour trafficking in Poland has not been a subject of public debate so far. More attention was paid to the situations involving groups of people than individuals or shocking incidents. What is striking is fact that that situations of asserting their rights or suing employers appeared rarely.

Both Police and the Border Guards stress that within the last year in Poland no cases of so-called “labour camps” (understood as the exploitation of victims of human trafficking) were noted. Also, the instances of reporting about taking away passports were not found during our research. The authorities such as Border Guards and Police did not mention such cases, and neither did the interviewed Ukrainians. We cannot, however, assume that such cases do not take place at all, especially since our research did not access the most pathological spheres of the illegal labour market such as prostitution and human trafficking.

Several cases, however, have been reported in the national media. For instance, in July 2006, a labour trafficking ring in Italy was found to have trafficked more than 300 Polish men and women for the purpose of forced agricultural labour. The Police conducted 21 new investigations. The government conducted 36 prosecutions, up from 18 in 2005. Sixteen traffickers were convicted in Polish Courts of First Instance in 2006. In 2006, Polish authorities worked closely with foreign counterparts on several high-profile international trafficking cases. In May 2006, Austrian authorities arrested two Polish policemen who were involved in a group suspected of having trafficked 440 Polish and Romanian women to Austria. Although the government has invested significant resources in victim identification training, the number of identified victims in the country remained low.¹²⁶

In spring 2007, the press reported a horrific story about a Ukrainian woman forced to work in a greenhouse and because of hunger she was eating pet food. She was kept in a condition of servitude and constantly threatened by the legal processes (with passport taken and no valid visa). Finally thanks to the help of a Polish colleague and organisation helping victims of trafficking she contacted the Police and deposed against her former employers in the prosecutor’s office.¹²⁷

¹²⁶ Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report 2007, US Department of State

¹²⁷ K. Surmiak-Domańska, Niewolnica Kowalskich, Gazeta Wyborcza, 28 April 2007

There has been much less coverage of the cases of exploitation of foreign workers in the Polish media. Most reports merely recorded investigations of illegal employment or unregistered trade activities of non-EU nationals (Ukrainians, Vietnamese). In some cases, the intervention by the Polish Border Guards was criticised by Polish NGOs and the Ukrainian consulate as groundless. In October 2007 Border Guards and Labour Inspection controlled a plantation nearby town Pyrzyce (Zachodniopomorskie Province) where 73 Ukrainians worked. Initially, the National Labour Inspection questioned the legality of the migrants' employment, and all Ukrainians were asked to leave Poland within 7 days and had a 12-month ban on entry to Poland. This decision was later revised after it was heavily criticised by the officials representing the Ministry of Labour and Social Policy, Ukrainian honorary consul in Szczecin and many other authorities.¹²⁸

Only individual stories probed the working conditions of migrants themselves. One such story appeared in 2007. According to the report, company owners attracted Ukrainian workers promising legal employment and a satisfactory salary and free accommodation. The reality was different – after coming to Poland they had to work illegally, live in caravans and finally received considerably lower remuneration or even nothing.¹²⁹

Analysing the press reports, it is questionable whether the current administrative practice actually contributes to protecting the migrants' rights. In the case of the discovered inappropriate conditions of work of illegal migrants, the immediate measure would be the deportation of the workers. In contrast, the maximum penalty for the employer could be only the fine of 3000 PLN (or around 900 EUR). The payment of this symbolic sum is dependent, however, on the proof of humiliation and forced labour, which would have to be substantiated by migrants' reports. However, their cooperation is not likely—in fact, some of the migrants who are deported try to return to Poland with the intention of further work.¹³⁰

4.3.3. Enforcement of Labour Rights

The employee has a right to file a complaint concerning the violation of his/her worker rights to the National Labour Inspection and the Inspection is obliged to perform actions to verify the complain and, eventually, to punish the employer. When discrimination is an issue, any person who feels discriminated ought to report such case to the police, to the court or to the prosecutor office. The prosecuting organ is obliged to initiate and conduct a preparatory procedure, and the public prosecutor is obliged to bring charges against and support the charge – prosecuted *ex officio*. In a case when constitutional rights were

¹²⁸ A Kulej, Ukrainki: Chcemy tu zostać i pracować Gazeta Wyborcza, 31 October 2007

¹²⁹ A. Lewinska: Biało-czerwona na czarno, Gazeta Wyborcza, 27 April 2007

¹³⁰ Sławomir Cichy, Katarzyna Świerczyńska, Obóz pracy w Zachodniopomorskiem, Dziennik, 2 November 2007

violated, a complaint to the Ombudsman's Office can be filed. These institutions cannot refuse to accept the report on the offence.

As the discrimination is persecuted *ex officio*, in case of a repeated issuance of a refusal to initiate proceedings or of discontinuance of the case, the victim can independently lay charges in court. The charge sheet lodged by the victim must be prepared and signed by a lawyer. In such situation it is recommended to ask for assistance and/or a legal advice from institutions that deal with anti-discrimination (the list is presented in the section Institutional and Community Support).

All violations of workers' rights, according to the labour code, have to be reported to the National Labour Inspection. It can be done personally, through an organisation (e.g. labour union) or anonymously. The National Labour Inspection is the institution that supervises and controls how the labour law is obeyed. In particular, it controls employment, employment conditions, work safety and deals with regulations concerning legal employment and all other forms of contracts.

The control/supervisory function of the National Labour Inspection is especially focused on these sectors and companies where bad conditions of labour rights' protection were diagnosed earlier. The priorities of the National Labour Inspection are: to enforce regulations concerning labour relations, especially restricting existing pathologies, concentration on these areas where the greatest violations and number of work related accidents were observed. PIP also deals with prevention.¹³¹

The National Labour Inspection reported receiving 901 complaints on discrimination or harassment in 2006. The statistics on the enforcement of labour rights seem to point to a steady improvement in recent years. The total number of complaints filed by workers against their employers decreased from 326,000 in 2004 to 160,000 in 2006.¹³² Unfortunately, the Inspection does not report the cases of discrimination against foreigners as a special category. This is in line with the practice of the Polish state institutions. No institution focuses on the cases of discrimination specifically against foreigners. Apart from the logistical challenges, this approach reflects the low priority of combating illegal employment on the agenda of officials in charge of management of labour market. Even a representative of the Ministry of Labour and Social Protection admits that there is no social consent to fight irregular employment in Poland. (WEMPiPS) The officials justify their position with the statement that the Poles just do not see anything wrong with unregistered labour, and claim that it is socially accepted (WELaS10).

Prosecuting Employers for Discrimination against Migrants

¹³¹ National Labour Inspection, <http://www.pip.gov.pl>

¹³² Statistics of the National Labour Inspection

Prosecuting employers for discrimination against migrants (both legal and illegal) is extremely rare or inexistent. This situation was confirmed also by interviewees. Usually, Ukrainians who do not work in Poland legally are afraid to contact authorities and complain about work conditions or not being paid on time (or at all). The cases are exceptional, but according to our interviewees they do appear.

It is not possible to ascertain how many other cases of discrimination against foreign workers were processed by the legal system during 2006, if at all, because the available case statistics do not disclose the grounds of discrimination concerned. This means that in Poland and other states with a similar situation the key concepts of antidiscrimination legislation concerning ethnic/racial discrimination have not been applied, tested or interpreted by courts.¹³³

The single cases of migrants' fighting for their rights are a result of number of factors. First of all migrants stay in Poland temporarily and this strategy influences their decision whether or not to sue their employer. In the case of problems it is easier for an illegal worker to change the employer than to go to court. Second, they often seem to not know their rights or treat such cases as a natural aspect of the black market. A lack of organisations providing assistance in such a situation also plays an important role. For legal workers prosecution is often too time-consuming and costly. Such factors seem to discourage Polish employers to the same extent.

Another issue limiting the number of the reported cases is the inaccessibility of the court procedure to migrants. The key factors are the cost, complexity and length of proceedings. Migrants, as well as the vast majority of Poles abused at work, do not start lawsuits with complaints over the common issues such as wage arrears or payment delays. As one of the interviewed experts stated it, *"when a person does not have a written contract then execution of his rights in a court is practically impossible. Ninety-nine percent of Poles would not be able to do it without a lawyer, and a lawyer's fee would be probably much higher than the benefits from the case (WEMPiPS05).*

4.3.4. Overall Assessment

According to our observations that were also confirmed by many studies, migrant workers more often than the natives tend to have low skilled, low-paid and low status jobs, even though they have the appropriate qualifications and education. As in many other countries, immigrants in Poland may find themselves in a situation when they have to accept work below their qualifications or for a lower salary. According to the opinions

¹³³ Report on Racism and Xenophobia in the Member States of the EU, European Union Agency for Fundamental Rights, http://fra.europa.eu/fra/material/pub/racism/report_racism_0807_en.pdf

of migrants gathered our research,¹³⁴ immigrants generally do not have problems in finding employment in Poland. Nevertheless, Poland seems to be at a stage of economic development in which its market segmentation corresponds to the labour force conditions. For many migrants accepting low-status and low-paid jobs is a result of their own economic decision taken for very specific reasons (e.g. an academic lecturer working as a plumber during a summer holiday or a medical doctor taking care of old people).¹³⁵ Working below qualifications may also be the result of objective factors, such as a lack of linguistic competence which is quite common in the cases of asylum-seekers and migrants who are not fluent in Polish, along with a lack of appropriate education and/or experience.

Taking into consideration the level of salaries, in the case of illegal work lower salaries make the migrants competitive while legal workers enjoy wages that are comparable or even higher than those of the Poles. The most recent observations show, however, that even in the irregular sector remuneration does not depend on immigrant/native status but on the skills and usefulness of the worker. In the legal sector, for example, teachers in public schools receive similar remuneration as Poles depending on experience and probation. Accordingly, native speakers' salaries are higher due to the place they work and fact that it is their mother tongue, but their position on the market is more uncertain and temporary. Thus, migrants are not treated worse in this sector and sometimes even more favourably.

4.4. Awareness among Employees and Employers

4.4.1. Migrants' Awareness of their Rights

While analysing the awareness of migrants' rights one may clearly notice a difference between legal and illegal workers. Ukrainians who work legally seem to be aware of their rights. It is especially visible among those who have spent a few years in Poland: many of them possess extensive knowledge of the procedures of employment, obtaining work permits, visas, etc. They are familiar with procedures as they usually go themselves through everything regularly.

¹³⁴ E.g. M. Bieniecki, H. Bojar, A. Gąsior-Niemiec, M. Pawlak, *Migranci na rynku pracy w Polsce. Wyniki badań przeprowadzonych wśród migrantów ekonomicznych i pracowników polskich* [Migrants on the Polish labor market. Results of the research carried out among economic migrants and Polish employees]. Civic Club, Institute of Public Affairs, Warsaw 2005

¹³⁵ D. Bagińska, M. Bieniecki, H. Bojar, A. Gąsior-Niemiec, I. Koryś, P. Koryś, J. Kurczewska, M. Pawlak, , *The European Dilemma: Institutional Patterns and Politics of 'Racial' Discrimination: WP4 Institutional Discrimination*, Institute of Public Affairs, Warsaw 2004/2005

As the interviews show, most of the irregular workers are aware of the existence of some workers' rights, but cannot enumerate them. They assume they have a right to emergency medical care, they are conscious about the possible consequences of illegal work (but they do not know how they could legalise their work). Most of them, however, being aware of the situation on the Polish labour market, point out the free market principle: if they do not like working for someone they can change their employer. The current situation on the Polish labour market is quite good for employees and the employers are pressed to do their best to satisfy their workers' expectations.

A comment of one of the Ukrainian workers (*if they were not satisfied with their job, they would go look for another*) describes this process very well: today there are employers who need Ukrainians and it is in their interest to satisfy the needs of their employees – if they do not, the workers can change jobs. It is valid more for unregulated work (where no permits are considered and where the terms of employment are more flexible). In the case of legal migrants, changing their job demands a new procedure of legalisation, new work permits, often a new visa, etc. In this sense legal workers are handicapped when compared both to Poles in a similar situation and to those workers who do not need a work permit.

Employers have adapted to new conditions on the labour market and are reported to treat workers better than it could be observed a few years ago. Academic respondents who observe the labour relations confirm this: the situation is improving every year. According to the interviews with employers in professions requiring qualifications, but not of academic training (drivers, construction workers, etc.), their employees are not too afraid of losing their jobs – the strategy of moving to the grey zone (unregistered employment) is quite often applied in such situations.¹³⁶

Considering the protection of their rights, besides the legal protection, also informal methods were pointed by our interviewees. The informal methods work especially well in the irregular sector of economy. For instance, an owner of farm who hires illegal workers said that even if she is not satisfied with the work of Ukrainian worker she pays him or her daily wage, because “she does not want to have her car lights broken”. It would be rather an effect of incidental revenge of seasonal workers, not of action of any criminal organisation. Other employers know that if they would be mistreating their Ukrainian workers their bad reputation will spread very fast among the Ukrainian diaspora and they would not be able to find any new labourers – this is mostly the matter of short term illegal jobs like construction or agriculture, especially in the situation of labour shortages in these sectors in general.

¹³⁶ In such situation the worker becomes employed somewhere illegally but he still enjoys the rights to legal residence in Poland thanks to the provisions of the visa issued on the basis of the working permit. Although, strictly speaking, the legal basis for the stay has expired as the worker no longer is employed at the work place for which the permit was issued, this irregularity is rarely detected, as it is very difficult to be traced by the authorities.

Another issue that should be pointed out in the context of migrants' awareness of their rights is the low socio-economic position of migrants that makes them willing to accept work in worse conditions. A representative of one of the NGOs pointed out a very important factor influencing immigrants' perception of their rights: *when a person comes from poverty, his expectations and standards are much lower* (WELaS10). This attitude is often strengthened by the formal status of immigrants that does not allow them to consider legal employment: *people are desperate, determined to find employment and they do not pay attention to formal conditions...they do not consider a regular contract as important* (WELaS10).

The awareness of their rights among Ukrainian migrant workers can be summarised in such a way: wherever they feel comfortable at work, they do not think about the Labour Code, and whenever they feel abused they blame it on their illegal status having no practical way to fight for their rights. In cases when the abuse is severe – they usually change the job. The knowledge of the precise regulations is very limited and it is not used in practice.

4.4.2. Awareness of Violations

Among Migrants

Neither regular nor irregular Ukrainian workers expressed any major concerns related to the violations of their rights; however, in respect to the Polish and international legal regulations, there were situations they described that suggested that such violations do take place, especially among blue collar workers (e.g. disrespect for safety regulations at construction sites). The lack of such concerns seemed to result from the relatively high position and good conditions of work of those Ukrainians who work in Poland legally, and the very low expectations of those who are employed within the informal sector.

During our interviews, none of the Ukrainians who work legally in Poland complained about any violation of their rights. Not all of them were hired in full-time positions, although such terms of employment were rather conscious result of their choices than a pressure from the side of their employers (e.g. WPL07, an analyst in one of the major consulting firms who works officially as a free-lancer). In their opinions, their choices were based on the calculation of costs and benefits resulting from the taxation system. Any irregularities, e.g. in working hours, as in the case of WPL01, an anaesthesiologist in a public hospital, were no different than among Poles working in similar positions.

The migrants' perception of their rights varied according to their position on the labour market. Highly qualified Ukrainians working legally did not see the problem at all; they stressed strict regulations concerning job hours, being paid on time, etc. The other rights, of lesser importance to them, did not raise their concerns. The interviewed illegal workers point out only occasional situations of the abuse of their rights. The few described cases revealed a lack of respect and the violation of workers' dignity expressed occasionally by people who hire household help (WPN08). Such situations were described generally by women who worked in Polish houses as cleaners. All of them stressed that such cases are not common and that in most of the situations they were able to resist such cases of abuse. No cases of physical abuse were mentioned. Employers are also conscious that some of their Polish employees verbally offend their Ukrainian colleagues. None of the employees has heard anything about physical or psychological abuse, which is defined as recurrent behaviour. It has to be stressed that according to the Labour Code the employer is obliged to protect his employees from the acts violating their dignity by other employees of the company (Art. 94). Their perception of the working conditions were similar to those expressed by experts, i.e. thanks to better economic conditions workers have become more valuable and mistreatment may mean problems for the employers: the employees will leave and the employer will have trouble finding someone to replace them.

Among Employers

The interviewed employers declare that they obey the rights of their legally employed Ukrainian workers. Usually they declare that their Ukrainian workers have the same rights and are treated the same as the Polish ones. However, on the other hand they admit that sometimes they are lost in the jungle of regulations which are quite often contradictory. An example is a school headmaster who according to the Teacher's Charter (*karta nauczyciela*) should sign a permanent contract with a teacher who has been promoted to be a delegated teacher (*nauczyciel mianowany*), but on the other hand the headmaster cannot sign such a contract with a person who is granted a work permit for one year.

Several employers who were interviewed have complained that according to the Polish labour code the employer is a much weaker party in the case of any conflicts with the employees. An interesting case of the legal action conducted by the employee after being disciplinarily fired was described by one of the interviewed employers. According to the relation of the owner of a private clinic a Ukrainian doctor was using a falsified medical diploma. When the employer discovered the fact he immediately fired the fake doctor. Then the Ukrainian worker accused him of firing without reason. During the trial, the employer was not able to prove that the diploma was falsified and had to compromise in court.

The employers' perception of being on the weaker side in legal cases was illustrated by a case when a worker was fired from a catering company who accused her former employer of not reporting the whole remuneration to the tax office was on trial during the research. The former employee reported it also to the National Labour Inspection (*Państwowa Inspekcja Pracy*) who fined the company. The employer recognises that legal action as revenge for firing the worker. The worker, according to the employer, was fired because of low performance. The employees of the company (both Polish and Ukrainian) had signed contracts for minimum wage but without a contract were receiving extra money which was not reported to the tax office, and also social insurance from the extra money was not paid. This is a very common practice in Poland. The interviewed employer admits her practice was breaking the regulations but she was referring to the fact "that everybody does it in Poland to cut expenses", plus in her opinion she was not abusing the former employee who agreed with not reporting the whole salary to the tax office in order to earn more.¹³⁷

Among Experts

The experts agree that the labour conditions in Poland have improved greatly over the past few years and that it is due mainly to economic growth and the better general situation on the labour market (for employees). This concerns both native workers and Ukrainians working both legally and in the shadow economy.

However, several concerns are on the agenda of trade unions. According to the opinion of representative of the largest Polish union, NSZZ Solidarnosc, the conditions of work in Poland are generally bad and especially bad for immigrants. Access to many vocations and the best working places is controlled by informal networks, and immigrants do not have chances to enter these networks. However, he stressed that formally the rights of foreigners working in Poland are protected the same way that the rights of Polish workers are.

As it was noticed by one of the experts, in extreme cases, a lack of awareness of own rights may lead to the deterioration of the migrant workers' position and eventually to slave labour. Irregular employment, especially when an immigrant is also illegally residing in the country, makes him or her vulnerable to abuses and crime. The experts point out that it is not a problem that appears on a large scale, but that illegal workers and immigrants are among the groups that are most likely to become victims. A representative of one of the NGOs refers to a few examples of human trafficking and forced labour that her organisation has encountered during its work. She stressed that "*in the situation when we deal with bad conditions of labour and bad employers and when the exploitation*

¹³⁷ No worker's opinion was heard in this case, although the instances of such practices were commonly found during our research.

comes gradually, without a clear line turning into slave labour some people, victims of this situation may not realise that” (WELaS10).

None of the experts stressed any particular situation or type of situations where the rights of Ukrainian employees are violated. If there were any violations, they were not reflected in the National Labour Inspections as they did not take note of either Ukrainians or any other foreigners. It seems that apart from some extreme cases that are sporadic and very individual, there is no particular area where Ukrainian workers would be treated differently than Poles.

Analysis

The situation of Ukrainian workers must be placed within a wider context. Looking at the formal rules and regulations (the rights defined, for instance according to the Labour Inspection’s understanding), we can find some violations of these rights. The rights of all workers are more often violated within the secondary sector (unregistered economy) and Ukrainians constitute only a fraction of the labour force within this sector. Their position in comparison to other employees within this sector is generally the same (with the only difference that Poles caught working irregularly cannot be deported and that many Poles who work in a grey zone have medical insurance – as they are registered as unemployed).

It seems, however, that generally the level of violations is not different toward Ukrainian migrant workers than to their fellow workers in the same positions (legal/irregular, with high or low status). Such a diagnosis is apparent in the annual report of the Labour Inspection, and it was confirmed by the Labour Inspection officers during interviews. The differences result from the bureaucratic procedures related to obtaining a job permit and residence status.

However, the positive self-assessment of migrants needs to be placed in context. Ukrainians are hired to work for less but not worse than Poles. Often they have no training and lack safety equipment. They cannot complain too much, because they are illegal. They are willing to take risks because risky jobs are often better paid and they are determined to make money. For the same reasons they accept worse condition of living. Additionally, i.e. in the construction sector, a practice was observed that Ukrainians (and other immigrants) are forced to compete with people who receive additional benefits (such as unemployment or early retirement benefits).

4.4.3. Awareness of Discrimination

The interviewees stress that there are hardly any cases of discrimination directed against them. Some refer to stories of people not being paid for their work and instances of employers having Ukrainians deported after completing their work, without pay. They all point out, however, that these are rare cases, and if they took place it was a few years ago when the situation on Polish labour market was completely different (20% unemployment, hundreds of thousands of Ukrainian migrants). This statement is reflected in the National Labour Inspection statistics that show a general improvement in the terms of conditions of work and workers' rights over the past few years.

Looking at Polish society through the eyes of Ukrainian migrant workers, we can see that the greatest problems they face are problems related to dealing with various types of state institutions and their representatives.¹³⁸ The most important institutions for the immigrants are those which decide about their residence status in Poland and are responsible for the migrants' functioning on the labour market. Migrants who want to regularise their status in Poland most often fit into one of the categories: those who choose temporary migration travelling every three months to Ukraine in order to avoid illegal residence in Poland; and those who try to legalise their residence through temporary residence permits, work permits, etc. The first group consists of people who treat migration to Poland as a way to earn money but do not have long-term plans of living in Poland. The second group is a group of potential residents who are looking for possibilities of building long-term relations with Poland – building steady, long-term life strategies. Both available data and our research show that the second group is much less numerous. Recent analyses show one more group: migrants who decided to stay in Poland illegally for some time and then to return to Ukraine with earned savings. The recent regulations (introducing visas, Schengen) cause this group to grow, although no numbers are available.

Another issue pointed out by the immigrants from Ukraine was mistreatment by the personnel of the Polish Border Guard and Police. On a few occasions they referred to cases of corruption and unjustified harassment by representatives of these services. Especially often they described instances of mistreatment of Ukrainian women. Practically no other issues referring to discrimination were brought up by the interviewed Ukrainian immigrants.

Employers view the cases of discrimination to be accidental. All of the interviewed employers declared that they do not discriminate against Ukrainian workers. These must be treated with caution, as they are just declarations by interviewees. At the same time, some of them expressed negative opinions of Ukrainians (for example Ukrainian desire to avoid formal solutions of problems). Some of the interviewees generalise their experiences with Ukrainian workers hired in their companies for the whole nation, which in consequence may affect their future migrant workers. It has to be stressed that the

¹³⁸ M. Bieniecki, H. Bojar, J. Frelak, J. Konieczna, J. Kurczewska, A. Gąsior-Niemiec, *Ukraiński trudowi mihranti na polskomu rinku praci*, in *Ukraińska trudowa mihracija do krain Evropeiskovo Sojuzu u dzierkali sociologii*, Kiev 2005

majority of the employers were talking about other differences between workers rather than nationality, which are important for them – for example one said that the most important difference is if a worker comes from the city or a rural area. In her opinion, both Ukrainian and Polish workers who were born and brought up in the villages are more dutiful than workers of both nationalities coming from cities.

Access to the Labour Market and the Recognition of Qualifications

Although the legal workers do not point out considerable differences in terms of working conditions, access to the labour market and obtaining a work permit should be perceived as a serious disadvantage compared with natives. The only discrimination that appears as a practice is restrained mobility of Ukrainian workers: the work permit is prescribed to a particular position in a specific workplace. Legal Ukrainian workers in Poland are authorised only to take up employment in the described position, and any change of the employer or work place requires going through a new procedure of employment/obtaining permits, etc. Although such a situation is common across the European Union countries, presenting clear disadvantage to third country citizens on the European labour market, from a sociological point of view it is an unequal treatment. On the other hand, the European regulations allow for such a situation and do not consider it as discrimination. This situation does not apply to those Ukrainians who work legally and do not need a work permit (spouses of Poles, some vocations).

The regulations concerning the employment of foreigners in Poland discourage both the prospective employers and employees from entering the procedure of obtaining work permits. The basic principle of Polish labour market policy concerning immigrants from the outside of the EU is that non-EU citizen can be employed only if there is no possibility to find an EU citizen for the position.¹³⁹ This doctrine results in a restrictive and selective practice of issuing work permits.

An additional burden which is perceived as a barrier to entering the Polish labour market by foreigners is the bureaucracy involved in the procedure, making it complicated and time-consuming. The procedures of obtaining a residence and work permit are mentioned by most of the immigrants as the most troublesome.

The interviewed Ukrainians report that the prolonging bureaucratic procedures cause a feeling of uncertainty, suspension and instability, and make it difficult to build long-term plans related to living in Poland. Additional requirements (like extra documents) that may be introduced freely by civil servants makes the procedure not clearly defined, non-transparent and make the employment of a foreigner not attractive and quite often discourage them from legal employment. Ukrainians also mentioned the different

¹³⁹ Act on the Promotion of Employment and Instruments of Labour Market of 20 April 2004 (Journal of Laws 2004, no. 99, pos. 1001) and the regulation of the Minister of Labour and Social Policy on the Procedures and Conditions of Issuing the Work Permits for Foreigners of 21 July 2006.

treatment accorded to immigrants from the West and those from the East by the immigration and labour office workers.

The problem of the complex procedures was underlined by a member of a Ukrainian migrant organisation who described the unsuccessful effort to involve a Ukrainian actress in a Polish movie. According to the manuscript, only a person with Ukrainian citizenship, speaking Ukrainian and having certain physical characteristics could take this role. Ironically, she was not able to pass through the initial procedure of verifying whether or not there existed a native (Polish) candidate who met those requirements and was ready to perform the offered job.

Recruitment Procedures

In most cases employers do not recruit their Ukrainian workers through announcements or middlemen. During the conducted research, the common answer to the question "How did you find your Ukrainian workers?" was "they found themselves" or they were recommended. In other words, for the majority of cases these are Ukrainians who initiate contact with the employer.

In some cases, it is easier for companies to order services from a Ukrainian company, which is then delegating its workers to Poland. In such cases it is a Ukrainian company that formally employs workers and they are the subject of Ukrainian, not Polish, labour regulations.

The process of selecting candidates seems to be quite fair in the segments of legal employment. Fair in this sense means that there are no differences in the evaluation the competencies of native and foreign candidates, especially in companies with a well elaborated organisational structure. Apart from the companies that conduct recruitment activities with high standards, in the case of the migrants it is additionally verified by the local authorities under the admittance of job permit. In some cases, however, it is problematic to recognise the experience reached, e.g. in the 'third countries' as the equivalent to the experience achieved in Poland.

As far as the employment in the irregular sector is concerned, the candidate's competence is usually judged on the basis of his/her recommendations and/or performance. It should be underlined that especially in cases of domestic help the references/recommendations are very often a substitute for the formal verification of competencies. Also, the preferences of the employer provide the basis for a migrant's employment.

Most experts suggested that the broadly conceived social network plays a crucial role in the recruitment in general. The employment of immigrants does not stray from this rule either. Especially in the lower segments, often illegal and based on trust, the immigrant worker can find a job under the condition that he is supported by connections and networks. A similar situation can be observed in the branches dominated by one specific

nation, e.g. Vietnamese or Chechen, whose culture consist in the close relations, family/community-like organisation. The only group of employers who need to pass the whole professional process of formal verification and recruitment is – in the opinion of experts – noticeable among highly qualified experts.

By common consent, stereotypes are regarded as playing a minor role in recruitment procedures. The fact that stereotypes of foreign nations are mostly – according to experts – of a positive nature in Poland is a notable exception too. However, as one of experts underlined, the closer a contact with a specific nation, especially concentrating on a particular sector, the more verified and uncomplimentary opinions are shared. This might derive from appearing elements of competition with native Poles' activity (e.g. Vietnamese bars, Ukrainian domestic help or construction workers).

Both this research and our previous experience show that experts were reluctant to identify overt forms of discrimination analysing, for example, the types of announcements. On the contrary, many of them exemplified common cases of announcements directed exclusively to foreigners, or giving an advantage to them by specific lists of requirements which are to be met by a person with wide international experience as well as by the publication of the announcement in English, German or another foreign language in Polish press.

According to one expert interviewee, the discrimination, if it can be considered as discrimination, may arise rather from fear which results from low educational competencies or insufficient access to information on too complex legislation than preferences. Many experts gave examples of the opposite, i.e. 'positive' preferences towards migrants. As it was already mentioned, due to the objectively low number of those recognised as legal foreigners, the recruitment of migrants often provides incentive or confers a unique character in the opinion of clients or economic partners.

The Positive Recruitment of Migrants

Ukrainian workers often express gratitude to employers who were willing to help them with the legislation process. Within the group of mobile workers (irregular), some employers have a very positive reputation and some are avoided. According to the interviewees, such recommendations play a very important role in the shadow economy sector: a negative opinion of an employer cuts him/her off from Ukrainian workers and, considering the existing demand for labour, a bad reputation may seriously impair someone's business.

The data and interviews with a representative of the regional Mazowiecki Labour Office show that it is difficult to point out employers who have a negative reputation among workers: the procedure of obtaining legal employment is so complicated that the very will to enter the procedure shows that the employer is interested in hiring a foreigner (Ukrainian) and testifies his/her positive attitude towards the Ukrainian workers.

Obviously, this is the business aspect that makes the employers willing to search for workers abroad, i.e. in Ukraine. The tendencies visible on the Polish labour market (decreasing unemployment, emigration of Poles, limited mobility of those who live in Poland) have led more Polish companies to search for Ukrainian workers in Ukraine. There are job fairs organised in some Ukrainian towns by Polish companies and some Polish companies (shipyards, construction companies) recruit Ukrainians through advertisements in Ukrainian newspapers, on the Internet and at recruitment agencies.

There are also examples of agencies that respond to the growing need for Ukrainian workers and that organise recruitment in Ukraine. The majority of interviewed employers reported, however, that they recruited Ukrainian workers through informal contacts, using recommendations from trusted persons. A significant number of employers said that Ukrainians contacted them in search of a job. The employers hired them because there was a need for a new labour force.

Security of Employment and Contract

Migrants employed legally are obliged to renew their work permit regularly, and in the case of Warsaw it is on an annual basis. As one of the workers of a confectioner's shop (*cukiernia*) mentioned, preparations to collect all documents start long before the deadline for submitting the documents and whole procedure takes a few months. As a result, it creates a permanent insecurity of employment. This opinion was shared by an expert from the Ministry of Labour and Social Affairs who criticised the mentioned rule from a different perspective. Because of the renewal rule, Ukrainian employees are deprived from the right to have a contract of unlimited duration (long-term agreement), which makes their position at work worse when compared to natives, especially in the Polish circumstances. This is for example needed to obtain a loan, open a bank account and makes them "second-rate residents". Furthermore, the expert stressed that as a result they may be naturally "the first to go" when it comes to staff reductions. He accurately described this situation as "permanently sitting on suitcases". As a result, this insecurity seriously hampers their social and 'professional' integration. The economic prospects of the migrant depend on his/her success in dealing with tough market competition, which is always uncertain. In effect, the unstable position on the labour market hinders the migrant from settling in a new place and starting a new life in Poland.

The differences between contracts were also mentioned by a National Labour Inspection employee. For migrants, the contract can be signed only for as long as their work permit is valid, and they cannot be assigned a different workplace unless a new permit is issued. This means that they have a limited opportunity to change the company and position. The same expert pointed out that there is now urgency to change the regulations concerning labour migration since the existing ones were created in the times of high unemployment.

Wages and Social Security

Generally, Ukrainian workers receive the same remuneration as Polish ones. In public institutions (schools, clinics) employees are hired according to certain regulations (. Teachers' Charter - *Karta Nauczyciela* - in case of schools), which specify the level of wages for specific positions. Construction workers, drivers, teachers (in non-public schools) and farm workers in certain regions are hired not just because they are cheaper but rather because there is an enormous lack of workers on the market. In certain fields (constructions, shipbuilding, transportation) highly skilled Polish workers have moved to EU countries that opened their labour markets for Poles. This left significant labour gaps in these sectors.

The migration of Ukrainian workers to these sectors of the economy is a compensation of shortages. With a growing demand for labour in construction, Ukrainians receive similar wages as Poles. The demand for labour exceeds the supply of workers and they practically do not have to compete with their Polish colleagues. As an employer from the construction industry said – *“if the worker knows his job, he is not going to be fired, because there are no people”*. For this reason, if employees also ask for a pay rise, the employers have no other choice but to give it to them, because they risk losing their whole crew in the middle of the investment.

In professions where there are strict regulations on staff qualifications,¹⁴⁰ Ukrainian workers may receive a smaller salary than they would if all of the documents confirming their qualifications would be accepted by authorities in Poland. It is the case of teachers, who have to start their career in Polish schools as interns in order to achieve the levels within the Polish system for professional promotion. Of course it affects their salaries – an ‘intern teacher’ earns two times less than a ‘designated teacher’.

It should be stressed that the majority of Ukrainians work in Poland illegally (see Section 2). In general Ukrainians do not take worse positions or receive lower salaries than Poles. Both Polish and Ukrainian construction workers (employed illegally) are equally abused by the employers which are usually not paying extra money for them.

Farm owners admit that the conditions of work and wages of Ukrainian illegal workers in agriculture are very poor, but it is in certain regions of Poland, a sphere of the economy where there are no Polish workers either. The vegetables and fruits are being picked together by members of farmer families with Ukrainian workers, but workers receive the wages (most often an hourly or daily rate) and the Polish families share the income from selling the products. Farmers usually do not provide accommodation, because usually they hire workers just for certain jobs for one or a few days. The food maintenance during

¹⁴⁰ Ukrainians are not covered by the intra-EU system of recognition of qualifications. Additionally, the sector-specific regulations apply such as the Teachers Charter in education and the Bill on the Professions of Physician and Dentist in health care.

the working day depends on the oral contract between farmer and worker. Money is paid just after the work is done as a daily wage (lack of trust between the parts of the oral contract makes the postponement of payment impossible). The income of an illegal agriculture worker is considerably higher than the net income of a person hired in Poland on a work contract and being paid very often the minimum wage.

As an example, an interviewed owner of a transportation company said that he was accused by his Ukrainian driver of not being sent for long distance journeys to western Europe, which are also better paid. The reason was that the driver would need visas to the other European Union states, which would be an additional cost for the company, so he was working only on national routes. This is an example of an institutional barrier, but as the interviewee said, his driver could not understand it and quit the job saying that he was treated unfairly.

Under the provisions of the Labour Code, all legal workers enjoy the same rights to social security. However, the Ukrainian workers are at a disadvantage since there is no agreement between Poland and Ukraine on social security (comparable to the agreements that Poland has concluded with other EU member states). As one of the experts mentioned, in the case of the Ukrainian workers that may lead to serious problems when it comes to counting years of work, funds transferred to another security system, etc.

Working Below One's Own Qualifications

Apart from the complicated procedures of employment the other problem mentioned by interviewees that work legally was the recognition of qualifications achieved abroad. Migrants reported that only certain kinds of certificates or licenses were honored during the procedure for obtaining the right to work. Such regulations often place immigrants with similar qualifications (obtained in a different country) in an inferior position, i.e. a doctor who obtained his diploma in Ukraine may have to work below his/her qualifications, because not all his/her licenses, valid in Ukraine, are valid in Poland. Similar situations have taken place in the cases of many other qualified workers. It should be stressed that even highly qualified personnel pointed out difficulties in obtaining work permits, confirmation of qualifications, etc.¹⁴¹

However, over-qualification, work under one's own qualifications, used to be mentioned as a problem a few years ago, when the Polish labour market was more attractive for

¹⁴¹ WPL07: *(The procedure) ... has its weak points, has some points that do not make sense, One needs to bring along a file or two of documents. It takes a month or two to collect them. The employer needs a lot of time to get the work permit. In addition, the regulations have changed twice or three times already in the last three years* , WPL01: *The path to be taken by the doctors (not only from the East, but foreigners in general) is very complicated, absolutely arranged in an illogical way.*, WPN11 *The procedures are far more complicated than they should be...*

Ukrainians and when there was a much greater disproportion of income between Poland and Ukraine. It is quite rare now. It appears occasionally among housemaids, who are sometimes graduates of Ukrainian universities and/or experienced workers in other fields. Such people consider this situation as a problem, but they blame it on the situation in Ukraine. For them it is sometimes a reason for shame or discomfort.

Observations of the labour market for Ukrainians conducted during various research projects¹⁴² suggest that in other sectors it is not as significant a problem as it used to be. This is probably caused by the two factors. One is the better situation on the Ukrainian labour market for certain groups of highly skilled professionals, and second is that there are now more opportunities for migrant workers from Ukraine in Western Europe, where active migrants have moved. One of the interviewees, whose workers are expected to have high qualifications that are difficult to acquire, declared that his Ukrainian employees treat Poland as a stepping-stone on the way to Western Europe. In Poland they gather the documents that will let them later enter western labour markets.

It is a fact that in certain professions with a high level of formalisation of qualifications Ukrainian workers have to once more acquire in Poland the qualifications that they already have in Ukraine because of problems with the translation of the terms.

¹⁴² E.g. Experiment in Newcomer Integration, Institute's of Public Affairs (2006-2007), Migrants on the labour market in Poland (2005); The European Dilemma: Institutional Patterns and Politics of 'Racial' Discrimination (2004-2006).

4.5. Institutional and Community Support

4.5.1. Broader Institutional Support Environment for Migrants in Poland

Selected State Institutions Dealing with Migrant and Minority Issues

There are several institutions dealing with migration in Poland. With a growing number of immigrants and a growing demand for foreign labour, a number of ministries have opened special departments focused on migration. In particular, specialised departments were established in the Ministry of Labour and Social Affairs and the Ministry of Interior and Administration (MIA).

In the **Polish Parliament** a number of committees deal with the analysed issues: the National and Ethnic Minorities Committee, the Committee on Liaisons with Poles Abroad of the Polish Sejm, and the Emigration Affairs and Contacts with Poles Abroad Committee of the Polish Senate.

The Ministry of Interior and Administration **supervises the Border Guards, Police and Office for Foreigners.**¹⁴³ The Ministry has initiated legislative activities leading to changes in national legislation on aliens, citizenship, repatriation, etc. Within its structure there are the **Department of Denominations and National and Ethnic Minorities, Department for Citizenship and Repatriation** and the **Department of Migration Policy.**

Since 2004, the Ministry has been responsible for co-operation with the European Union Monitoring Centre on Racism and Xenophobia. Its Committee for Monitoring Racism and Xenophobia is responsible for gathering information regarding hate crimes, cases of discrimination and conducting research in this field. **The Border Guard** is formally supervised by the MIA and represents the institution implementing the controlling functions in the areas of entry, residence and departure of foreigners.¹⁴⁴ It publishes reports, research and statistical data on migration.¹⁴⁵ **The Office for Foreigners'** responsibilities include: refugee and repatriation issues, long-term residence, citizenship, etc.¹⁴⁶

The Ministry of Foreign Affairs' responsibilities in this field include mainly shaping the Polish consular and visa policy.¹⁴⁷

¹⁴³ For more information see: www.mswia.gov.pl

¹⁴⁴ For more information see: www.sg.gov.pl

¹⁴⁵ K. Iglicka, P. Kazmierkiewicz, A. Weinart, *Current immigration...op.cit.*

¹⁴⁶ For more information see: www.udsc.gov.pl

¹⁴⁷ For more information see: www.msz.gov.pl

The Provincial governor's offices and local governments' responsibilities include examining the documents such as visas for employment purposes, residence permits or settlement permits.

The Ministry of Economy and the Ministry of Labour and Social Policy (Department of Assistance and Social Integration) are responsible for the legal frames of employment of foreigners. The latter one shapes the character of social assistance for aliens and integration programs¹⁴⁸ that are under supervision of County Centres for Family Help (*Powiatowe Centra Pomocy Rodzinie*). Additionally, the Inter-departmental Team for Social Integration (*Międzyresortowy Zespół ds. Integracji Społecznej*) was created in the Ministry of Labour and Social Policy. These programmes aim to help refugees recognised in Poland. So far there is no integration policy for any other groups of immigrants.

Ombudsman Office. The Ombudsman protects human rights and civil freedoms enshrined in the Constitution and other legal documents.¹⁴⁹ The activities of the Ombudsman play an important role when it comes to protecting the rights of foreigners and ethnic and national minorities. The issue of the protection of foreigners has been within the Ombudsman's competence since 1991,¹⁵⁰ but this kind of activity became regular in the mid-1990s. The cases concerning foreigners constitute a very small fraction compared to other interventions, for example in 2002 about 1% with a growing tendency.¹⁵¹ The small number of cases does not prove the absence of problems but rather a limited awareness of the institutions protecting human rights and unwillingness to reveal the national origin in case of minorities. The majority of cases concern refugees or people applying for refugee status (problems with refusals of refugee status, conditions of stay in Poland). Others concern settlement in Poland, repatriation, conditions in prisons and detention centres. Another group of cases is related to the elimination of legal discriminatory regulations towards foreigners and interventions when no law but other people's activities are a source of discrimination.

The number of cases concerning the protection of national and ethnic minorities' rights constitutes about 30 annually.¹⁵²

The Ombudsman's actions manifest what the main problems of foreigners and minorities are in Poland, while on the other hand they show the extent to which the Polish regulations concerning 'others' has already changed for the better. According to research

¹⁴⁸ For more information see: www.mpips.gov.pl

¹⁴⁹ For more information see: www.brpo.gov.pl

¹⁵⁰ J. Arcimowicz, "*Obcy*" – *cudzoziemcy i ich prawa w działalności Rzecznika Praw Obywatelskich* (unpublished).

¹⁵¹ *Ibidem*.

¹⁵² Ochrona praw mniejszości narodowych i cudzoziemców. Informacja Rzecznika Praw Obywatelskich za rok 2004.

conducted by the employees of the Office, Polish law and authorities do not discriminate against immigrants.¹⁵³

Selected NGOs Involved in Work with Foreigners

The Polish Humanitarian Action (PAH) is a non-governmental organisation helping refugees with material assistance. The **Refugee Counselling Centre** of PAH assists foreigners granted refugee status in starting a new life and integrating with Polish society and in finding a job.¹⁵⁴ Another organisation, **Caritas Poland**, organises Information Bureaus for Migrants and Refugees (Lublin, Białystok, Wrocław), which concentrate on informational tasks, legal issues of access to asylum procedures and provide psychological counselling. They assist in searching for a job, accommodation, free meals, medical services, language courses, etc.¹⁵⁵ **The Polish Red Cross (PCK)** is an organisation with similar goals providing material assistance and helping in official contacts with authorities. It was very active in promoting the ratification of the Geneva Convention on the Status of Refugees of 1951.¹⁵⁶ The **Foundation “Ocalenie”** has similar aims and activities, although probably not so broad and extended.

Helsinki Foundation for Human Rights’ main focus is human and refugee rights. Its activity has had a significant impact on the legislation concerning the aliens’ rights.¹⁵⁷ The Foundation drafts appeals to NSA and to the Council on Refugees as part of the programme of legal assistance to foreigners. It is also an important partner of UNHCR.¹⁵⁸ Another aspect of the Foundation’s activities is carrying out research on the situation of people who belong to national, ethnic and religious minorities, and it undertakes intervention activities in the cases of ascertained discrimination. Since September 2003, as the National Focal Point within the RAXEN network, the Foundation prepares analyses, reports and opinions in the field of minority and migrant rights as well as discrimination in Poland.

Legal Clinics Foundation. The idea of the legal clinics programme concerns the establishment of legal clinics at the Faculties of Law and Administration, where students

¹⁵³ J. Supińska et al., *Discriminatory Landscape Poland*. Institute of Social Policy, Department of Journalism and Political Sciences, University of Warsaw, 2004.

¹⁵⁴ For more information see: www.pah.org.pl

¹⁵⁵ For more information see: www.caritas.pl

¹⁵⁶ For more information see: www.pck.org.pl

¹⁵⁷ For more information see: www.hfhrpol.waw.pl

¹⁵⁸ For other information on NGO activities see: K. Iglicka, P. Kazmierkiewicz, A. Weiner, *Current immigration...op.cit.*

help provide free legal advice for poor members of the community.¹⁵⁹ In 1997, the first clinic in Poland was established at the Jagiellonian University (its Section on Human Rights deals with refugees and regulations concerning migrants in Poland). In 1998, a clinic at Warsaw University was founded and since then the Section on Refugees assists refugees in submitting documents, contacts with authorities, etc.¹⁶⁰ The growing number of such organisations in Poland is now aimed at providing legal assistance to the representatives of refugees or minorities.

H. Nieć Human Rights Association is involved in developing academic research which helps in distributing human rights ideas. The Association initiates activities leading to the growth of the standards in human rights prevention and helps make interventions when they are broken. Its Asylum Unit provides free legal assistance, including administrative court representation in asylum cases and cases of other aliens seeking protection.¹⁶¹

Association for Legal Intervention (SIP) provides legal advice to foreigners – mostly people applying for protection in Poland. The activists of the Association also represent foreigners in courts. The Association monitors the legislation on migrants and is actively lobbying on behalf of them. The Association for Legal Intervention takes part in research projects on the situation of immigrants and prepares recommendations for legislation.

A-Venir Foundation provides legal advice for foreigners (mostly refugees or people applying for refugee status). A-Venir also deals with social assistance aimed mostly at women and children.

La Strada Foundation Against Trafficking in Women is a non-governmental women's organisation that seeks to prevent and combat the trafficking of women in Poland. La Strada not only provides help to the victims of trafficking but also is very active in informing public opinion on the issue of woman trafficking.

International Organisations

The International Organisation for Migration has operated in Poland since 2002. It has assisted voluntary returns to home countries for asylum-seekers and foreigners without legal status in Poland. IOM has also organised trainings for officials responsible for migrant integration programs. Another large field of IOM's activity in the country is preventing and combating trafficking in human beings. In collaboration with the local La Strada Foundation, the IOM office ran a programme of assistance to trafficked women interested in return to their countries of origin, including activities aiming at their social reintegration. Other anti-trafficking activities include information campaigns targeting the

¹⁵⁹ For more information see: www.fupp.org.pl

¹⁶⁰ For more information see: www.klinika.wpia.uw.edu.pl

¹⁶¹ For more information see: www.niecassociation.org

Polish society and research into the demand for sexual services of the victims. IOM has also worked on helping the Roma minority become more active economically through the establishment of social enterprises.¹⁶²

The Office of the United Nations High Commissioner for Refugees (UNHCR) operates on the basis of an agreement with the Polish government, since the ratification of the Geneva Convention on the Status of Refugees of 1951 in 1991. It plays an important role in assisting foreigners applying for refugee status and acknowledged refugees. It monitors legislation and the implementation of laws concerning refugees. The organisation is also involved in refugee integration. Funds are provided for NGO partners to cover the costs of social and legal counselling of asylum-seekers in Poland. The UNHCR supports and organises information and education actions about refugees.¹⁶³

Selected Diaspora Organisations

There are also organisations created by the migrants themselves, for example: **Association of Asylum Seekers/Exiles** publishing *Głos Uchodźcy* [Voice of Exiles]; **Association of Political Refugees from Belarus, Association of Marriages of Poles and Foreigners**,¹⁶⁴ created in order to promote legislative changes concerning mixed-marriages, or "**Wspólnota Kazachska**" **Association** - a non-profit organisation working "towards unity of people of various nations, cultures and religions".

Informal organisations clustered around religious institutions (i.e. the Ukrainian Uniate Church on Miodowa Street in Warsaw) and groups of immigrants collaborating with so-called 'old national minorities' (Ukrainians collaborating with of the Association of Ukrainians in Poland, Armenians collaborating with Armenian minority in the Olsztyn region, etc.). The exceptions associating just (or mainly) new immigrants could be **Our Choice Ukraina** (joined with the **Association of Ukraine's Friends**). The old Ukrainian minority, which is large, those with Polish passports, do not differ from Poles but they claim to be ethnically Ukrainian. They traditionally organise events for Ukrainians (Watra – a traditional holiday of Lemkos Ukrainian ethnic group, Malanka – Ukrainian celebrations of New Year according to the Julian Calendar, which is a large festival fashionable to be attended by the Warsaw artistic and cultural elite), they find fresh members among those who are now coming from Ukraine.¹⁶⁵ Cultural events organised

¹⁶² For more information see: www.iom.pl

¹⁶³ For more information see: www.unhr.pl

¹⁶⁴ For more information see: www.obcokrajowcy.republika.pl

¹⁶⁵ Mirosław Bieniecki, Mikołaj Pawlak, *Impact of Immigrants' Integration on Local Communities: the Polish Case*

by the Ukrainian minority help in integrating the Ukrainian Diaspora. The role of the Uniate Church (mentioned above) is also very important because Sunday services are meetings integrating the diaspora. At the Greek-Catholic church one can find information on job opportunities. There are the places where migrant networks develop.

4.5.2. Migrants' Knowledge and Usage of Institutions

Factors Influencing Migrants' Willingness to Use Support

The most important factor influencing contacts between Ukrainians and various institutions is their legal status in Poland. Ukrainians who are in Poland legally and work in the formal economy seem to have similar contact with various institutions of public life as Poles. They are dispersed, living among Polish colleagues and families, and therefore it can be expected that they adopt similar attitudes towards Poles. Regarding their needs, they have the same access to health services, security and all other public institutions. Their bad experiences in the form of mistreatment may be related to people assuming they are illegal immigrants. Even though we encountered such cases, it does not seem to be a common practice. Usually their experiences with institutions are no different than the experiences of Poles regarding bureaucracy. The situation of illegal workers and residents is much more difficult, since having an unregulated legal status they very often avoid contact with official institutions.

Socially, Ukrainians quickly adapt to the Polish reality. Many factors contribute to this process: mental and cultural closeness, similarity of languages that allow for easy communication, no racial differences that make Ukrainians visually undistinguishable among Poles, etc. Our earlier observations and studies show that since the opening of the borders (as there were completely inaccessible) in the 1990s, Ukrainians coming to Poland were treated by Poles with an understanding mixed somewhat with paternalism. Many of those who live in Poland today have been travelling back and forth between Ukraine and Poland for many years. Very often Ukrainians live with Poles, they work together with Poles and our research did not indicate any particular tensions between Poles and Ukrainians within their environments.

Contact with Labour Inspectors

Labour inspections could potentially advance the protection of migrant workers' rights. The National Labour Inspection is authorised to control both conditions of work and legality of employment. However, the interviews with Ukrainian migrants show that they have almost had no contact with these institutions. The interviewed employers also did

not report any information about other formal ways of protecting Ukrainian workers that are in use.

The polled employees and employers claim that the controls of National Labour Inspection on construction sites are ineffective – everybody who works illegally “is able to run away”, when the big construction site is controlled by 3 or 4 officials. As mentioned before, workers (in the opinion of the interviewed employers) are not very much concerned with safety regulations because of financial expenditures associated with meeting all safety regulations. In the case of the control of the Labour Inspection, it is in the common interest of employers and employees to avoid negative consequences, so the illegally employed workers are “hiding somewhere” or “disappearing” during the time of controls, which are recognised as completely ineffective in comparison to the ones done in Germany (“there they surround the construction site and guard it with dogs. In Poland 3 or 4 inspectors enter the site - they are unable to check everything”). They are also limited by the existing regulations that actually require cooperation with other bodies such as the Police or Border Guards and make the ad hoc actions very difficult in terms of logistics.

A representative of Solidarity claimed that the legal labour control institutions that until July 2007 were located within regional governors’ offices were completely ineffective (i.e. due to a lack of staff). From the perspective of other experts, employment inspectors are not experienced enough in the field of foreign labour. For example, they may have difficulties in distinguishing migrants staying in Poland legally from those who are illegal. At the same time, because of different competences, Police and Border Guards often lack coordination. The situations when visa overstayers approached by Police and after checking the validation of their ID document are left free happen quite often.

Trade Unions

Labour unions are another group of institutions that monitors the conditions of work and employment in general. It seems that not one of the immigrants we interviewed was a member or knew any immigrants in a labour union. It can be explained by the fact that most of our interviews were conducted in small companies, or among firms that did not have labour unions at all. There are no formal constraints for foreigners to belong to labour unions in Poland.

According to the interviewed Solidarity representative, if Ukrainians were able to work in Poland legally, without permits, but obeying the same regulations that concern Polish workers, half of the illegal Ukrainian workers would never legalise their work anyway, because they do not want to work legally. Legal work results in many other forms of control and regulations; and neither employers nor employees are interested in becoming subjects of these regulations.

Looking from the viewpoint of the labour unions, Solidarnosc maintains the position that the rights of foreign workers should be protected exactly the same way the rights of native workers are protected. This demand includes equal wages for the same job. In order to achieve this, Solidarnosc wants Poland to implement EC directives providing for sanctions against employers of illegal third-country nationals¹⁶⁶ and extending adequate social security regulations to nationals of third countries who are not already covered by these provisions solely on the ground of their nationality.¹⁶⁷

In general, Solidarity represents the position that labour migrations cannot cause “social dumping” and all the regulations concerning immigrants should follow the rules of equal treatment of all legal workers. They stress also protection against illegal migrations and opt for keeping the rule of giving privileges to those third country nationals who are already legally residing within the EU.¹⁶⁸

The Ukrainian Embassy and Consulates

According to an interviewee from one of the Ukrainian consulates, both the embassy and consulate try to be active in providing help and information to Ukrainian migrants working in Poland. They also collaborate with the Association of Friends of Ukraine in publishing and disseminating handbooks and leaflets and cards. The handbook provides information about: basic contacts, addresses, telephone numbers, etc. The aim is to provide basic information for migrants working in Poland not only seeking assistance. This initiative has also a preventive character: migrants equipped with this knowledge/ access to information may not fall prey to conmen or unscrupulous employers. Both institutions disseminate materials at the Ukrainian Orthodox Church, informal labour markets, and consulates. Similar information is circulated in leaflets of Western Union.

Ukrainians whose status is regulated and who stay in Poland for a longer time do declare contacts with the Ukrainian embassy, usually these are contacts related to elections in Ukraine, obtaining some documents or information or to register marriage. Illegal migrants, on the other hand, treat consulates as the last resort. For example, thousands of them visit consulate in order to report losing a passport. It is a very common strategy of visa overstayers to receive substitute travel documents in order to return to Ukraine without negative consequences such as difficulties in re-entering Poland again. Consulates intervene in so-called drastic cases such as death and a serious health injury, especially when a Ukrainian citizen has no insurance and commits a crime. There are

¹⁶⁶ COM(2007) 249 http://eur-lex.europa.eu/LexUriServ/site/en/com/2007/com2007_0249en01.pdf

¹⁶⁷ COM(2007) 249 http://eur-lex.europa.eu/LexUriServ/site/en/com/2007/com2007_0439en01.pdf

¹⁶⁸ http://www.solidarnosc.org.pl/migracje/dokumenty/s_o_m/opnia.htm and “Zielona ksiega nt. migracji— uwagi NSZZ „Solidarnosc”[NSZZ Solidarnosc Green Book on migrations] http://www.solidarnosc.org.pl/migracje/dokumenty/s_o_m/green_book.pdf

individual cases of informing consulates about poor working conditions or companies violating laws, but as they often come from illegal workers, who are reluctant to reveal details and cooperate with Police, the consulate staff cannot undertake any actions.

According to interviewed workers the *Ukrainian consulate and embassy* do not play an important role as a place that the migrants would contact in case of problems. It is due to a number of reasons. First, the majority of Ukrainians work and some of them even stay in Poland illegally so naturally they are reluctant to contact institutions of both the Ukrainian and Polish state. Second, they function in a relatively closed environment of other unregistered migrants. Third, people from the former Soviet Union are according to some respondents afraid of public institutions in general. Finally, they seem not to perceive protecting rights as one of the duties of the consulate.

Ukrainian Diaspora Organisations

Hardly any of the migrants know Ukrainian associations, and most of them are afraid of Polish authorities. In some cases, like in the case described above of Ukrainian workers who were supposed to be deported for illegal work in Pyrzyce, the function of official Ukrainian authorities is replaced by the help of honorary consuls. Most of Ukrainians, however, in such cases seem to rely on informal networks of contacts that provide them with either help or information about where this help can be found. It seems that in terms of the most common problems (sickness, lost passport, transportation, money transfer, etc.) they know the procedures and “they know their way around”.

The cases of contacting organisations created by the Ukrainian minority and migrants are also rare. Ukrainians associated within the Association of Ukrainian Minority in Poland organise various cultural events for Ukrainians, occasionally find new members among those who are now coming from Ukraine. As leader of an NGO mentioned that the mission of the organisation is promoting Ukraine, Ukrainian culture and history and demonstrating the existence of Ukrainian minority rather than intervening in single cases and providing direct assistance in case of problems. Although such activities are planned right now there is not a migrant organisations providing such assistance.

Concerning other Ukrainian organisations, there is a large group composing a historical Ukrainian minority who rarely serves as a base for contacts for Ukrainians coming to Poland. In the case of the organisation created by Ukrainian diaspora, accidental contacts result probably also from the fact that they represent a different group of people having Polish citizenship. Even though some of their cultural interests are the same, their economic interests are different. The Ukrainians who come now have a major problem with legal work and or cannot obtain resident status and they have to travel back and forth to and from Ukraine.

This situation proves that the existing immigrant groups are still in the process of formation. They are too weak to create strong and influential organisations that apart from providing support could serve as a migrant lobby.¹⁶⁹ The exception is the organisation Our Choice Ukraine (recently joined with the Association of Friends of Ukraine) that became quite active during the so-called Orange Revolution by demonstrating in Warsaw. Besides collaborating with the Ukrainian Embassy on information booklets directed to Ukrainian migrant workers, they engage in public activities through organising concerts and other cultural events promoting Ukraine, good Polish-Ukrainian relations, and supporting democratic and pro-European processes in Ukraine.

¹⁶⁹ Cf.: K. Iglicka *Active Civic Participation of Immigrants in Poland*, Interdisciplinary Center for Education and Communication in Migration Processes, Oldenburg 2005

5. Conclusions

Migrants on the Polish Labour Market

- There were practically no immigrants on the Polish labour market before 1989. The collapse of the communist system resulted in significant political changes in Poland. Among other phenomena, the transformation and opening of the borders initiated a flow of migrations. Poland became a host to legal and illegal immigrants, refugees and Polish repatriates and return migrants.
- As of 2007, the number of immigrants working in Poland is still quite low compared to other European countries, although a growth can be observed every year. A number of categories of migrants are exempt from the need to apply for work permits (EU nationals, certain professions).
- The Polish immigrant labour market can be divided according to the legal status of employment into two sectors: regular and irregular employment. The sector of regular employment is dominated by professionals, experts and qualified workers. It is characterised by a high market demand, relatively good salaries and labour mobility. The irregular sector does not require any special skills and qualifications and it includes low paid, manual work, petty-trade, and simple services. In Poland, similar to other countries, this sector attracts many immigrants, mainly from Eastern European countries.
- The recent outflow of Polish workers, the acceleration of economic growth and growing demand for the labour force has shown that the Polish labour market lacks domestic workers and that opening the country to immigration may be one of the ways of filling the gaps on the labour market.
- The current restrictive system has become inadequate for the needs of the Polish market. All steps of the procedure of employment are too troublesome, time-consuming and costly. They are also inflexible and non-transparent
- The new situation on the labour market served as a catalyst for the limited liberalisation of some sectors of the Polish labour market. The demand for foreign workers has become a subject of government interest.
- Ukrainians dominate in these statistics—they are the top nationality among work permit holders (with 3000 permits issued to them every year, they account for around 30% of the total). Ukrainian migration to Poland tends to fluctuate in response to two major factors: the demand for labour and administrative procedures for entry.
- Incentives for Ukrainian labour migration to Poland are mainly related to the development of migratory networks and the wage gap between Ukraine and Poland. Western Europe remains more attractive for Ukrainian migrants. What

- keeps them in Poland are: geographic proximity, easy access to the Polish informal sector, and linguistic and cultural affinities.
- There are a number of disincentives for Ukrainian migration to Poland. Polish wages are not so attractive for Ukrainians anymore. They find jobs in Russia, Kazakhstan, Portugal or other European countries more attractive. Therefore, many Ukrainians perceive Poland as a stop on the way to the EU where they can earn more.

The Migrants' Position on the Labour Market

- The legal status of residence and employment has a significant impact on the position of the migrants on the labour market. Thus, we may refer to two groups of Ukrainians actually residing and employed in Poland—those who enter Poland legally and either legalise their actual purpose of residence or choose to violate the residence and labour regulations by taking up employment while on a tourist visa. Their decision violates Polish law and may potentially lead to expulsion and a temporary ban on re-entry
- The scale of this illegal employment has never been properly estimated. Some analysts give a range of 50,000 to 300,000 persons annually taking up informal labour, while others estimate foreigners working seasonally in Poland to be much higher, stating that their number can reach between 100,000 and 600,000. It depends of the season and the way of calculating (flows or stock).
- In 1994, Poland and Ukraine signed the bilateral agreement on employment of Polish and Ukrainian citizens. The agreement does not have any impact as it does not facilitate the labour migration between the two states and makes migrants' employment conditional upon a number of other restrictions (e.g. need for a work permit).
- Ukrainians who are working legally are very often highly qualified professionals and their situation on the labour market is the same as the situation of all other highly qualified migrants from outside the EU. They seem to face similar problems to those faced by Poles working within these vocations, although,
- The unregistered Ukrainian workers have been active predominantly in the sectors that do not require special skills and qualifications: manual work, petty-trade, simple services, etc. – in general, involved in these activities that are not particularly attractive for Poles. The other group consists of professionals, including heads of various companies, commercial representatives and businesspeople.
- The Ukrainian migrant workers on the Polish market are facing several barriers. The most important barrier is stated by the procedures of formal employment and

- residence status. Most of other barriers derive from this one (fewer job opportunities, additional costs of employment, difficulty in searching for work), or are related to bureaucratic regulations concerning qualifications, training, courses, etc. obtained in Ukraine.
- Other barriers are related to the legal status of Ukrainians in Poland and to their individual characteristics that allow them (or not) to adjust to different procedures, habits and customs related to searching for job opportunities and dealing with the Polish reality. Such barriers may include fewer job opportunities, fewer opportunities for training, poor knowledge of the language, limited access to the public sector; ethnic prejudices, educational qualifications, etc.

Working Conditions of Legal and Illegal Migrants

- The basic rights of all workers employed in Poland are protected by the same regulations that are described in the Labour Code. According to Polish law, the difference between formal employment and irregular work is fundamental, especially for foreigners: legally employed Ukrainians enjoy all rights that Polish workers do and any violation of these rights is a subject of a legal action. At the same time, the Ukrainians who work without permit are not only more vulnerable to mistreatment but also can be persecuted for violating the immigration law.
- In practice, the unregulated position of Ukrainians results in a situation that when a Pole is caught working without a contract, the employer is punished, and when a Ukrainian is caught – the employer is punished as well, but the Ukrainian is expelled from Poland.
- It is also very hard to compare the conditions between legal and irregular workers because they work in a different environment. Ukrainian construction workers more often work on small construction sites (i.e. a single family house) without a contract and the whole social sphere of a large company. There is a higher chance of employers behaving unfairly (not paying, not paying the whole remuneration, etc.) in grey zones or in smaller companies.
- There is a widespread practice of working without a written contract in Poland: Ukrainians constitute only a fraction of the informal economy. The huge scale of informal employment makes immigrants' access to work in Poland easier because of social consent for such practices.
- The interviewed Polish employers claim that Ukrainian workers take hazardous or unhealthy jobs more often than Poles. However, Ukrainian irregular workers concentrate in construction and agriculture sectors that are more hazardous than others.

- Several problems hamper the position of Ukrainian migrants on the Polish labour market:
 - institutional disincentives for employers and employees to legalise seasonal employment;
 - low socio-economic position of migrants which makes them accept illegal employment;
 - insufficient access to information on how to enter the procedure for starting their own business in Poland (self-employment);
 - work permit restrictions that place foreign workers at a disadvantage compared to the native workforce
- As a result of restrictive regulations, the majority of labour immigrants who choose to work in Poland are being forced to accept illegal employment. The restrictive procedure to obtain legal employment, relatively easy access to the Polish territory, and social acceptance of the shadow economy allow for a flourishing illegal immigrant sector.

Perception of Foreigners

- According to public opinion surveys, at the beginning of the 1990s, Poles declared relatively strong xenophobic positions. Today, a positive attitude towards migration prevails in Polish society. More intensive contacts (including seasonal migration, petty trade and trade exchange in general) influenced the decrease of negative attitudes as stereotypes were confronted with the experience of direct contacts. For example, 62% of Poles accept immigrants settling in Poland, 80% do not think Poland needs immigrants.
- Poles have overall expressed negative opinions about Ukrainians as a nation. However, the presence of Ukrainian migrants and greater openness of Poland to foreigners have contributed to the gradual improvement of the public attitudes over the last decade. Contacts with Ukrainians play a very important role in Poles' attitudes towards them. Research shows that there is much more positive perception of Ukrainians among those Poles who know them personally than among those who do not have any contacts with Ukrainian migrants.
- The majority of Poles accept the presence of migrants on the domestic labour market. According to 34% of respondents, foreigners should be allowed to undertake all kinds of positions or selected posts (47%). Around 70% of Poles state that foreigners should be offered a job if there is no Polish citizen willing to accept the position

- According to press analysts, nowadays foreigners are perceived as a less important threat than in the 1990s. More attention is paid to their economic activity and life in Poland than to crime and other illegal activities.
- Poles do not fear the competition of foreign workers (including Ukrainians). Ukrainians as a labour force are seen as compensating for the shortages on the labour market. Poles acknowledge the right of foreign workers to wages equal to those of the native employees working in the same positions, and the support for foreign employment is higher among the employees in industries facing a labour shortage.

Discrimination

- The EU anti-discrimination regulations allow for restrictions on foreigners' access to the labour market. Their objective is to protect the domestic labour markets and thus Polish regulations cannot be described as discriminatory according to the EU law.
- Some regulations may sometimes result in institutional discrimination. In some countries the exclusion of particular categories of people (denial of opportunities, respect, and rights available to the host population) can even concern second and third generations of migrants. In Poland restrictive laws concerning employment of non-Polish citizens dominate - work permits are granted just for one year and it makes investing in the new qualifications of the employee risky.
- Only one respondent (the leader of a non-governmental organisation that provides assistance to victims of human trafficking) mentioned cases of trafficking. However, the press has reported some cases of labour trafficking and involuntary servitude in recent years, both the Police and the Border Guards stress that within the last year in Poland there were no cases of so-called "labour camps" (understood as the exploitation of victims of human trafficking). We cannot, however, assume that such cases do not take place at all, especially since our research did not access the most pathological spheres of the illegal labour market (i.e. prostitution).
- No institution focuses on the cases of discrimination or abuses of labour rights specifically against foreigners. This approach is the result of the generally low priority of combating illegal employment. There is a wide acceptance of the informal economy in the Polish society.
- Prosecuting employers for discrimination against migrants (both legal and illegal) is extremely rare. Ukrainians who do not work in Poland legally are afraid to contact authorities and complain about work conditions. The cases are exceptional, but they do appear. It is not possible to ascertain how many other

cases of discrimination against foreign workers were processed by the legal system during 2006, if at all, because the available case statistics do not disclose the grounds of discrimination concerned.

- Migrant workers more often than the natives tend to have low skilled, low-paid and low status jobs, even though they have the appropriate qualifications and education. For many migrants accepting low-status and low-paid jobs is a result of their own economic decision taken for very specific reasons. Working below qualifications may also be the result of objective factors, such as a lack of linguistic competence, which is quite common in the cases of asylum-seekers and migrants who are not fluent in Polish, along with a lack of appropriate education and/or experience.

6. Recommendations for Polish and Ukrainian Institutions

General Migration Policy

The existing solutions are inadequate and reflect the fact that the problem of migrants is still quite new to Poland. There is still low awareness of the problem not only among the general public but also among the practitioners dealing with migrants.

Two sets of measures need to be introduced in the short term. Firstly, a new agreement on the employment of Ukrainians in Poland is needed, replacing the obsolete and unused agreement of 1994. Not to remain a mere declaration (as its predecessor has been), the document needs to contain specific executable clauses on the recognition of academic qualifications and skill certificates, obligatory access to social security, the transfer of pension rights and family reunification. Having secured the permission of the EU and analysed the needs of the domestic employers, the Polish government should set quotas of seasonal workers for the next several years and launch information campaigns in Ukrainian regions using its consular network.

Secondly, further simplification and facilitation of the administrative procedure for obtaining work permits is required to put the foreign workers on equal footing with the domestic workforce. While the employers have welcomed the reduction in the application fee, the administrative practice remains too inflexible. The period of validity for work permit needs to be extended in most cases as to give an incentive to the employer to issue an unlimited-time working contract (such regulations are prepared by the Ministry of Labour, i.e. prolonging is planned to be automatic, seasonal employment – redefined). These measures would result in the greater stability of the migrants, allowing them to obtain a mortgage and settled down in Poland.

Poland is not as attractive a destination country as many other European countries. In order to change that, considering the general reforms directed towards the country's development that would make Poland a good place to live and invest, there should be additional measures implemented that would reward legal employment.

Specifically, the following recommendations may be drawn from the collected data:

Polish-Ukrainian Agreements

1. Bilateral agreement concerning social security issues

The existing agreement between Poland and Ukraine does not facilitate labour migration between the two states. As there is a mutual interest in regulating labour migration, Poland and Ukraine need a new bilateral agreement regulating various aspects of employment. It should cover a comprehensive range of policies including solutions to such problems as social security insurance, access to health care, retirement funds, wage guarantees and other mechanisms for protecting and enforcing workers' rights.

In particular, an agreement concerning social security should be a constitutive part of such agreement so that the years of working in Poland count for Ukrainian retirement and vice versa. A lack of such an agreement may lead to serious problems when it comes to counting years of work, funds transferred to another security system, etc.

2. Agreements or set of agreements concerning the recognition of qualifications

One of the major barriers of entry for migrant workers is set by various requirements that foreign workers are obliged to fulfil. Therefore, a review of procedures of recognising qualifications/licenses obtained by Ukrainians in their country of origin is necessary. Common standards concerning third country nationals are needed especially for the most popular professions.

Access to the Polish Labour Market

3. Simplifying employment procedures

The present mechanisms aimed at attracting Ukrainian seasonal migrants have not brought the expected results. The new regulations in this sphere should be implemented. It does not concern only Ukrainian workers, but the whole sector of seasonal work in Poland. The system of such employment should make the procedure fast and uncomplicated.

Firstly, the employer should have a possibility of registering workers in one office, without unnecessary bureaucratic procedures. The person employing seasonal workers should have to deal with only one or two institutions (e.g. the labour office and the tax office). Workers' insurances, taxes, social security and other fees should be paid as a single fee to one institution that would distribute the money to the adequate funds. At the same time, fees should be somehow standardised. This is a very important (de)regulation that would allow for an effective use of the new

legislation concerning the seasonal employment of Ukrainians, but it would also contribute to diminishing the informal employment among Poles in this sector.

Secondly, the number of documents demanded from employers should be limited. A rule of trust should be implemented and the employer should be legally responsible for his/her declarations instead of having to submit a number of documents confirming legal status of company, paid taxes, rental agreements, foreign contractors etc. A model of declaration of intend predicted in the seasonal work regulations seems to be a good point of reference for such practices.

Finally, employers and employees from the third countries are currently obliged to go through the same procedure of issuing work permit every year. We recommend that prolonging of the work permit should be simplified, or even automatic.

4. New, more flexible forms of employment

Observations of the Ukrainian migrants on the Polish labour market show that many of them are working practically as self-employed professionals. Such a form of employment is generally very popular in Poland. It should be made easier to register such forms of employment, both for Poles and for foreigners who would like to do so. In the case of Ukrainians, it would make their work in such vocations as household service, child-care and elderly-care easier and give them a chance to regularise their employment.

5. Fast track employment for selected sectors

In these sectors, where work permit is still necessary, a wide list of vocations should be established, for which the so-called test of the labor market is not necessary. Such lists could be created either at the national level (by the Ministry of Labor and Social Affairs) or at the local level (e.g. by local labor offices). It would allow for a quick responses to the labor demand in the selected vocations.

Position of Migrants on the Labour Market and in the Society

6. Access to information

The research showed that migrants often have a disadvantageous position on the labour market due to the lack of information. The diaspora is still too weak to create

strong and influential organisations that apart from providing support could serve as a migrant lobby or provide continuous support. Thus they should be supported in their activities in this field, especially by Ukrainian authorities. Alternatively, special funds should be provided for creating information points for migrants.

The guidebooks and leaflets in Ukrainian concerning the conditions of employment, labour rights, and basic information on Poland should be broadly distributed among migrants who are already in Poland and among those who want to go to Poland and are still in Ukraine. Both Polish and Ukrainian consulates should be active in these fields. The Ukrainian diaspora should also use its contacts with representatives of the old Ukrainian minority in Poland in order to build a web of contacts and contact centres for migrants across the country (e.g. Ukrainian Caritas and IOM initiatives).

7. Employment agencies (mediators)

The problem of matching employers with employees is growing together with the demand for the immigrant labour force. Thus a system of information on available job opportunities in Poland should be established. It should be based on the existing labour offices that nowadays are considered to be ineffective. The job opportunities should be directed first to Poles and EU citizens; however the system should also manage cases of the lack of domestic workers. When no workers are found within the EU, Poland should also consider using the network of its consulates, as well as regional representatives and business associations to promote the vacancies abroad, in the third countries. The possibilities and conditions of employment should be effectively disseminated/circulated in Ukraine.

Regulations on the operation of labour mediators/agencies need to be worked out. Private labour agencies already seem to be the most effective institutions providing workers to many companies throughout Poland. Bilateral agreement concerning employment of workers between Poland and Ukraine could enhance the effectiveness of such firms and contribute to an increased legal employment of Ukrainians.

8. Integration

There are no integration mechanisms for economic migrants in Poland (only recognised refugees are eligible for integration programmes). Yet, economic migrants constitute the largest group of immigrants in Poland. In this situation Polish language and culture courses should be provided to migrants who consider long-term residence in Poland, as insufficient proficiency in Polish is a serious disadvantage on the labour market.

In the case of Ukrainians, an important role could be played by the existing Ukrainian minority organisations in Poland. Collaboration with them would help in real integration and the preservation of the immigrants' own national identity.

9. Regularisation

One of the most important issues concerning the regularisation of employment of Ukrainians in Poland is amnesty for those who have been illegally working in Poland. Two announced amnesties were criticised and did not change the situation. For instance, Poland could consider legalising the residence and employment of those Ukrainians who have stayed in the country for over a year and thus have demonstrated their ability to succeed on the Polish labour market. Regularisation should be preceded by an information campaign using Ukrainian and Russian-language websites and associations of migrants and of the Ukrainian minority in Poland.

Protection of Migrant Workers' Rights

10. Enforcement of existing laws

The opening of the market needs to be complemented by a stronger enforcement of workers' rights by the Polish state institutions (labour inspection, police) in collaboration with the trade unions and the Ukrainian consular service. The National Labour Inspection's decision to investigate the legality of employment in its controls (since July 2007) is the necessary first step. It is worth investigating whether the Solidarity trade union's proposals for Poland to accede to two EC directives providing for sanctions against employers of illegally-staying third-country nationals (COM (2007) 239 and 249) should be supported. It remains to be seen whether ensuring the labour rights of third-country working migrants at the level of EU nationals, such as the minimum wage or full social security guarantees, would not jeopardise the actual economic position of the Ukrainian workers in Poland.

11. Monitoring the foreigners' situation on the market

Improved methods of monitoring the foreigners' situation on the market are necessary. Our study shows that obtaining separate data concerning various

nationalities is very difficult and in many cases impossible, because such institutions as Labour Inspection often do not keep the records of the nationality of their clients. Sometimes it is justified with the protection of individual rights, but as a result, such practices do not allow monitoring whether or not these rights are actually protected. We recommend that such data should be collected and analysed to a certain extent (i.e. to monitor work related accidents among various nationals, or the number of cases concerning discrimination against members of particular nations in courts).

12. Building awareness of the immigration-related issues

An additional issue is building awareness concerning workers' rights among both the Polish and foreign workers. Increased awareness should also concern discrimination based on nationality/ethnicity/race. Higher awareness would result in improving the level of reporting cases of discrimination and bad practices. It is also related to better access to information concerning rights and obligations that foreigners have to fulfil.

Building awareness is a task that belongs both to the government and non-governmental institutions. It could be achieved by disseminating handbooks/guides/leaflets as well as through publishing articles in the press, analyses and organising conferences concerning migration issues.

13. Anti-human trafficking measures

A number of anti-trafficking measures have been taken in Poland. However, such initiatives should be intensified as there is still low awareness of the problem especially among civil servants, the Police or Border Guards. For instance, trainings on identifying and handling victims of trafficking are needed. Continuous cooperation with specialised NGOs should be upgraded, covering e.g. joint work in emergencies when the state agencies contact the non-governmental partners and act in tandem.

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ANNEXES

ANNEX A. Full List of Contacts

Employer interviews

	Employers	Code
1	construction sector	WZ01
2	language school	WZ02
3	public primary school	WZ03
4	health care	WZ04
5	construction sector	WZ05
6	transport company	WZ06
7	horse stable	WZ07
8	tailor	WZ08
9	big agriculture company	WZ09
10	cleaning company	WZ10
11	trade company	WZ11
12	confectionery	WZ12
13	catering company	WZ13
14	farmer	WZ14
15	bakery	WZ15

Expert interviews

	institution	Code
1	senior labour inspector (national level)	WEOIP01
2	Trade Union representative	GESol02
3	expert from Labour Office	WEMUP03
4	representative of Border Guards	WESG04
5	expert from Ministry of Labour and Social Affairs	WEMPiPS05
6	senior labour inspector (level level)	WEPIP06
7	Police representative	WEPol07
8	Ukrainian Diplomatic Representation (2 persons)	WEAUA08
9	association of Ukrainian migrants	WETPU09
10	NGO working with immigrants	WELaS10
11	experts in a field of labour market	WELaS11

Employee interviews

	Employee	Code
1	doctor	WPL01
2	household care	WPN02
3	manager	WPN03
4	construction worker	WPN04
5	construction worker	WPN05
6	household care	WPN06
7	investment risk analyst	WPL07
8	household care	WPN08
9	employee of nongovernmental organization	WPL09
10	manager	GPL10
11	cleaning	WPN11
12	office worker	WPL12
12	confectioner	WPN13
14	teacher	WPX14
15	farmhand	WPN15

ANNEX B. Questionnaire Design: Employee Interviews

IOM PROJECT

Perceptions between employers (European) and employees (Ukrainian) on level of awareness of Labour Abuses and relevant measures existing / taken

EMPLOYEE UNSTRUCTURED INTERVIEW

I. Introductory questions

- ▷ Let's start our talk with basic questions. Where do you come from? Where did you recently live in Ukraine? How did you get to Poland? Why did you decide to leave your country (trade, tourism, family)?
- ▷ Could you say what your first days, months in Poland were like? How did you find the job/place to live? Did anyone help you? If yes – who? Was it difficult to find the first job in Poland? How did you find it? Did anyone help you?

II. Conditions of work

General questions

What do you do in Poland – what kind of job do you have? How did you find it? Could you please describe your typical working day?

- ▷ How many times did you change work since you came to Poland? Why?
- ▷ What field is your company working in? Does it work in any other fields?
- ▷ How many people are employed in the company? (Full-time, part-time, seasonally)
- ▷ How many foreigners are among them? How many people from Ukraine? (Full-time, part-time, seasonally)

Wages, social insurance, taxes, right to vacation

- ▷ What kind of rights do you enjoy as an employee? (right to vacation, sick leave, promotion, safety of work)
- ▷ Do you have a written or oral contract with your employer? On what terms? Did the employer stick to the terms?
- ▷ Do you receive your wages on time or are there delays? Do you always receive the entire sum specified in the contract?

- ▷ Does your employer pay due contribution for social security and taxes? If so, does the employer pay the contributions on all your salary or on a part of the salary, and you receive the rest 'under the table', untaxed?
- ▷ Do you have a health insurance? What kind? State or private policy? Did the employer purchase it, or did you have to buy it?
- ▷ Do you enjoy the right to sick leave and to vacation? How many days of vacation do you have a year? Have you ever asked for a time off for personal reasons? (e.g. necessity to visit family, home country)? Did you receive it? If not – how did the employer justify the refusal?
- ▷ In case of sickness, could you take a paid leave? Are there cases when the employer discourages employees from taking a sick leave?

Work hours and safety

- ▷ Do you have fixed working hours? If not, what does it depend on?
- ▷ How many hours do you work a day? (OR What time do you normally start your working day? What time do you usually finish?) How many hours do you usually work a week? Do you have any days off? If yes - how many?
- ▷ Do you have to work overtime without adequate payment?
- ▷ Can you describe your work as safe? If not – why?
- ▷ Were there any situations in the workplace that were dangerous to your health or life? Please describe them. What does your employer do to avoid them? Did you receive proper working clothes? Can you expect immediate medical assistance?

Mobbing and harassment

- ▷ Have your colleagues or the employer harassed you (teasing, humiliating)? In what ways? Was this related to the fact that you are from Ukraine/Belarus/Moldova?
- ▷ Has the manager ever demanded from you doing what you had not agreed for?
- ▷ Are you sometimes asked to complete a task that cannot be completed in the assigned time?
- ▷ Have you ever been unfairly accused of wrongdoing? Who accused you (the employer, one of the colleagues)?
- ▷ Have you observed in your workplace the cases when the employer made sexual propositions (offers) to the (female) employees from Ukraine/Belarus/Moldova? Have such offers been made by the (native) co-workers?

Violence, forced labour

- ▷ Has the employer ever forced you to do anything with threats? Please describe these cases. What threats did the employer use (firing, report to authorities, withholding the wages, violence)?

- ▷ Has the employer ever hit you or threatened to hit you? And has a co-worker or a third person hit you or threatened to hit you, encouraged by the employer? Please describe these cases. Have you reported this incident to the police? If not, why not?
- ▷ Has the employer humiliated you or other workers from Ukraine? Has he used the words that were offensive or breached your or their personal dignity?
- ▷ Has anyone ever demanded money from you without a legitimate reason? Who was it? Have you heard of such cases?
- ▷ Have the citizens of Ukraine or of other post-Soviet states demanded money from you which were not due to them? Have they threatened you? What kinds of threats were used? Were you hit? Have you reported this incident to the Police? If not, why not?

VI. Discrimination of migrant workers

- ▷ Does your company employ both Polish and migrant staff? Do you Polish colleagues exercise similar tasks to you?

IF YES, PLEASE ASK FOLLOWING QUESTIONS?

- ▷ Please compare situation of Poles and Ukrainians responsible for similar duties
- ▷ Do Polish workers receive the same salary as Ukrainians?
- ▷ Are they treated the same by supervisors?
- ▷ Do they receive comparable tools, equipment, safety clothes?
- ▷ Are they obligated to do the same work?
- ▷ Do they have the same chances for promotion?
- ▷ What are the relations between you, other Ukrainian workers and Polish colleagues? Friendly, neutral, unfriendly?

VI. Awareness of rights/institutional support

- ▷ Do the newcomers receive assistance from the compatriots who had earlier come to Poland? If so, in what form (e.g. in finding housing, employment)?
- ▷ Are there any organisations (formal and informal) of Ukrainian migrants? If yes, what is their field of activity?
- ▷ Have you ever contacted any representative of Ukrainian institutions in Poland (consulates/embassy)? What was the question/problem? What was a result?
- ▷ Do you have any person/institution, who you would ask for help in case of problems (e.g. at work)? Who would it be (Ukrainian colleagues, Polish colleagues, supervisor, trade unions, consulate, church)?
- ▷ Have you ever turned to one of these institutions for help? What was the question/problem? What was the result?

- ▷ Do you know which institutions can you ask for help in case of problems at work?
Do you know who should you inform if your employer would abuse your rights, wouldn't pay your salary, blackmail you?

Opinions about societies, in which migrants live

- ⇒ What do you think about relations between Ukrainians who are working in Poland and Poles?
- ⇒ Do you have any friends/acquaintances among Poles? Do you maintain social contacts with the Poles, and what are they?
- ▷ How are the foreigners treated by: the Polish authorities, law and order institutions (police, courts), public institutions (schools, hospitals, religious organizations, trade unions), non-governmental organisations, churches?
- ▷ What do you think about the Polish employers in general?
- ▷ What do you think about Polish co-workers in general?

III. Legality of stay and work

What is the legal status of your stay in Poland?/ How did you enter Poland? (tourist visa, work visa, temporary permit, other answers e.g. illegally)

Illegal migrants

- ⇒ Have you always worked illegally? If yes - why?
- ⇒ Have you ever considered to legalize your stay/work in Poland?
- ⇒ If so, were you successful in legalizing? If not, what was the reason?
- ⇒ Do you know which documents are required to obtain a work permit, temporary stay permit?
- ⇒ Where did you get that information? Do you know any place, where you can obtain this information/help?
- ⇒ In your opinion, is it difficult or rather easy to obtain a work permit in Poland?
- ⇒ Did you know before coming to Poland what the procedure for obtaining a work permit is in Poland? If yes – how did you obtain that information?
- ⇒ Have you ever contacted state institutions? (hospitals, police, registration office)
- ⇒ Has the knowledge of the Polish language ever been a problem during the contact with state institutions? How did you manage to deal with such situations?

Legal migrants

- ▷ Please describe the procedure how you got your work permit/temporary stay permit?
- ▷ Was it difficult? What was the biggest problem?
- ▷ Did anyone help you?
- ▷ What is your experience with Polish institutions, considering obtaining a work/temporary stay permit? Can you tell me how the Polish officials treated you/

- people you know? Were they helpful, polite or rather suspicious and made difficulties?
- ▷ Is it relatively easy or opposite difficult to receive a work permit in Poland?
 - ▷ What do the decisions of institution depend on: competences, country of origin? Others?
 - ▷ Has the knowledge of the Polish language ever been a problem in contacts with state institutions? How did you manage to deal with such situations?

Respondent's data:

Age :

sex:

place of birth:

religion:

citizenship:

marital status:

education:

profession:

Place and type of work actually done:

In the home country

In Poland

Please state how much you earned over the last month? Please include all sources of income. If you do not remember, please give an estimate of the sum.

ANNEX C. Questionnaire Design: Employer Interviews

IOM PROJECT

Perceptions between employers (European) and employees (Ukrainian) on level of awareness of Labour Abuses and relevant measures existing / taken

EMPLOYER UNSTRUCTURED INTERVIEW

I Introductory questions

- ▷ What field is your company working in? Does it work in any other fields?
- ▷ How many people are employed in the company? (Full-time, part-time, seasonally)
- ▷ How many foreigners are among them? How many people from Ukraine? (Full-time, part-time, seasonally)
- ▷ Why do you employ Ukrainians?
- ▷ Are you generally satisfied with Ukrainian employees work?
- ▷ What are advantages and disadvantages of employing foreigners?

II Employments regulations

- ▷ What terms of employment do you offer to Ukrainians? (In the contract, and through informal agreements)
- ▷ What do you think about the procedures of obtaining work permit for foreigners?
- ▷ What are the main difficulties?
- ▷ How do you find employees? In Poland? In Ukraine?
- ▷ Are you using any employment agency? Here? In Ukraine?
- ▷ Does anyone help you with the formalities related to hiring foreigners? Who?
- ▷ How would you improve the procedure of employment of foreign labour force?
- ▷ How do you assess the qualifications of your potential workers? How do you recruit them?

III Polish and migrant employees

- ▷ In which sectors are migrants from Ukraine employed most often according to your experience? Why?
- ▷ How would you compare Ukraine and Polish workers?
- ▷ What makes Ukraine desirable workers? (Price? Quality of work?)
- ▷ What terms of employment do you offer to Ukraine? (In the contract, and through informal agreements)
- ▷ Do you offer the same terms to Poles?
- ▷ Are all your workers formally (legally) employed?

IV Conditions of work

Remuneration, insurance, taxes

- ▷ How do you pay your workers? (per hour? For the work done? Overtime? Mixed system?)
- ▷ What benefits besides remuneration do you offer to your employees? (Room/board, meals)
- ▷ Do you have problems with the company's finances (money flow)?
- ▷ Do they result in occasional delays of paying out the wages?
- ▷ Do all your workers have social insurance/health insurance? What kind (state/private) ?
- ▷ Do you pay all the obligatory/compulsory insurance/taxes? Or maybe the taxes are paid on a smaller amount than the actual remuneration?
- ▷ Do you provide any extra insurance for your workers?
- ▷ Do your employees often take vacations?

Safety and worktime

- ▷ Do you consider work in your company to be safe?
- ▷ Did any dangerous situations happen in your company? Accidents? What did you do then? Can you provide an immediate medical care if needed?
- ▷ How do you protect your workers from accidents? What happens in the case of accident?
- ▷ How many hours does a typical workday at your company last?
- ▷ And how many hours do your employees work weekly?
- ▷ Do you organize night shifts?
- ▷ How do you remunerate your employees for extra work, overtime? Do you expect them sometimes to stay overtime without additional remuneration?

Situations of conflict

- ▷ Are there any conflicts among your employees? Any conflicts based on the fact that someone is Polish/Ukrainian?
- ▷ (Have you come across cases of the consumption of alcohol at work? How did you deal with them?) How do you deal with the consumption of alcohol at work by employees?
- ▷ (Have you encountered cases of theft in the workplace? How did you deal with them?) How do you deal with theft?
- ▷ How do you execute duties from your employees? (i.e. in a case someone is neglecting his/her job)
- ▷ How do you deal with workers neglecting their duties?
- ▷ Did you ever have to notify the Police about any misconduct among your employees?
- ▷ Have you ever heard about employees accusing their employers of abusing labour rights molestation?
- ▷ Did you experience any situations when workers expected from you something you were not able to do? What was it? How did you deal with the situation?
- ▷ Did any employees threaten you? Why? What did you do then?

V Controls

- ▷ Was your company ever controlled by the labour inspection?
- ▷ What were the effects of such controls? Did they find any irregularities?
- ▷ And maybe you know the experience some other companies had with such controls?
- ▷ (Can such controls be avoided? How?) How can one avoid such controls?

Respondent's data:

Age:

Gender:

Place of Birth:

Citizenship

Marital Status:

Education (specialisation):

ANNEX D. Questionnaire Design: Expert Interviews

IOM PROJECT

Perceptions between employers (European) and employees (Ukrainian) on level of awareness of Labour Abuses and relevant measures existing / taken

EXPERT UNSTRUCTURED INTERVIEW

I. Introductory questions

- ⇒ What is your field of expertise?
- ⇒ Since when?
- ⇒ And since when have you been involved in the topic of labour market/migration?
- ⇒ What are the reasons of migration to Poland (possible answers: liberal regulations, migration links, geographical closeness, other?)
- ⇒ Why do you think so?

II. Situation on the labour market

- ⇒ How can we describe working conditions in Poland in general?(contract, salary, safety of work, promotion, opportunities for training)? What are the differences between Polish and foreign workers?
- ⇒ Is there any difference among the nationalities? (e.g. EU and non EU citizens)? What is the situation of the workers from Ukraine?
- ⇒ What is your opinion about the statement that all employees (Polish and migrant) should be treated equally at work in terms of: contract terms, conditions of employment, promotion, access to training). Are there differences in practice?

III. Access to the labour market

- ⇒ How would you assess the procedures of migrant employment (obtaining work permit, visa, type of announcement, etc)?
- ⇒ In your opinion, are barriers to the access of third-country nationals to the national labour market discriminatory? Are these measures somehow justified?

- ⇒ *'Immigrants take up the most hazardous and unhealthy jobs'* Please comment this opinion. Do you think that it is also relevant for Poland
- ⇒ According to other view *'Immigrants take up jobs that Poles are reluctant to undertake'* Do you share this opinion? What are the reasons of that situation?
- ⇒ Do you think that described situation proves that they have more disadvantageous position on the labour market or that there are abuses of their rights? Or maybe in the developed countries there are always jobs, that native workers are not willing to take.
- ⇒ In general, how is problem of employment of migrant workers perceived by public opinion? Is the attitude generally positive or negative? How has it changed recently?

IV. Position on the labour market

- ⇒ What is the structure of (legal/illegal) migrants' employment by profession/sector?
- ⇒ What is the main source of income of migrants from Ukraine? What are the living conditions of migrant workers?
- ⇒ What are the attitudes of the employers and co-workers towards the labour migrants from Ukraine (fear of competition?)
- ⇒ Cases have been reported of the abuses of immigrants on the Polish labour market. What mechanisms/procedures are there to protect the rights of migrant workers in Poland? Are they effective?
- ⇒ Do migrant workers require additional legal protection or are the regulations concerning Polish citizens sufficient in their case?

V. Awareness and protection of rights – theory and practice (equality – discrimination)

- ▷ What are the most common examples of abuses of labour rights in Poland?
- ▷ What is the role of labour inspectors, other state officials, the police in protecting migrant workers? What are some of the factors limiting the effectiveness of these services in protecting the migrant workers' labour rights?
- ▷ How is the legality of residence and employment controlled with regard to migrant workers?
- ▷ What are the most common examples of abuses of labour rights in Poland in case of migrants? Have you ever heard about such cases (eg: camps, very hard working conditions, etc) .
- ▷ What is the position of workers in various sectors of the economy? What is the position of migrant workers in those sectors?
- ▷ What are the differences between migrant working legally and illegally? Can we even discuss any labour rights in case of illegal migrant workers? (with no written

- contract, registration). Are the workers in the 'gray zone' (informal, unregistered economy) entitled to any rights? What rights?
- ▷ Are migrant workers aware of their rights? What kind of rights? Do they try to enforce their rights?
 - ▷ Cases have been reported of the negative treatment of immigrants in Poland by employers. Can you confirm any such cases?
 - ▷ Have you ever heard about migrants - members of trade unions? Are migrants' interests represented by the trade unions?
 - ▷ What are the institution/s they contact most often in case of abuse of their rights? Do immigrants know where they can go for help?

VI. Institutional support

- ⇒ Have you ever heard about migrants from Eastern Europe receiving any support from formal or informal organisations?
- ⇒ Have they established any organisations? Do you know how they work? What is your assessment of their activities?
- ⇒ Do the Ukrainian migrants contact any state institutions?
- ⇒ If yes, why and what experience have they had in this regard?
- ⇒ Can the Ukrainian migrants rely on their states of origin in protecting their rights (consulates, embassies)?
- ⇒ Do you know whether there are any bilateral agreements protecting migrant workers?

Respondent's data

Age:

sex:

education (specialisation)

institution:

ANNEX E. Readmission agreements and other relevant agreements signed by Poland (selection)

Date of signature (entry into force)	Country	Name of agreement
29 March 1991	Belgium, France, Germany, Italy, Luxembourg, Netherlands	Porozumienie o przyjmowaniu osób przebywających bez zezwolenia/ Übereinkommen betreffend der Rückübernahme von Personen mit unbefugtem Aufenthalt
12 January 1993 (21 December 1993)	Ukraine	Umowa między Rzeczpospolitą Polską a Ukrainą o stosunkach prawnych na polsko-ukraińskiej granicy państwowej oraz współpracy i wzajemnej pomocy w sprawach granicznych/ Agreement between the Republic of Poland and Ukraine on the Legal Relations on the Polish-Ukrainian State Border and the Cooperation and Mutual Assistance in Border Related Matters
7 May 1993	Germany	Porozumienie między Rządem Rzeczypospolitej Polskiej a Rządem Republiki Federalnej Niemiec o współpracy w zakresie skutków wynikających z ruchów migracyjnych/ Abkommen zwischen der Regierung der Republik Polen und der Regierung der Bundesrepublik Deutschland über die Zusammenarbeit hinsichtlich der Auswirkungen von Wanderungsbewegungen

24 May 1993 (10 April 1994)	Ukraine	Umowa między Rządem Rzeczypospolitej Polskiej a Rządem Ukrainy o przekazywaniu i przyjmowaniu osób przez wspólną granicę państwową/ Agreement between the Government of the Republic of Poland and the Government of Ukraine on Transfer and Readmission of Persons across the common State Border
28 August 1996	Slovenia	Umowa między Rządem Rzeczypospolitej Polskiej i Rządem Republiki Słowenii o przekazywaniu i przyjmowaniu osób przebywających bez zezwolenia
13 July 1998 (8 January 2000)	Lithuania	Umowa między rządem Rzeczypospolitej Polskiej a rządem Republiki Litewskiej o przekazywaniu i przyjmowaniu osób/ Agreement between the Government of the Republic of Poland and the Government of the Republic of Lithuania Concerning Readmission and Admission of Persons
12 May 2001	Yugoslavia	Umowa o międzynarodowych przewozach drogowych i przyjmowaniu osób przebywających na terytoriach ich państw bez zezwolenia
12 May 2001 (19 July 2002)	Ireland	Umowa między Rządem Rzeczypospolitej Polskiej a Rządem Irlandii o przekazywaniu i przyjmowaniu osób przebywających na terytoriach ich państw bez zezwolenia
21 May 2002	Spain	Umowa o przyjmowaniu osób przebywających bez zezwolenia/ Agreement on Reception of Persons Residing Without a Permit
10 June 2002	Austria	Umowa między Rządem Rzeczypospolitej Polskiej a Rządem Federalnym Republiki Austrii o przyjmowaniu osób przebywających bez zezwolenia

19 September 2005	Switzerland	Umowa między Rządem Rzeczypospolitej Polskiej a Radą Federalną Konfederacji Szwajcarskiej o przekazywaniu i przyjmowaniu osób przebywających bez zezwolenia
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ANNEX F. Excerpts from Selected Legal Texts

ACT of 26 June 1974 THE LABOUR CODE

(Consolidated text: *Excerpts*)

SECTION III. REMUNERATION FOR WORK AND OTHER BENEFITS

Chapter Ia. Remuneration for Work

Article 78. § 1 . Remuneration for work should be fixed in a manner corresponding, in particular, to the type of work performed and qualifications required for its performance, and shall take into account the quantity and quality of the work performed.

(...)

Article 80. Remuneration shall be due for work performed. For any period of non-performance of work an employee shall retain the right to remuneration only when the provisions of labour law so provide.

Article 81. § 1 . If, in the period of any non-performance of work, an employee was ready to perform such work but was prevented from doing it by reasons of the employer, such employee shall have the right to remuneration according to his/her individual monthly or hourly rate of pay and if such component of remuneration has not been identified in the specification of the conditions of remuneration, 60 per cent of the remuneration. However, under no circumstances may such remuneration be lower than the amount of minimum remuneration for work determined under separate provisions.

§ 2. The remuneration referred to in paragraph 1 above shall be due to the employee for any stoppage duration which has not been caused by his/her fault. If the stoppage resulted from an employee's fault, remuneration shall not be due.

§ 3. The employer may, for the stoppage duration, instruct the employee to perform other appropriate work for the performance of which the employee shall receive remuneration due for such type of work, but not however, less than the remuneration fixed in accordance with paragraph 1 . If a stoppage resulted from an employee's fault such employee shall have a right to remuneration only for work performed.

§ 4. Remuneration for a stoppage duration caused by weather conditions shall be due to employees employed to perform work dependent on such conditions if the provisions of law so provide. Should the employee be instructed for the duration of such stoppage to perform other work, he/she shall have the right to remuneration in relation to the work so

performed, unless the provisions of labour law provide that the principles specified in paragraph 3 above shall be applicable.

Article 82. § 1 . The employee shall receive no remuneration for making defective products or inadequate performance of services. If the inadequate performance of work by the employee results in lower quality of the product or of services his remuneration shall be reduced accordingly.

§ 2. Where the defect in the product or of the service has been repaired by the employee he/she shall have the right to remuneration corresponding to the quality of the product or the service but for the time of work needed for the repair of the defect the employee shall receive no remuneration.

Article 83. § 1 . The work standards applicable to work to measure expenditure of labour, its efficiency and quality may be used when this is justified by the type of work.

§ 2. The work standards shall take into account the achieved level of technological development and organization of work. Work time standards may be changed in order to correspond to new technical and organizational solutions promoting higher work efficiency.

§ 3. The exceeding of work standards shall not constitute the reason for their change if it is a result of higher individual contribution of work or occupational efficiency of the employee.

§ 4. Employees shall be informed about the change of work standards at least two weeks prior to the introduction of the new work standards.

Chapter II. Protection of Remuneration for Work

Article 84. Employees may not renounce their right to remuneration nor transfer such right to another person.

Article 85. § 1 . Remuneration for work shall be paid at least once per month, at the same day of month fixed in advance.

§ 2. Remuneration for work payable once per month shall be paid in arrears, immediately after the full amount thereof has been fixed, but not later than within the first 10 days of the next calendar month.

§ 3. Where the fixed day of payment of the remuneration for work is a rest day, the remuneration shall be paid on the preceding day.

§ 4. Components of remuneration for work due to the employee for a period longer than one month shall be paid in arrears within time limits specified in the provisions of the labour law.

§ 5. Upon demand of the employee, the employer shall make the documents, on the basis of which the remuneration has been calculated, available to such employee.

Article 86. § 1 . The employer is obliged to pay remuneration at a location, date and time specified in the workplace regulations or in other provisions of labour law.

§ 2. Remuneration shall be paid in cash; a partial remittance of remuneration in a form other than cash shall be admissible only when so provided by statutory provisions of labour law or a collective labour agreement.

§ 3. The duty to pay a remuneration may be performed in a manner other than personal delivery to the employee if the collective labour agreement provides so or upon his/her prior consent in writing.

Article 87. § 1 . After the social insurance premiums and advance payment on natural persons' income tax have been deducted from the remuneration, only the following items may be further deducted from the remuneration:

- 1) sums attached by virtue of enforcement titles in respect of maintenance payments;
- 2) sums attached by virtue of enforcement titles in respect of payments other than maintenance payments;
- 3) cash advances given to the employee;
- 4) pecuniary penalties defined in Article 108.

§ 2. The deductions shall be made in accordance with the order specified in paragraph 1 above.

§ 3. The deductions made shall be subject to the following limits:

- 1) in the case of maintenance payments, up to three fifths of the remuneration;
- 2) in the case of attachment of other payments or deduction of cash advances, up to one half of the remuneration.

§ 4. All the deductions specified in paragraph 1 , subparagraphs 2 and 3, may not amount to more than one half of the remuneration and together with the deductions defined in paragraph 1 subparagraph 1 they may not amount to more than three fifths of the remuneration. Irrespective of these deductions, pecuniary penalties shall be deducted within the limits specified in Article 108.

§ 5. Any rewards paid from the establishment's reward fund, additional annual remuneration and amounts due to employees by profit sharing or from the balance surplus shall be liable to attachment in satisfaction of maintenance payments up to the entire amount thereof.

§ 6. Repealed.

§ 7. Remuneration received on a previous payday for time of absence from work and for which the employee is not entitled to be paid, shall be fully deductible from the next remuneration for work.

§ 8. Deductions from an employee's remuneration in the month in which the remuneration components are paid for periods longer than 1 month shall be made from the total amount of remuneration including any such remuneration components.

Article 87(1). § 1. The following remuneration for work shall be free of any deductions:

- 1) the minimum remuneration for work established on the basis of separate regulations and payable to employees employed on a full-time basis, after withholding social insurance premiums and personal income tax advance – in case of deduction of any amounts enforced pursuant to enforcement titles with regards to payment of amounts other than maintenance or alimony payments;
- 2) 75 per cent of the remuneration referred to in subparagraph 1 – in the case of deducting cash advances paid to the employee;
- 3) 90 per cent of the remuneration referred to in subparagraph 1 – in the case of deducting cash penalties referred to in Article 108.

§ 2. If an employee works on a part-time basis the amounts defined in paragraph 1 shall be decreased in proportion to the amount of working time.

Article 88. § 1 . Whilst observing the principles specified in Article 87, the employer also deducts maintenance payments without execution proceedings, except in the following cases:

- 1) maintenance payments are to be deducted on behalf of several of creditors, and the overall sum which may be deducted will not cover all maintenance payments;
- 2) remuneration for work was seized through court or administrative execution procedure.

§ 2. The deductions specified in paragraph 1 shall be made by the employer on request of the beneficiary on the basis of enforcement titles presented by him/her.

Article 89. Repealed.

Article 90. In matters not regulated by Articles 87 and 88, the provisions of the Code of Civil Procedure and the provisions on administrative execution in respect of cash payments shall be applicable.

Article 91. § 1 . Payments other than those specified in Article 87, paragraphs 1 and 7 may be deducted from an employee's remuneration only by his/her consent expressed in writing.

§ 2. In the cases referred to in paragraph 1 the amount of remuneration free from deductions shall equal:

- 1) the amount defined in Article 871, paragraph 1 , subparagraph 1 – where payments are deducted for the benefit of the employer;
- 2) 80 per cent of the amount defined in Article 871, paragraph 1 , subparagraph 1 – where deductions include payments other than those specified in subparagraph 1.

Chapter III. Benefits Due During Period of Temporary Incapacity to Work

Article 92. § 1. For a period of an employee's incapacity to work due to:

- 1) illness or isolation because of a contagious disease, said illness or isolation lasting 33 days in total per calendar year, an employee shall retain the right to 80 per cent of his/her remuneration, unless the provisions of labour law applicable to a given employer provide for a higher remuneration in such circumstances;
- 2) an accident while travelling to or from work or disease during pregnancy – within the period specified in subparagraph 1 – the employee shall retain the right to 100 per cent of his/her remuneration;
- 3) undergoing necessary medical examinations for candidates for donors of cells, tissues and organs as well as undergoing the procedure of collecting cells, tissues and organs – within the period mentioned in subparagraph 1 – the employee shall retain the right to 100 per cent of his/her remuneration.

§ 11. Repealed.

§ 2. The remuneration referred to in paragraph 1 above shall be calculated according to the principles valid for fixing a sickness benefit assessment base and shall be paid for each day of incapacity to work, including rest days.

§ 3. The remuneration referred to in paragraph 1 above:

1) shall not be decreased in the event of a reduction in the sickness benefit assessment base;

2) shall not be due where an employee has no right to sickness benefit.

§ 4. For a period of incapacity to work, referred to in paragraph 1 above, which lasts longer than 33 days per calendar year, the employee shall be entitled to receive sickness benefit on terms defined in separate provisions.

Chapter IIIa. Pension or Retirement Severance Pay

Article 921. § 1 . An employee satisfying the conditions entitling him/her to receive a pension due to incapacity to work or retirement pension and whose employment relationship ceased in connection with a pension or a retirement pension, shall have the right to cash severance pay equivalent to one-month remuneration.

§ 2. An employee who has received severance pay may not require a right thereto.

Chapter IV. Death Benefit

Article 93. § 1 . In the event of death of an employee during the existence of an employment relationship or during a period of receiving benefits following termination thereof due to incapacity to work by reason of illness, the employee's family shall have a right to death benefit from the employer.

§ 2. The amount of severance pay referred to in paragraph 1 above shall depend on the period of employment of the employee by a given employer and shall be equivalent to:

1) one month's remuneration if the employee was employed for less than 10 years;

2) three month's remuneration if the employee was employed for at least 10 years;

3) six month's remuneration if the employee was employed for at least 15 years.

§ 3. The provisions of Article 36, paragraph 11 shall apply as appropriate.

§ 4. Death benefit shall be payable to the following family members of the employee:

1) the spouse;

2) other family members satisfying the conditions required to receive a family pension as provided by the provisions on retirements and other pensions from the Social Insurance Fund.

§ 5. The death benefit shall be equally divided between all family members entitled thereto.

§ 6. Should there remain only one family member of the employee who is entitled to the death benefit, he/she shall be entitled to death benefit in one half of the amount specified in paragraph 2 above.

§ 7. No death benefit shall be payable to the family members referred to in paragraph 4 if the employer has provided life insurance for the employee and the compensation from an insurance institution is not lower than the death benefit payable pursuant to paragraphs 2 and 6. If such compensation is lower than the death benefit, the employer shall be obliged to pay such family the difference between the compensation and the death benefit.

SECTION IV. DUTIES OF EMPLOYER AND EMPLOYEE

Chapter I. Duties of the Employer

Article 94. The employer shall be under a particular duty, to:

- 1) make new employees familiar with their duties, the methods of work in particular posts and their basic rights;
- 2) organize work in a manner best suited to make effective use of working time and achievement of high efficiency and appropriate quality of work by employees through exercise of their abilities and qualifications;
- 2a) organize work in the manner ensuring decreased onerousness of work, particularly any monotonous work and work with a pre-established tempo;
- 2b) counteract discrimination in employment, particularly due to sex, age, disablement, race, religion, nationality, political beliefs, trade union membership, ethnic origin, religious convictions, sexual orientation or due to employment for a definite or indefinite period or on a full-time or a part-time basis;
- 3) repealed;
- 4) ensure safe and hygienic working conditions and to provide systematic training of employees in the area of work safety and hygiene;
- 5) pay correct remuneration on time;
- 6) support employees in their endeavours to develop their occupational qualifications;
- 7) create for employees taking up employment after graduation from a school of vocational education or a school of higher education conditions favourable for their adaptation to proper performance of work;
- 8) satisfy, within the limits of available means, the social needs of employees;
- 9) use objective and just criteria of evaluation of employees and of the results of their work;
- 9a) keep records in the matters involving the employment relationship and personal files of employees;
- 10) influence the establishment of principles of social coexistence in the employing establishment.

Article 94(1). An employer shall be obliged to make the text of provisions on equal treatment in employment available to employees in the form of written information disseminated in the employing establishment or provide employees with access to said provisions in another manner accepted at the given employer.

Article 94(2). The employer shall be obliged to inform employees, in the manner adopted by a relevant employer, of the possibility of full-time or part-time employment and the employees employed for a definite time – of vacant positions.

Article 94(3). § 1. An employer shall prevent mobbing.

§ 2. Mobbing shall mean any actions or behaviour relating to an employee or directed against the employee consisting of persistent and long-lasting harassment or intimidation of an employee resulting in his or her decreased evaluation of professional capabilities, as

well as resulting in or aimed at humiliating or ridiculing an employee, isolating him or her or eliminating him or her from a work team.

§ 3. An employee who suffers from health disturbance as a result of mobbing may claim a relevant sum from the employer as cash compensation for the incurred harm.

§ 4. An employee who terminated the employment contract in consequence of mobbing shall have the right to claim compensation from the employer in the amount of at least the minimum remuneration for work established pursuant to separate provisions.

§ 5. The employee's declaration on termination of employment contract should be in writing and include the reason referred to in paragraph 2 to justify the termination of the contract.

Articles 95, 96. Repealed.

Article 97. § 1 . Upon the termination or the expiry of an employment relationship, the employer shall be obliged to immediately issue the employee with a certificate of employment. The issuance of the certificate of employment may not depend on the previous settlement of account between the employee and the employer.

§ 1 1. In case of termination or expiration of a contract of employment with an employee with whom the current employer concludes the next contract of employment immediately after the termination or expiration of the previous contract of employment, the employer shall be obliged to issue a certificate of employment to the employee upon the employee's demand only.

§ 2. The certificate of employment shall provide information on the period and type of work performed, posts occupied, the manner of termination or circumstances of expiry of the employment relationship and other information necessary to establish the employee's rights and social insurance rights. Moreover, the certificate of employment shall contain an annotation on any with-holding of remuneration for work as provided in the provisions on execution proceedings. At the request of the employee the certificate of employment should also disclose information on the amount and the components of remuneration and qualifications acquired.

§ 21. The employee may apply to the employer for amendments to the certificate of employment within seven days of the date of receiving the certificate. If the application is rejected, the employee shall have the right to apply to a labour court for an amendment of the certificate of employment within seven days of the date of being informed about the refusal to amend the certificate.

§ 3. Should the decision of the labour court establish that a termination of a contract of employment with an employee without notice due to his/her fault was effected in violation of the provisions on termination of employment certificates according to such procedure, the employer shall be obliged to include in the certificate of employment a clause stating that the contract of employment was terminated as a result of a notice given by the employer.

§ 4. The Minister of Labour and Social Policy shall specify, by regulation, the detailed wording of the certificate of employment and the manner and procedure for issue and amendment thereof.

Article 98. Repealed.

Article 99. § 1 . An employee shall be entitled to make a claim for redress of damage caused by the employer through his/her failure to issue a certificate of employment in due time or by having issued an inaccurate certificate of employment.

§ 2. The compensation described in paragraph 1 above shall amount to the remuneration for the period during which the employee was unemployed for the above reasons, but for not longer than six weeks.

§ 3. Repealed.

§ 4. A court order for compensation due to the issue of an inaccurate certificate of employment shall constitute grounds for amendment of the certificate.

Chapter II. Duties of the Employee

Article 100. § 1 . An employee shall be obliged to perform his/her work conscientiously and scrupulously and shall comply with the orders of his/her superiors which apply to work, unless they are contradictory to the provisions of law or the contract of employment.

§ 2. An employee shall be obliged, in particular:

- 1) to observe the working time established in the employing establishment;
- 2) to observe the workplace regulations and order adopted by the employing establishment;
- 3) to observe the law and principles of work safety and hygiene, and fire protection;
- 4) to care for the interests of the employing establishment, protect its property and to maintain the confidentiality of information, the disclosure of which could cause damage to the employer;
- 5) to maintain the confidentiality provided for by separate provisions;
- 6) to observe the principles of social coexistence at the employing establishment.

Chapter III. Occupational Qualifications of Employees

Article 102. Occupational qualifications of employees required for performance of work of a specific type or for a specific post may be defined in the provisions of labour law envisaged in Articles 771 to 773, within the limits not regulated by special provisions.

Article 103. Within the limits and on conditions defined by a regulation of the Minister of National Education and the Minister of Labour and Social Policy, an employer shall facilitate the improvement of occupational qualifications by employees.

Chapter IV. Workplace Regulations

Article 104. § 1 . Workplace regulations shall regulate the organization of and order in the process of work and the rights and duties of the employer and the employees connected therewith.

§ 2. Workplace regulations shall not be made if within the limits specified in paragraph 1 the provisions of a collective labour agreement are applicable or where the employer employs less than 20 employees.

Article 104(1). § 1 . Workplace regulations while specifying the rights and duties of employer and employees connected with order in the employing establishment, must specify in particular:

- 1) organization of work, conditions for staying on the premises of the employing establishment during working time and after hours, equipping of employees with tools and materials, clothing and working shoes, and with means of individual protection and personal hygiene;
- 2) working-time systems and schedules and adopted working-time settlement systems;
- 3) repealed;
- 4) night-time;
- 5) the date, the place, the time and frequency of payment of remuneration;
- 6) the types of work prohibited to young employees and women;
- 7) types of work and list of working posts open to young employees for the purposes of occupational training;
- 7a) the list of the types of light work which may be performed by young adults employed for other purposes than occupational training;
- 8) duties applicable to work safety and hygiene and fire protection, including the method of advising employees of occupational risks connected with work performed thereby;
- 9) the method adopted by a given employer to confirm the time of employees arrival at work, their presence at work and leave of absence from work.

§ 2. Workplace regulations shall include information on penalties applicable by virtue of Article 108, to employees for breaches of order.

Article 104(2). § 1 . Workplace regulations shall be made by the employer in agreement with the establishment's trade union organization.

§ 2. Where the wording of workplace regulations is not agreed with the establishment's trade union organization within the time limits set by the parties and also where there is no such trade union organization operating in relation to a given employer, the workplace regulations shall be made by the employer.

Article 104(3). § 1 . Workplace regulations shall become effective 2 weeks from the date they were communicated to the employees by a method adopted by a given employer.

§ 2. The employer shall be obliged to ensure that each employee is familiar with the contents of the workplace regulations prior to the commencement of his/her work.

Chapter V. Rewards and Distinctions

Article 105. Employees who substantially contribute to the performance of the tasks of the employing establishment through exemplary fulfilment of their duties, show initiative at work and improve its effectiveness and quality, may be given rewards and distinctions. A copy of notice on granting a prize or a distinction shall be put in employee's personal file.

Chapter VI. Employees' Liability for Maintenance of Order

Article 108. § 1 . For employee's failure to observe established organization and order in the working process, the work safety and hygiene regulations, fire protection regulations or the procedure adopted to confirm arrival and presence at work, as well as justifying absence at work, the employer may charge with the following:

- 1) penalty of admonition;
- 2) penalty of serious reprimand.

§ 2. Where an employee fails to observe the provisions on work safety and hygiene or fire protection, leaves work without excuse, reports to work drunk or drinks alcohol during working hours, he/she may also be liable to a pecuniary penalty imposed by the employer.

§ 3. The pecuniary penalty for one offence and for every day of an unjustified absence may not be higher than the daily remuneration of the employee and the total pecuniary penalties may not exceed one tenth of the remuneration to be paid to the employee, as defined in Article 87, paragraph 1, subparagraphs 1 to 3.

§ 4. The proceeds from pecuniary penalties shall be dedicated to the improvement of work safety and hygiene conditions.

Article 109. § 1 . A penalty may not be imposed more than two weeks after the management has become aware of the offence of the employee and after three months have elapsed since the offence was committed.

§ 2. A penalty may be imposed only after the employee has been given a hearing.

§ 3. Where, due to the absence of an employee from the employing establishment he cannot be given a hearing, the two week period provided for in paragraph 1 shall not run, and if it has started it shall be suspended until the day the employee reports back to work.

Article 110. An employee shall be notified by the employer in writing of any fine imposed and the type of violation of work duties and the date of such violation shall be indicated and the employee shall be advised of his/her right to lodge an objection along with the time limits for filing such objection. A copy of the notice shall be placed in the personal file of the employee.

Article 111. In the imposition of any penalty, the particular nature of the breach of the employee's duties, his/her degree of blameworthiness, as well as his/her previous work record shall be taken into account.

Article 112. § 1 . If a penalty has been imposed in violation of law, the employee may lodge an objection within 7 days of the date of being notified of the imposition of the penalty. Whether the objection will be granted or not shall be decided by the employer after having considered an opinion of the establishment's trade union organization representing the employee. Failure to overrule the objection within 14 days from the date of filing thereof shall mean that the objection was sustained.

§ 2. An employee who has filed an objection may, within 14 days of the date of being notified of the overruling thereof, apply to a labour court to revoke the penalty imposed upon him/her.

§ 3. Where the objection against a pecuniary penalty is sustained or such fine is revoked by a labour court, the employer shall be obliged to reimburse the equivalent of such fine to the employee.

Article 113. § 1 . A penalty shall be deemed to be of no effect and a copy of the notice of the penalty shall be removed from the employee's personal file after a year of blameless work. The employer may, on his/her own initiative or at the request of an establishment's trade union organization representing the employee, decide to consider a penalty to be of no effect prior to the expiry of the above time limit.

§ 2. The provisions of paragraph 1 , first sentence, shall be applied as appropriate where the employer upholds the objection or when the labour court issues a decision revoking the penalty.

SECTION XII. CONSIDERATION OF CLAIMS ARISING FROM EMPLOYMENT RELATIONSHIPS

Chapter I. General Provisions

Article 242. § 1 . An employee may pursue claims arising out of his/her employment relationship before a court.

§ 2. Before submitting a case to court, an employee may demand initiation of conciliation proceedings before a conciliation commission.

Article 243. An employer and his/her employee shall aim at a conciliatory settlement of disputes arising from an employment relationship.

Chapter II. Conciliation Proceedings

Article 244. § 1 . Conciliation commissions shall be appointed in order to settle disputes concerning the claims of employees connected with their employment relationships.

§ 2. Repealed.

§ 3. A conciliation commission shall be appointed jointly by the employer and the establishment trade union organization and when no trade union organization exists in the establishment of such an employer – by the employer, upon receipt of consent thereto from the employees.

§ 4. Repealed.

Article 245. The following shall be established according to the procedure specified in Article 244, paragraph 3:

- 1) the rules and procedures for the appointment of the commission;
- 2) its term of office;
- 3) the number of its members.

Article 246. The following persons may not be members of a conciliation commission:

- 1) the person managing the employing establishment on behalf of the employer;
- 2) the chief accountant;
- 3) the legal adviser;

4) the person responsible for the matters of personnel, employment and remuneration.

Article 247. A conciliation commission shall appoint, from among its members, a chairman of the commission and his/her deputies and shall establish the rules for conciliation proceedings.

Article 248. § 1 . A conciliation commission shall initiate proceedings upon a written or oral application by an employee, recorded in the register. The date of such application shall be recorded on it.

§ 2. The submission of the application by an employee shall suspend the time limits referred to in article 264.

Article 249. A conciliation commission shall conduct the conciliation proceedings in groups consisting of at least 3 members of such commission.

Article 250. Repealed.

Article 251. § 1 . A conciliation commission shall aim at a conciliatory settlement of the case within 14 days beginning from the date of the submission of the application. The date of termination of the proceedings before the conciliation commission shall be stated in the minutes of the session of the group.

§ 2. In the case of termination, expiry or establishment of an employment relationship referred to in Article 264, the application shall be submitted to the conciliation commission within the time limits dates specified in that provision.

§ 3. In cases specified in paragraph 2 above, the conciliation proceedings shall, by operation of law, be terminated 14 days after the day of submission of an application by an employee and in other cases – 30 days after the day of submission of the application.

Article 252. A settlement made before a conciliation commission shall be recorded in the minutes of the session of the group. The minutes shall be signed by the parties and by the members of the group.

Article 253. It shall be inadmissible to reach a settlement not in accordance with law or the principles of community life.

Article 254. Where proceedings before a conciliation commission have not resulted in a settlement, the commission, on an application submitted by the employee within 14 days after the day of termination of the conciliation proceedings, shall transfer the case to a labour court without delay. The application of the employee for a conciliation settlement of the case by the conciliation commission shall be substituted by a claim. Instead of submitting this application the employee may bring a suit to a labour court under general rules of procedure.

Article 255. § 1 . Where an employer does not implement any settlement, it shall be subject to execution according to the procedure specified in the provisions of the Code of Civil Procedure, after a court has confined its executability.

§ 2. The court shall refuse to state the executability when the documents presented by the commission reveal the settlement to be inconsistent with the law or the principles of community life. Such a refusal shall not exclude the possibility of arriving at such statement of inconsistency of the settlement with the law or principles of community life, in accordance with general principles.

Article 256. Within a period of 30 days after the day of making a settlement, an employee may apply to the labour court for a declaration that such settlement be treated as ineffective when he/she considers that the settlement infringes his/her legitimate interests. However, in the cases referred to in Article 251 paragraph 2 the employee may make an application to a court only during the period of 14 days of the day of making the settlement.

Article 257. The discharge of the duties of a member of a conciliation commission shall be an honorary public function. However, a member of a conciliation commission shall retain the right to remuneration for the period in which he does not work due to his participation in the work of such commission.

Article 258. § 1 . An employer shall be obliged to provide a conciliation commission with premises and technical means enabling it to function appropriately.

§ 2. An employer shall bear the expenses connected with the activity of a conciliation commission. Such expenses shall also include the equivalent of the remuneration lost during the period for which an employee did not work due to his/her participation in the conciliation proceedings.

Chapter III. Labour Courts

Article 262. § 1 . Claims arising out of employment relationships shall be considered by:

- 1) labour courts – constituting separate organizational units of district courts; and
- 2) labour and social insurance courts – constituting separate organizational units of voivodeship courts, hereinafter referred to as labour courts.

§ 2. Claims connected with:

- 1) the establishment of new terms of work and pay;
- 2) the application of work standards;
- 3) rooms in employee hostels shall not fall within the jurisdiction of labour courts.

§ 3. The rules for establishing labour courts, their organization and procedures before such courts shall be specified by separate provisions.

Article 263. [*The provisions of this Article are valid until 1 March 2006.*] § 1 . Proceedings in respect of claims by an employee arising from his/her employment relationship shall be exempt from court fees.

§ 2. Expenses connected with matters done during the proceedings specified in paragraph 1 above shall be provisionally borne by the State Treasury.

§ 3. The labour court shall, in a decision concluding proceedings at a given instance, decide on such expenses applying the relevant provisions relating to costs of judicial proceedings in civil cases, it being understood that an award of costs may be made against an employee in particularly substantiated cases.

Article 263. [*This amendment comes into force on 2 March 2006.*] Repealed.

Article 264. § 1 . An appeal from such a notice of termination of employment shall be submitted to a labour court within 7 days of the day of service of the letter notifying of the termination of the contract of employment.

§ 2. A claim for reinstatement in work or for payment of compensation shall be submitted to a labour court within 14 days of the day of service of the notification of termination of the contract of employment without notice or of the day of the expiry of the contract of employment.

§ 3. A claim for reinstatement in employment shall be submitted to a labour court within 14 days of the day of service of the notification of refusal to grant employment.

Article 265. § 1. Where an employee has, without fault, not performed the acts specified in Article 97, paragraph 21 and in Article 264 in due time, a labour court shall on his/her application decide whether to restore the expired time limit.

§ 2. An application to restore the time limit shall be submitted to a labour court within 7 days of the date of cessation of the reason for the failure to observe the time limit. The circumstances justifying the restoration of the time limit shall be included in the application.

**ACT
of 20 April 2004
ON EMPLOYMENT PROMOTION AND LABOUR
MARKET INSTITUTIONS**

(Excerpts)

Chapter 16. Polish Citizens' Starting Work Abroad for Foreign Employers and Foreign Persons' Performing Work in the Republic of Poland

(...)

Article 87. A foreign person may perform work in the territory of the Republic of Poland if he or she holds a work permit issued by the marshal of the *voivodeship* competent with respect to the employer's seat. The following foreign persons shall be exempt from this duty:

- 1) persons having the status of refugee granted in the Republic of Poland;
- 2) persons having a permit to settle or a long-term resident of the European Communities' stay permit in the Republic of Poland;
- 2a) persons having a permit to reside for a specified period of time in the Republic of Poland granted in connection with a circumstance referred to in Article 53, paragraph 1, subparagraph 13 of the Act of 13 June 2003 on Foreign Persons;
- 3) persons having consent for tolerated stay in the Republic of Poland;
- 4) persons enjoying temporary protection in the Republic of Poland;
- 5) family members of a Polish citizen being citizens of the states referred to in Article

- 1, paragraph 3, subparagraph 2, letters a and b;
- 5a) the spouse of a Polish citizen not being a citizen of a state referred to in Article 1, paragraph 3, subparagraph 2, letters a and b, if he or she holds a permit to reside for a specified period of time in the territory of the Republic of Poland granted in connection with his or her entering into a marriage;
- 5b) descendants of a Polish citizen or a foreign person who is a spouse of a Polish citizen, as referred to in subparagraph 5a, not being a citizen of a state referred to in Article 1, paragraph 3, subparagraph 2, letters a and b, if he or she holds a permit to reside for a specified period of time in the territory of the Republic of Poland;
- 6) family members of the foreign persons referred to in subparagraphs 1 to 4:
- a) being the spouse of this foreign person and holding a permit to reside for a specified period of time in the territory of the Republic of Poland granted in connection with his or her entering into a marriage;
- b) holding a permit to reside for a specified period of time in the territory of the Republic of Poland granted under Article 53, paragraph 1, subparagraph 7 or 14 of the Act of 13 June 2003 on Foreign Persons (Journal of Laws 2003, No. 128, item 1175 as amended) or being descendants of a foreign person holding consent for a tolerated stay in the territory of the Republic of Poland, if they obtained a permit to reside for a specified period of time in the territory of the Republic of Poland, or being descendants of a foreign person enjoying temporary protection in the territory of the Republic of Poland, if they obtained a permit to reside for a specified period of time in the territory of the Republic of Poland;
- 7) those exempt from the duty to hold work permits pursuant to separate provisions;
- 8) foreign persons – with the possibility of applying to them the principle of reciprocity with the use of equivalent means or limitations referred to in Annex XII, subparagraph 2, paragraph 1 of the Treaty on accession of Poland to the European Union:
- a) citizens of European Union Member States;
- b) citizens of States with which the European Union concluded agreements on free movement of persons;
- c) family members of the foreign person referred to in subparagraphs a and b, who perform work or carry on economic activity in the territory of the Republic of Poland;
- d) family members of the foreign person referred to in subparagraphs a and b, who stays in the territory of the Republic of Poland pursuant to the provisions:
- on the right of stay applicable in European Union Member States;
 - on the right of stay of employees and self-employed persons who ceased their occupational activity, applicable in European Union Member States,
 - on the right of residence for students, applicable in European Union Member States.

Article 88. 1. A work permit shall be required if the foreign person:

- 1) performs work for a subject having its seat in the territory of the Republic of Poland;
- 2) performs work for a foreign employer and is delegated in the territory of the Republic of Poland in order to deliver an export service;

3) performs work for a foreign employer and is delegated thereby to another subject having its seat in the territory of the Republic of Poland for a period exceeding 30 days per year in order to perform a task specified by the delegating party according to a procedure different from that of delivering export services; this provision shall not infringe the provisions referred to in Article 90, paragraph 2, concerning the procedure for employing foreign persons in the delivery of export services provided by foreign employers in the Republic of Poland.

2. The issue of a work permit shall be conditional upon the employer's prior obtaining of a promise and the foreign person's obtaining of the appropriate visa or permit to reside for a specified period of time in the territory of the Republic of Poland, or the permit referred to in the provisions on the principles and conditions of entry and stay of citizens of European Union Member States and their family members in the territory of the Republic of Poland.

3. [*This provision is valid until 31 December 2006.*] If the foreign person holds the appropriate visa or permit to reside for a specified period of time in the territory of the Republic of Poland, the *voivode* shall issue a decision on the work permit. The *voivode* shall issue a decision on the work permit also on the basis of the travel document or the permits referred to in the provisions on the principles and conditions of entry and stay of citizens of European Union Member States and their family members in the territory of the Republic of Poland, or on the basis of a temporary certificate of identity of a foreign person and a certificate confirming the period that has elapsed since the day of initiating the proceedings for granting the status of refugee, and confirming the circumstance that extension of the proceedings was not caused by the foreign person.

3. [*This provision comes into force on 1 January 2007.*] If the foreign person holds the appropriate visa or permit to reside for a specified period of time in the territory of the Republic of Poland, the marshal of a *voivodeship* shall issue a decision on the work permit. The marshal of a *voivodeship* shall issue a decision on the work permit also on the basis of the travel document or the permits referred to in the provisions on the principles and conditions of entry and stay of citizens of European Union Member States and their

family members in the territory of the Republic of Poland, or on the basis of a temporary certificate of identity of a foreign person and a certificate confirming the period that has elapsed since the day of initiating the proceedings for granting the status of refugee, and confirming the circumstance that extension of the proceedings was not caused by the foreign person.

4. The provisions of paragraphs 1 to 3 shall not apply in the event when the employer entrusts the foreign person with the performance of work outside the territory of the Republic of Poland.

5. The work permit for foreign persons:

1) performing functions in management boards – shall be applied for by the subject authorized to representation;

2) [*this provision is valid until 31 December 2006*] referred to in paragraph 1 , subparagraph 2 – shall be applied for by the foreign employer; the decision on the

promise and work permit shall be issued by the *voivode* competent with respect to the place of delivery of the export service;

2) [*this provision comes into force on 1 January 2007*] referred to in paragraph 1 , subparagraph 2 – shall be applied for by the foreign employer; the decision on the promise and work permit shall be issued by the marshal of the *voivodeship* competent with respect to the place of delivery of the export service;

3) [*this provision is valid until 31 December 2006*] referred to in paragraph 1 , subparagraph 3 – shall be applied for by the foreign employer or the subject where the task specified by the delegating party will be performed; the decision on the promise and work permit shall be issued by the *voivode* competent with respect to the seat of the subject where the task will be performed;

3) [*this provision comes into force on 1 January 2007*] referred to in paragraph 3 – shall be applied for by the foreign employer or the subject where the task specified by the delegating party will be performed; the decision on the promise and work permit shall be issued by the marshal of the *voivodeship* competent with respect to the seat of the subject where the task will be performed.

6. [*This provision is valid until 31 December 2006.*] A promise and work permit for a foreign person concerning work in units subordinated to the minister competent for culture and protection of national heritage, the minister competent for physical culture and sport,

the minister competent for science, the minister competent for tourism, the minister competent for higher education, the minister competent for health, the minister competent for education and upbringing and the President of the Polish Academy of Sciences shall be issued by the *voivode* if the conditions set out in the provisions of this Act and in separate provisions have been fulfilled.

6. [*This provision comes into force on 1 January 2007.*] A promise and work permit for a foreign person concerning work in units subordinated to the minister competent for culture and protection of national heritage, the minister competent for physical culture and sport, the minister competent for science, the minister competent for tourism, the minister competent for higher education, the minister competent for health, the minister competent for education and upbringing and the President of the Polish Academy of Sciences shall be issued by the marshal of a *voivodeship* if the conditions set out in the provisions

of this Act and in separate provisions have been fulfilled.

7. [*This provision is valid until 31 December 2006.*] A promise and work permit shall be issued to the employer by the marshal of a *voivodeship*, taking into account the situation on the local labour market and the criteria referred to in Article 8a, paragraph 1 , subparagraph 2. In events justified by the labour market situation, the marshal of a *voivodeship* may limit the kind of work to management actions and representation of the subject. The marshal of a *voivodeship* may also consider the usefulness of the subject for the labour market and for the economy.

7. [*This provision comes into force on 1 January 2007.*] A promise and work permit shall be issued to the employer by the marshal of a *voivodeship*, taking into account the

situation on the local labour market and the criteria referred to in Article 8a, paragraph 1, subparagraph 1. In events justified by the labour market situation, the marshal of a *voivodeship* may limit the kind of work to management actions and representation of the subject. The marshal of a *voivodeship* may also consider the usefulness of the subject for the labour market and for the economy.

8. [*This provision is valid until 31 December 2005.*] A foreign person's promise and work permit shall be issued upon the employer's application, for a specified period of time, for a specific foreign person and employer, for a specific job or kind of performed work. The permit shall be issued on the conditions set out in the promise, for a period not longer than the duration of stay specified in the appropriate visa or not longer than the validity period of the permit to reside for a specified period of time in the territory of the Republic of Poland or the permit referred to in the provisions on the principles and conditions of entry and stay of citizens of European Union Member States and their family members in the territory of the Republic of Poland, or the period indicated in the certificate issued under Article 30a, paragraph 1 of the Act of 13 June 2003 on Providing foreign persons with protection within the territory of the Republic of Poland (Journal of Laws 2003, No. 128, item 1176, as amended). If the promise has been issued, the permit shall be issued after obtaining the employer's written confirmation of the date when the foreign person starts the performance of work. The date when the foreign person starts the performance of work may not be earlier than the date of issue of the decision on work permit. Upon the employer's application the voivode may extend the promise and work permit of a foreign person.

8. [*This provision comes into force on 1 January 2006.*] A foreign person's promise and work permit shall be issued upon the employer's application, for a specified period of time, for a specific foreign person and employer, for a specific job or kind of performed work. The permit shall be issued on the conditions set out in the promise, for a period not longer than the duration of stay specified in the appropriate visa or not longer than the validity period of the permit to reside for a specified period of time in the territory of the Republic of Poland or the permit referred to in the provisions on the principles and conditions of entry and stay of citizens of European Union Member States and their family members in the territory of the Republic of Poland, or the period indicated in the certificate issued under Article 30a, paragraph 1 of the Act of 13 June 2003 on Providing foreign persons with protection within the territory of the Republic of Poland (Journal of Laws 2003, No. 128, item 1176, as amended). If the promise has been issued, the permit shall be issued after obtaining the employer's written confirmation of the date when the foreign person starts the performance of work. The date when the foreign person starts the performance of work may not be earlier than the date of issue of the decision on work permit. Upon the employer's application the marshal of a *voivodeship* may extend the promise and work permit of a foreign person.

9. [*This provision is valid until 31 December 2006.*] Upon application by the head of the competent revenue office, the Social Insurance Establishment or a consul, the *voivode* shall transfer transcripts of issued decisions.

9. [*This provision comes into force on 1 January 2007.*] Upon application by the head of the competent revenue office, the Social Insurance Establishment or a consul, the marshal of a *voivodeship* shall transfer transcripts of issued decisions.

10. Unless separate provisions provide otherwise, the employer shall employ a foreign person or conclude with him or her a contract for the performance of other paid work for the time for which the work permit was granted.

11. [*This provision is valid until 31 December 2006.*] If separate provisions make the possibility of occupying a specific post, practising a profession or carrying on other activity conditional on obtaining consent of the competent authority, the employer, prior to applying to the *voivode*, shall be obliged to obtain such a consent.

11. [*This provision comes into force on 1 January 2007.*] If separate provisions make the possibility of occupying a specific post, practising a profession or carrying on other activity conditional on obtaining consent of the competent authority, the employer, prior to applying to the marshal of a *voivodeship*, shall be obliged to obtain such a consent.

12. [*This provision is valid until 31 December 2006.*] The *voivode* shall annul the promise or work permit if:

- 1) the foreign person performs work illegally;
- 2) the foreign person has lost the rights to perform work;
- 3) there has been a change in the circumstances or evidence relating to the issued decision;
- 4) the reason for which the work permit was granted has ceased to exist;
- 5) the foreign person who performs, instead of the employer being an organizational unit, activities in the scope of labour law and infringes the said law; in the event of infringement of the labour law provisions the promise or work permit shall be annulled upon application of the competent labour inspector.

12. [*This provision comes into force on 1 January 2007.*] The marshal of a *voivodeship* shall annul the promise or work permit if:

- 1) the foreign person performs work illegally;
- 2) the foreign person has lost the rights to perform work;
- 3) there has been a change in the circumstances or evidence relating to the issued decision;
- 4) the reason for which the work permit was granted has ceased to exist;
- 5) the foreign person who performs, instead of the employer being an organizational unit, activities in the scope of labour law and infringes the said law; in the event of infringement of the labour law provisions the promise or work permit shall be annulled upon application of the competent labour inspector.

13. Annulment of the promise or work permit shall oblige the employer to immediately terminate the contract with the foreign person. In the event of a delegated foreign person, the employer shall be obliged to immediately recall him or her from the delegation.

14. The employer shall file an application for the issue of a foreign person's work permit having made a one-off payment amounting to the minimum remuneration for work, per each person, the said payment constituting income of the State budget. In the event of

application for extension of the work permit, the payment shall amount to half of the minimum remuneration for work.

15. [*This provision is valid until 31 December 2006.*] The minister competent for labour and the *voivode* shall gather and process data relating to foreign persons, issue of work permits, control of observance of the provisions of this Act and proceedings pending in these matters, to the extent necessary to implement the provisions of this Act.

15. [*This provision comes into force on 1 January 2007.*] The minister competent for labour and the marshal of a *voivodeship* shall gather and process data relating to foreign persons, issue of work permits, control of observance of the provisions of this Act and proceedings pending in these matters, to the extent necessary to implement the provisions of this Act.

16. The provisions of paragraphs 1 to 15 shall apply accordingly to a natural person intending to entrust a foreign person with the performance of work.

(...)

Article 90. 1. The minister competent for labour shall, by a regulation, determine:

- 1) the procedure and conditions for issuing or extending promises or work permits for foreign persons;
- 2) the procedure and conditions for refusing the issue or extension of work permits for foreign persons;
- 3) model forms of applications for issue of a work permit, extension of a work permit and the permits and promises which may contain the foreign person's personal data – having regard for the needs of the Republic of Poland's labour market and for ensuring the proper organization of the issue or refusal of issue of promises and work permits.

2. The minister competent for labour shall, by a regulation, determine:

- 1) the procedure and conditions for issuing or extending promises or permits, as well as refusing the issue or extension of promises or work permits for foreign persons employed in the delivery of export services provided by foreign employers in the Republic of Poland;
- 2) model forms of applications for the issue of a work permit, extension of a work permit and the permits and promises which may contain the foreign person's personal data – having regard for the needs of the Republic of Poland's labour market and to ensuring proper organization of the issue or refusal of issue of promises and work permits.

3. The minister competent for culture and protection of national heritage, in consultation with the minister competent for labour, may determine, by a regulation, the conditions for foreign persons' performing work within the framework of provision of artistic services, the qualifications and skills to be possessed by the foreign person and the employment duration, having regard for justified labour market needs in this scope.

4. The minister competent for labour shall determine, by a regulation, the cases when it is admissible to entrust a foreign person with the performance of work in the territory of the Republic of Poland without the need to obtain a work permit, if such cases result from international agreements and arrangements, training or advisory programmes conducted within the European Union, the particular character of practised profession, nature of the work, as well as the special status which was the grounds for granting to the foreign

person a permit to reside for a specified period of time in the territory of the Republic of Poland.

5. [*This provision is valid until 31 December 2006.*] The minister competent for labour may determine, by a regulation, the cases when the promise and work permit for a foreign person are issued by the marshal of a *voivodeship* regardless of the local labour market situation and the criteria referred to in Article 10, paragraph 2, subparagraph 2, guided by, in particular, the principle of reciprocity.

5. [*This provision comes into force on 1 January 2007.*] The minister competent for labour may determine, by a regulation, the cases when the promise and work permit for a foreign person are issued by the marshal of a *voivodeship* regardless of the local labour market situation and the criteria referred to in Article 8a, paragraph 1 , subparagraph 1 , guided by, in particular, the principle of reciprocity.

6. In the situation referred to in Article 87, subparagraph 8, the minister competent for labour may determine, by a regulation, the scope of limitations on the performance of work by foreign persons in the territory of the Republic of Poland, having regard for the protection of the Polish labour market.

ORDINANCE
of the Ministry of Labour and Social Policy
of 27 June 2007
on foreigners working without work permit

(unofficial translation)

According to the Ordinance of the Minister of Labour and Social Policy of 27 June 2007 (Dz. U. z 2007r. Nr120,poz.824) several professions and situations when seconded employees are exempted from the requirement to apply for a work permit. These applying to the citizens of Ukraine are listed below:

- trainers, advisers, supervisors, specialists having special qualifications in case of work for European Union programmes or other international aid
- foreign language teachers (when the language they teach is their native tongue)
- permanent correspondents of foreign media (press, radio, television, film, photography) provided they have governmental credentials
- artists (i.e. actors, musicians, dancers etc.) who perform or do artistic work provided it does not exceed thirty days in a calendar year
- lecturers and scientists who, while residing permanently abroad, come to Poland to perform short-term professional activity
- sportspersons representing during competitions clubs based in Poland, if that work has occasional character
- clergy of churches or church organizations that are registered with the Ministry of Internal Affairs
- full-time students studying in Poland doing part-time jobs (up to three months during summer holidays) and interns (via international student organizations or doing internship as a part of their studies in Poland)
- students working as part of the cooperation of Public Employment Services and their foreign partners
- employees of cultural institutions operating in Poland under international agreements
- workers seconded by their foreign employer up to 3 months in calendar year to:
 - installation, maintenance, repairs of devices, constructions, machines or other equipment produced by the foreign employer
 - delivery of ordered devices, machines or other equipment or parts produced by Polish company
 - setting up, removal and maintenance of trading-posts on the exhibitions, if the exhibitor is foreign employer
- company board members if their stay in Poland does not exceed 30 days in a calendar year

- employees of companies in EEA countries who are seconded to perform services in Poland
- employees working for the members of the European Parliament (MEP) necessary for carrying out the duties of the MEP
- scientists working for national research centres
- graduates of Polish medical and nursing schools (when they are enrolled in postgraduate internships in Poland)
- Up to 3 months in 6 months after employer delivers the statement to the Local Employment Agency (Powiatowy Urząd Pracy)