

**REPORT**  
**on the Free Movement of Workers**  
**in Poland in 2004**

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## Introduction

The year 2004 was really exceptional in the history of Poland – it became a Member of the European Union. The accession was the result of enormous effort in various areas of political and social life of the society. The adjustment of Polish law to EU standards, *inter alia*, in the area of free movement of workers, was one of the most significant challenges.

However, it must be stressed that this process is still continuing and not all the steps taken have been verified by the courts (the European Court of Justice as well as by the Polish courts) yet. As there is no jurisprudence on the free movement of workers in Poland which can be analyzed, the scope of this Report is limited. It is also quite difficult to assess practice in this area because the rules on the free movement of workers have been applied only from 1 May 2004. Also these rules are being applied with limitations because of transitional periods. One other aspect of this topic which influences actual practice is that the number of EU nationals taking up or seeking employment in Poland is relatively low (see Chapter VIII). Hence this report presents the stages of integration in the area of the free movement of workers and it focuses mainly on current legislation.

Considering that this is the first Report referring to the free movement of workers in Poland it is necessary to present the background to the current legal situation.

The Association Agreement of 16-12-1991 was Poland's first step towards accession to the European Community (more about the Agreement see in chapter VII). Then the official application for EU accession was submitted by Poland on 8-04-1994, in Athens. The decision to start negotiations with Poland was taken in December 1997 and the official opening of the negotiations took place on 31-03-1998.

The screening of the law in the negotiated areas and establishing the differences between the domestic law of the candidate country and the *acquis communautaire* were the first stage of the negotiations. The screening of the Polish law in the area of free movement of persons took place from 6-4 to 9-4-1999.

The Polish Government declared the full acceptance of the *acquis communautaire* in this area was stressed in the synthesis of the negotiating position and it declared the date "31-12-2002" as the time of full implementation of the community law but under the condition of reciprocity. It was also stated that the Polish legislation contained the legal basis for the implementation of the free movement principle on the day of the Accession Treaty coming into force. However, Poland reserved the right to revise its position regarding the coordination of the social security systems during the further steps in the negotiations, especially in the area of medical assistance. Moreover, Poland decided to take appropriate steps to eliminate any barriers in the sphere of the entrance, remaining and the access to the labour market for the nationals of the EU Member States.

The European Commission acknowledged Poland's position and started to elaborate the common position of the EU Member States. The first draft of a rather general common position (at this stage of negotiations the preparation of a more concrete position was impossible) was presented by the European Commission on 14-04-2000. However, all other EU States presented various positions in the area of free movement of persons and some of them (mainly Germany and Austria) demanded that the provision should be introduced to the negotiating position requiring the introduction of transitional means to provide for the free movement of workers. The official common position was sent to the Polish Government on 20-05-2000. It is worth mentioning that the common position contained the provision stressing *expressiss verbis* the particular sensibility of the free movement of workers topic. To-

gether with sending the official common position, the concrete negotiations in the area of the free movement of persons were opened on 26-05-2000. They were finally concluded in Copenhagen on 13-12-2002.

It is necessary to stress that during the negotiations the main concern was not the present (at that time)<sup>1</sup> or future legal or illegal migrant workers in Poland but the Polish migrant workers in the EU. The issue of the free movement of workers caused a lot of controversies of various nature not only economic but also mental, political and social. Finally, the European Commission took into consideration the fears of certain EU States of mass migration of Polish workers and adopted a compromise settlement by introducing transitional periods in the area of free movement of workers. The maximum 7 year (2+3+2) transitional period limiting the possibility of employment of Polish citizens in the “old EU countries” was introduced. In practice each State creates its own policy towards the Polish workers. The countries can open their labour markets gradually. Most of them declared that they would shorten the transitional period. Such a solution had a great impact not only on the situation of Polish migrant workers in other EU countries but also on the position of the EU migrant workers in Poland because of the adopted reciprocity principle.

While the negotiations were conducted at the European forum, the Polish Parliament and the Government, aiming at the approximation of laws, were systematically introducing new legal solutions. The Parliament amended the old acts [*ustawy*]<sup>2</sup> or adopted new ones. The most important of them will be taken into consideration in this Report.

As regards the Commission’s comments on the Polish report:

Comment 1. P. 11, 13: concerning the differentiation between residence and temporary residence, it is not still not entirely clear under whether the beneficiaries of Directives 93/364, 90/365 are entitled to obtain a residence permit or a temporary permit. This could be clarified in the text.

The text from “residence permit” until “current practice” – pages 724-725 of volume 2 of the Report (in version of 25 Nov. 2005) has been changed. The changes are small but I prefer to send all passages.

Comment 2 – p. 49 – It is not still clear what “a written approval” means in the context of the issue of a residence permit for family members. What is the subject of this approval and who should provide this written approval? This could be clarified in the text.

Sentence “The written approval for persons concerned in the application submitted by a spouse or a family member is also required; such approval is not required if they are under 16 years old”; – page 749 of volume 2 of the Report in version of 25 Nov. 2005, is replaced by *In the event that the application includes the spouse, or another family member who is of the age of 16 or more, the consent of that person expressed in writing is necessary.*

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1 In response to the Common Position the Polish Government estimated the number of Polish legal workers in EU countries at 300,000 persons and a similar number of illegal migrant workers.

2 The Constitution of Poland uses the term “statute” [*ustawa*] for describing the legal act which, just after the Constitution, is an act of the highest power. Article 87 of the Constitution explains the hierarchy of the sources of law: “The sources of universally binding law of the Republic of Poland shall be: the Constitution, statutes, ratified international agreements, and regulations.” However, the official translation of the legal acts does not use the term “statute” but “act”, for example: “Act on Aliens”. Each code, for example the “Labour Code” is also a “statute”.

## Chapter I Entry, Residence and Departure

### *Texts in force*

- Ustawa z 13 – 06-2003 o cudzoziemcach<sup>3</sup> – the Act of 13-06-2003 on aliens (before the accession);
- Ustawa z 27-07-2002 o zasadach i warunkach wjazdu i pobytu obywateli państw członkowskich Unii Europejskiej oraz członków ich rodzin na terytorium Rzeczypospolitej Polskiej<sup>4</sup> – the Act of 27-07-2002 on the principles and conditions of entry and residence of nationals of the Member States of the European Union and members of their families within the territory of the Republic of Poland;
- Ustawa z 22-04-2005 o zmianie ustawy o cudzoziemcach i ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw<sup>5</sup> – Act on amendment of the Act on aliens and the Act on granting the protection to aliens within territory of Poland and other acts.
- Rozporządzenie z dnia 26-04-2004 w sprawie wzorów wniosków, dokumentów i rejestrów dotyczących wjazdu i pobytu obywateli państw członkowskich Unii Europejskiej oraz członków ich rodzin na terytorium Rzeczypospolitej Polskiej<sup>6</sup> – the Regulation issued by the Minister of Internal Affairs and Administration of 26-04-2004 on specimens of applications, documents and registers referring to the entry and residence of the nationals of EU Member States and members of their families within the territory of the Republic of Poland;
- Rozporządzenie Rady Ministrów z dnia 30-11-2000 w sprawie opłaty za wydanie dowodu osobistego<sup>7</sup> – the Regulation of 30-11-2000 issued by the Council of Ministers on payment for the issuing of identity cards;
- Kodeks postępowania administracyjnego<sup>8</sup> – The Code of Administrative Procedures;
- Ustawa z dnia 9-09-2000 o opłacie skarbowej<sup>9</sup> – the Act of 9-09-2000 on stamp duty;
- Rozporządzenie ministra zdrowia z dnia 25-09-2003 w sprawie wykazu chorób uznanych za zagrażające zdrowiu publicznemu, z powodu których można odmówić zezwolenia na pobyt lub pobyt czasowy obywatelowi Unii Europejskiej i członkowi jego rodziny<sup>10</sup> – the Regulation of the Minister of Health of 25-09-2003 on specifying diseases recognised as dangerous to public health, as reason for refusal of residence permits or temporary residence permits to EU nationals and their family members;

Following the negotiations on accession to the EU, the Act on Aliens of 1963 was changed a few times, then a new Act on Aliens was adopted in 1997. This was amended in 2001 (*inter alia*, temporary protection and accelerated procedures for refugee status were introduced). Finally two new Acts referring to aliens (currently binding) were adopted on 13-06-2003: the Act on Aliens and the Act on granting the protection to aliens within the territory of the Re-

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3 *Journal of Laws [Dziennik Ustaw]*. 2003, no. 128, item 1175.

4 *Journal of Laws [Dziennik Ustaw]*. 2002, no.141, item 1180.

5 *Journal of Laws [Dziennik Ustaw]*. 2005, no.94, item 778.

6 *Journal of Laws [Dziennik Ustaw]* 2004, no. 115, item 1201.

7 *Journal of Laws [Dziennik Ustaw]* 2000, no. 105, item 1110.

8 *Journal of Laws [Dziennik Ustaw]* 2000, no. 98, item 1171.

9 *Journal of Laws [Dziennik Ustaw]* 2000, no. 86, item 960 (as amended).

10 *Journal of Laws [Dziennik Ustaw]* 2003, no. 177, item 1737.

public of Poland. They replaced the Act of 1997. All Acts adopted in 2003 were complemented by the enactment legislation.

However, the legislation on the free movement of persons and the entry, residence and departure of nationals of the EU Member States and members of their families in the year 2004 should be divided into two periods: “before” and “after” Poland’s accession to the EU.

Until the day of Poland’s accession to the EU, the entry and residence of nationals of the EU Member States were regulated by the European Treaty of 1991 (Article 37, par. 2 stating that “Poland shall, subject to the conditions and modalities applicable in that country, accord the treatment referred to in paragraph 1<sup>11</sup> to workers who are nationals of a Member State and are legally employed in its territory as well as to their spouses and children who are legally resident in the said territory”) and mainly by the aforementioned Act on Aliens.

The Act on Aliens of 2003 (currently in force) directly refers to the situation of the EU nationals after Poland’s accession to the EU. For final and transitional provisions, Article 165 indicates which provisions of the Act shall apply from the date of accession of the Republic of Poland to the European Union. There are Articles which transfer the issue of nationals of the EU Member States to the entirely “new legal regime”, e.g. Article 3, p. 2, *inter alia*. According to this Article, since 1-05-2004 the entry and residence of the citizens of EU states and states belonging to the EEA have been regulated in the Act of 27-07-2002 on the principles and conditions of entry and residence of nationals of the Member States of the European Union and members of their families within the territory of the Republic of Poland. It seems to be the most important legal Act in the discussed area; however, it refers not only to the free movement of workers but also to various aspects of entrance and residence of all EU nationals (not necessarily workers).<sup>12</sup>

On 22-04-2005 the new Act was adopted – the Act on amendment of the Act on aliens and the Act on granting the protection to aliens within territory of Poland and other acts. It amends the abovementioned Acts and its main aim is setting in order all the rules referring to all kinds of aliens. It has corrected the provision of the Act on Aliens of 2003 referring to exclusion of some groups of aliens from the Act on Aliens. Presently, Article 3, p. 2 of the Act on Aliens states that this Acts does not regulate the situation of citizens of the EU, EEA and citizens of other States (not being the Members of the EU) who, according to the concluded with the EU treaties, enjoy the free movement of persons. From the Act on aliens are also excluded family members of all these groups. The situation of all these persons is regulated by the Act of 2002.

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11 Art. 37, para. 1. “Subject to the conditions and modalities applicable in each Member State:  
- the treatment accorded to workers of Polish nationality, legally employed in the territory of a Member State shall be free from any discrimination based on nationality, as regards working conditions, remuneration or dismissal, as compared to its own nationals,  
- the legally resident spouse and children of a worker legally employed in the territory of a Member State, with the exception of seasonal workers and workers coming under bilateral agreements within the meaning of Article 41, unless otherwise provided by such agreements, shall have access to the labour market of that Member State, during that worker’s authorized period of employment”.

12 The Act will be presented in detail later in the Report.

## Entry

As mentioned above, until the day of accession, the entry, residence and departure of nationals of EU States and States belonging to the EEA and members of their families were regulated by the Act on Aliens due to the general conditions. From 1-05-2004 these matters have been regulated by the Act of 27-07-2002 on the principles and conditions of entry and residence of nationals of Member States of the European Union and members of their families within the territory of the Republic of Poland. Simultaneously they were excluded from the general provisions on aliens. The Act itemizes which directives it implements in the Polish legal system, including directives: 68/360/EEC, 148/73 (the most important for entry and residence), 64/221, 75/34, 90/364, 90/365 and 93/96.

On the ground of the Act of 22-04-2005 the nationals (and their family members) of other countries has been added to these groups of aliens. These “other States” means the States which concluded treaties with the EU on free movement of persons.

The second chapter of the Act of 2002 refers to border crossings. Article 3 states that EU nationals may enter the territory of Republic of Poland if they are in possession of valid travel documents or other documents certifying their identity and citizenship.<sup>13</sup> In comparison with third-country nationals, nationals of the EU State are in a privileged situation because third-country nationals must be in possession of valid travel documents and visas (when required). Moreover, due to the principle of reciprocity in relations with other States, permission to cross the border into the territory of the Republic of Poland by a third-country national may be dependent on paying an entry fee.

In case of the EU nationals even passports are not necessary; they can enter the territory of the Republic of Poland if they possess any other document certifying their identity and country of origin, hence the use of valid identity cards. If Polish nationals may cross the border being in possession only of their national ID,<sup>14</sup> so on the same principle, other EU nationals may enter Poland in the same way.

According to information obtained from the Polish Border Guard, at the border there is no difference (not only in law but also in practice) in treatment of EU nationals and citizens of Switzerland, Island, Norway and Liechtenstein.

## Residence

The issue of residence of EU nationals and members of their families is regulated by Chapter 3 of the Act of 2002 ‘On the principles and conditions of entry and residence of nationals of the Member States of the European Union and members of their families within the territory of the Republic of Poland’ and the Regulation issued by the Minister of Internal Affairs and Administration of 26-04-2004 on specimens of applications, documents and registers referring to the entry and residence of nationals of EU Member States and members of their families in the territory of the Republic of Poland. Moreover, the other acts which do not refer exclusively to the legal situation of EU nationals, but apply during the procedure for issuing permission for residence, should be also taken into account. As mentioned above, these are

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13 The Act and its Article 3 also takes into account the ECJ judgements with respect to the free movement of workers, inter alia, case C-376/89 (*Panagiotis Giagounidis v. Stadt Reutlingen*). European Court Reports 1991, p. I-01069.

14 Old ID-s (booklets) and new ID-s (one single card).

the Regulation of 30-11-2000 issued by the Council of Ministers on payments for the issue of identity cards, the appropriate provisions of the Code of the Administrative Procedure and the Act on stamp duty.

The Act of 2002 refers to the principles of residence of EU nationals (Chapter 3, Articles 4-18) and to the procedure and organs having authority in these matters (Chapter 4, Articles 19-18).

Periods of residence of EU nationals within the territory of Poland may be divided into at least three parts. From Article 4, if EU nationals (and members of their families) arrive in Poland for a period shorter than 3 months, they do not need any permits for their residence.<sup>15</sup> They are not even obliged to register their presence in the territory of Poland. EU nationals who live in their own country but work in Poland, on the other side of a border, also do not need any permits, providing that they return to their country every day or at least once a week.

If the period of residence exceeds three months, EU nationals must obtain permission for residence. The Act differentiates between “residence” and “temporary residence”. It may be stated that the difference depends on the strength of the ties between Poland and an alien.

#### *Residence permits*

#### **Residence permits**

Article 5 indicates who is entitled to obtain the residence permits (zezwoleńie na pobyt). The residents permits are granted to EU nationals who intend to settle or stay in Poland for rather long time. It means that the residence permit may be granted to these persons who intend to work in the territory of the Republic of Poland or to carry out any economic activity there for a period exceeding 12 months or to EU nationals who possess medical/sickness insurance [ubezpieczenie zdrowotne] and sufficient financial means to cover the cost of their stay without requiring social security benefits (Article 5 sec.2 p. 2). The Act indicates how “sufficient financial means” should be understood. “Sufficient” should be understood to mean an income by a family member above the level at which any social assistance would be granted to the family. This income is described in the Act of 12-03-2004 on social security<sup>16</sup> and in regulations and orders. It corresponds with Article 1 of Directive 364/90 which stipulates, inter alia, that the Member State should grant the right of residence to nationals of Member States who enjoy this right under other provisions of Community law and to members of their families, provided that they themselves and the members of their families are covered by sickness insurance in respect of all risks in the host Member State and have sufficient resources to avoid becoming a burden on the social assistance system of the host. These resources shall be deemed sufficient where they are higher than the level of resources below which the host Member State may grant social assistance to its nationals, taking into account the personal circumstances of the applicant.

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15 What goes with the ECJ conclusions in Case C-118/75 *Lynne Watson and Allesandro Belmann*, ECR 1976 – 1185.

16 *Journal of Laws [Dziennik Ustaw]* 2004, no. 64, item 593. The Act describes the criteria of granting the social assistance to a given person or a family (mainly Articles 7 and 8). The financial assistance is granted to a person (living alone) whose income does not exceed 461 PLN and a person living with family if the income for each member of this family does not exceed 316 PLN.



## *Poland*

Moreover, Article 5 sect. 3 refers to EU nationals who reach retirement age, have resided continuously in Poland for at least the previous 3 years and have worked in Poland for the previous 12 months or they have stopped working or carrying out an economic activity in the territory of Poland as a result of their permanent inability to work and they have been residing in Poland for at least two years. In the case of such persons, residence permits should be granted even if the previous requirements are not fulfilled, providing that they apply for renewed residence permits not later than two years after the expiry date of their previous residence permits.

According to the next section of Article 5, EU nationals will be granted residence permits based upon similar principles in situations when they are unable to work because of an occupational disease or an accident at work. However in their situation the Act does not contain a requirement for continuous residence in Poland for any period.

Article 6 of the Act of 2002 regulates the principles of the issuance of residence permits. Permits are granted for a period of 5 years and they can be extended in increments of 5 years (in accordance with Article 6.1 of Directive 360/68). Permits are not extended automatically; extensions must be applied for. Applicants must fulfil the same requirements as previously (except retired persons or those unable to work as mentioned above). If they fulfil them, the authorities are obliged to extend their permits. Hence in practice the period of residence of EU nationals in Poland may be unlimited and the initial decision to grant a permit is the deciding factor.

Article 6 sect. 3 is a very important provision for EU nationals who lose their jobs for reasons not attributable to them. According to this provision, if the EU nationals are residing in the territory of Poland in order to perform some work, and on the day the application for the first extension of the permit is submitted they are unemployed for reasons not attributable to them (however not longer than 12 months), the residence permits should be extended for the next 12 months (in accordance with Article 7 p.2 of the Directive 360/68).

### *Temporary residence permits*

According to Article 7 the temporary residence permit (*zezwole nie na pobyt czasowy*) may be granted to the UE citizens if he or she arrives to Poland for shorter (than in case of the residence permit) and determined (by any contract or studies) period. If they intend to obtain the temporary residence permit they should possess funds to cover the cost of their stay and insurance. Moreover they should in the territory of the Republic of Poland:

- Commence higher education studies. (In this case permits are granted for each year of the studies, but only until the completion of their education at the university)
- Intend to perform or has been performing work, profession, or intends to carry out or has been carrying out economic activity for the period from 3 to 12 months. The temporary residence permit is issued for the period of performing work as indicated in the written declaration of the employer, or the entity authorized to entrust the performance of work to the EU citizen, on the intention to entrust the performance of work, or in the certificate confirming the performance of work indicating the employment period, or for the period of performing profession or carrying out economic activity,
- Seek work (In this case temporary permits are granted for 6 months).

*Current practice*

EU nationals should obtain a “residence card/licence” [*karta pobytu*], issued by a competent authority for a period described in the card/licence or in a temporary residence card/licence.

Family members of EU nationals who are citizens of third countries should obtain a different document – it is the “residence document” [*dokument pobytu*]. This document describes the type of residence (temporary or not).

Either of these documents contains the names of individuals, their addresses and the expiry date of the residence permit or temporary residence permit. These documents should be returned to the competent authorities if Polish citizenship is granted, if the permit is withdrawn or if its former possessor is deceased. These documents should be replaced if the possessor’s name or address changes.

The issue and replacement of these documents are subject to charges in accordance with the Regulation on payments for the issuing of identity cards.

EU nationals and members of their families, if they intend to obtain residence permits, are obliged<sup>17</sup> to submit completed applications for residence<sup>18</sup> to the appropriate (for the intended location) *Voivode* [*wojewoda*].<sup>19</sup> The applications require: 2 photographs, statements of the planned places of residence in Poland and confirmation of the registration of their temporary residence.

In situations when EU nationals intend to work for others, have independent occupations or engage in any economic activity, they are required to provide statements to verify any of these activities;<sup>20</sup> from employers regarding their intention to give employment or regarding actual employment (if they are already carrying out any work), indicating the period of their employment, or certified copies of documents verifying the carrying out of independent occupations or economic activities (if necessary).

If EU nationals possess medical insurance or sufficient means to cover their costs of the residence, they should produce evidence of this insurance or verification of their financial means.

If EU nationals have stopped carrying out any work, independent occupations or any economic activities because they have reached retirement age or have permanent inability to work,<sup>21</sup> they should produce employment certificates or any documents certifying that they carried out independent occupations or economic activities for at least 12 months and also documents verifying their uninterrupted residence in the territory of Poland for at least 3 or 2 years respectively. For those persons who are unable to work as a result of occupational disease or the workplace accidents, certificates of inability issued by the competent organ are required.

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17 Based on information obtained at the Silesian *Voivodeship* (Governorship).

18 The application forms are also available at the *Voivodeship* web site.

19 In practice, the application should be submitted to the department at the *Voivode*’s Office responsible for migration matters (such departments may be named differently, it depends on the *Voivodeship*). *Voivode* is a head of the province (similar to a governor). He/she is a representative of the government in provinces (*województwa*).

20 Persons performing any economic activity should produce the certificate about such activity from the National Court Register.

21 These provisions are in accordance with Article 2, p. 1 of Directive 34/75, Article 1, p. 1 of Directive 364/90, and Articles 1-3 of Regulation 1251/70.

Also, all applicants should enclose with the applications, copies of valid travel documents or any other documents confirming their identity and citizenship (the original documents should be shown to the officer at the council).

Applications and all other documents should be submitted in Polish. Any documents issued in a different language must be translated into Polish by a registered interpreter. The time limit for taking decision in a given case is normally 30 days but in more complicated cases it is 60 days.

Decisions are made by the Voivode when the Commandant in Chief of the Border Guard express the opinion in particular cases.<sup>22</sup>

If a residence permit is refused, EU nationals or their family members have the right to appeal to the President of the Office for Repatriation and Aliens. According to the Administrative Code, such appeals should be submitted within 14 days from the day of receiving the refusal. If the decision issued by the President of the Office for Repatriation and Aliens is also negative, they can submit a complaint to the administrative court within 30 days.

The principles of procedures for persons applying for temporary residence permits are similar. However, students should produce certificates issued by the universities (either State or private) that they have just been admitted to, or are continuing their studies at.

## **Departure**

The Act of 27-07-2002 governs the principles and conditions of entry into and residence of nationals of the Member States of the European Union and members of their families within the territory of the Republic of Poland, Articles 17-18.

The Regulation of the Minister of Health (on identification of diseases recognised as dangerous to public health) can be the basis for refusal of residence permits or temporary residence permits for EU nationals and their family members. EU nationals may leave the territory of the Republic of Poland for several reasons. Firstly, it may be their own decision; no comments are necessary.

Secondly, it may be the result of the withdrawal of their residence permits (Article 17 of the Act of 2002). Permits are withdrawn if EU nationals or a member of their family does not possess financial means sufficient to cover the cost of their residence without needing to claim any social assistance or they do not have any medical insurance (Article 17, sect. 1, p. 1). In these cases the relevant authority is obliged to withdraw the permits. It seems that this provisions refers to persons who never worked or stopped its working activity and they may become a burden on a social system. However, the permits cannot be withdrawn for these reasons if the persons are unable to work because of their retirement age or their inability to work or if they are family members of those who have died from an occupational disease or a workplace accident (persons mentioned in Article 5, sect. 3, 4 and 5, and in Article 17, sect. 2 of the Act).

Article 17, sect. 5 states that temporary residence permits are withdrawn if the competent organ states that the persons have lost the right to be classed as students, they have ceased carrying out work, economic activity or looking for employment.

The decision on withdrawal of permits should indicate the time limit for leaving the territory of Poland. It cannot be less than 30 days from the date when the decision has become final.

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<sup>22</sup> There are 30 days for obtaining such an opinion. If it is not expressed within 30 days, it should be recognized as tantamount to fulfilment of this requirement.

Thirdly, according to Article 18 of the Act of 2002, EU citizens may be expelled from the territory of the Republic of Poland only if necessary for the protection of public order and security caused by a threat to State security and defence.<sup>23</sup> The decision on expulsion means, simultaneously by virtue of the law, the withdrawal of permits for residence or temporary residence. There are not any specific legal act referring to EU nationals on public order or security grounds. They are not treated in any special (privileged) manner.

Finally, according to Article 11, the relevant authorities may refuse residence permits or permits for temporary residence based solely on one of the foregoing reasons or for protection of public health (Article 11, sect. 1). Except in this last case, the reasons for refusal of permits apply also to extensions of residence permits or permits for temporary residence (sect. 2). The decision on refusal of permits or the extension of them should contain the time limit for leaving the territory of Poland (sect. 3). It cannot be less than 15 days from the final decision in cases of refusal of permits, or 30 days in cases of refusal of extensions.

Unfortunately the Act of 2002 does not indicate when, after the refusal of a residence permit, an EU national may next apply for a permit. In comparison with the Act on Aliens of 2003 it is imprecise. Article 21, sect. 1, p. 1 of the Act on Aliens stipulates that an alien shall be refused entry into the territory of the Republic of Poland if, *inter alia*, “prior to the expiry of one year from the day of issue of former decision on refusal of entry into the territory of the Republic of Poland, if the alien has not presented any new circumstances of the case”. It seems that the provisions of the Act of 2002 cannot be interpreted in a less favourable way, given that EU nationals have higher status for residence than nationals of third countries.

Article 12 of the Act of 2002 requires the Minister responsible for health matters to issue a regulation containing a list of diseases which are recognised as dangerous to public health and which can be a reason for the refusal of residence or temporary residence permits. The Minister should take into consideration the International Health Regulation no. 2 of the WHO in this regard.<sup>24</sup> The Minister of Health has issued such a Regulation applying to EU nationals and their family members. The annex to the Regulation contains the following diseases: cholera, severe acute respiratory syndrome (SARS), plague, suspected tuberculosis, poliomyelitis and other flaccid paralyses, *variola major* (smallpox), aphthous fever (foot-and-mouth disease), yellow fever and other haemorrhagic viral fevers and *pediculosis corporis* (lice infestation). This Regulation corresponds with Directive 221/64 (EEC) and its annex A. It refers directly to the WHO Regulation and it itemizes tuberculosis and syphilis but it allows the Member States to recognise other infectious and parasitic diseases as dangerous for the public health if they are the subject to provisions regarding protection of the host country nationals. The Regulation does not mention any serious mental disturbances which are itemized in the Directive.

*Literature:*

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Białocerkiewicz, J., *Nowe polskie prawo o cudzoziemcach* [The New Polish Law on Aliens], Toruń 2003.

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23 The Act of 2002 does not explain the terms: “public order”, “public security” or “threat to State security or defence”.

24 On 23 May 2005 the new revised version of the Regulation of 1951 has been adopted by the WHO Assembly.

*Poland*

- Integracja RP z Unia Europejska. Zadania Strazy Granicznej. Materiały z Konferencji.* [Poland's Integration with the European Union. Tasks of the Border Guard Conference Materials], Kętrzyn 2000.
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- Polska droga do Schengen. Opinie ekspertów* [Poland's road to Schengen. Experts' Opinions], Instytut Spraw Publicznych, Warszawa 2001.

## Chapter II Equality of Treatment

### *Texts in force*

- Konstytucja Rzeczypospolitej Polskiej z 2-04-1997 – Constitution of the Republic of Poland 2-04-1997– Articles 32, sect. 2, 33 and 37.  
**Article 32 1.** All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities. 2. No one shall be discriminated against in political, social or economic life for any reason whatsoever.  
*Article 33 1.* Men and women shall have equal rights in family, political, social and economic life in the Republic of Poland. 2. Men and women shall have equal rights, in particular regarding education, employment and promotion, and shall have the right to equal compensation for work of similar value, to social security, to hold offices, and to receive public honours and decorations.  
*Article 37 1.* Anyone under the authority of the Polish State shall enjoy the freedoms and rights ensured by the Constitution. 2. Exemptions from this principle with respect to foreigners shall be specified by statute.”
- Kodeks pracy z 24-06-1974- the Labour Code of 24-06-1974– Articles 11 and 18 [3a-3e], 94, 94 [1]
- Ustawa z 20-04-2004 o promocji zatrudnienia i instytucjach rynku pracy – Act of 20-04-2004 on promoting employment and institutions of the labour market, Articles 36 sec.5, 123.
- Rozporządzenie Ministra Pracy i Polityki Społecznej z 19-12-2001 w sprawie szczegółowych zasad i trybu wydawania przyrzeczeń i zezwoleń na pracę cudzoziemców<sup>25</sup> – The Regulation issued by the Minister of Labour and Social Policy on 19-12-2001 relating to special principles and the procedure of issuing promises and work permits for foreigners who are employed in realization of export services provided by foreign employers in the territory of the Republic of Poland (so-called “the Detailed Regulation”)
- Rozporządzenie Ministra Pracy i Polityki Społecznej z 19-12-2001 w sprawie określenia przypadków, w których przyrzeczenie i zezwolenie na pracę cudzoziemców jest wydawane przez wojewodę bez względu na sytuację na lokalnym rynku pracy i kryteria wydawania przyrzeczeń i zezwoleń na pracę cudzoziemców]<sup>26</sup> – The Regulation issued by the Minister of Labour and Social Policy on 19-12-2001 relating to cases of the promise and permission for a foreigner to work being issued by Voivode regardless of either the situation in the local labour market or the criteria for issuing promises and work permits for foreigners (so-called “the Simplified Regulation”)
- Rozporządzenie Ministra Pracy i Polityki Społecznej z 19-12- 2001 w sprawie wykonywania pracy przez cudzoziemców bez konieczności uzyskania zezwolenia na pracę.<sup>27</sup> The Regulation issued by the Minister of Labour and Social Policy on 19-12-2001 relating to the undertaking of work by foreigners without the need to obtain work permits (so-called: “Exempting Regulation”)
- Rozporządzenie Ministra Gospodarki i Pracy z 26-05-2004 w sprawie zakresu ograniczeń w sferze wykonywania pracy przez cudzoziemców na terytorium Rzeczypo-

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25 *Journal of Laws [Dziennik Ustaw]* 2001, no. 153, item 1766.

26 *Journal of Laws [Dziennik Ustaw]* 2001, no. 153, item 1767.

27 *Journal of Laws [Dziennik Ustaw]* 2001, no. 153, item 1765.

- spolitej Polskiej]<sup>28</sup> – The Regulation of the Minister of Economy and Labour of 26-05-2004 on the scope of restrictions on the undertaking of work by foreigners within the territory of the Republic of Poland (so-called “Transitional Regulation”)
- Rozporządzenie Rady Ministrów z 25-06-2002 w sprawie Pełnomocnika do Spraw Równego Statusu Kobiet i Mężczyzn<sup>29</sup> -The Regulation of the Council of Ministers of 25-06-2002 relating to the Plenipotentiary on the Equal Status of Women and Men.

The anti-discrimination clause in the Constitution of Poland is of a very general nature and appears to be compatible with international and European standards (not only those issued by the Council of Europe but also by the EC and EU forum). The anti-discrimination clause has been clarified in certain legal Acts, for example in the Labour Code. Article 32 of the Constitution reflects the principle of equal opportunity and the principle of equal treatment. However, “equality” does not mean identical, but allows for any justified variations.

Taking into account the main purpose of this report, equality of treatment should be considered from two aspects – the first regarding non-discrimination because of citizenship and the second because of other reasons – mainly regarding equality of men and women and non-discrimination based on age, disability, nationality, ethnic origin, etc.

Next, the issue of non-discrimination in employment relations should be considered from two aspects. Firstly, because of transitional conditions, the question of EU nationals’ access to employment should be assessed. Secondly, the issue of non-discrimination in the workplace should be considered.

### **Access to employment**

In relation to the main topic of this Report, the most important sections of the Accession Treaty of 16-04-2003 are the Fourth Part and Annex XII. Annex XII part 2.1 stipulates that Article 39 and the first section of Article 49 of the TEC shall fully apply only in relation to the transitional provisions for the freedom of movement of workers between Poland on the one hand, and Belgium, the Czech Republic, Denmark, Germany, Estonia, Greece, Spain, France, Ireland, Italy, Latvia, Lithuania, Luxembourg, Hungary, the Netherlands, Austria, Portugal, Slovenia, Slovakia, Finland, Sweden and the United Kingdom on the other hand. It is worth mentioning that Cyprus and Malta are excluded from the transitional periods.

The transitional periods refer also to the freedom to provide services involving the temporary movement of workers; however the scope of these periods is reduced because only Germany and Austria have reserved the right to take protective measures against the temporary movement of workers from the new EU countries. These restrictions refer only to certain sectors stipulated in paragraph 13 of the second part of Annex XII (e.g. stone masonry and the cutting, shaping and finishing of stone, cleaning, gardening, etc.)

The transitional period introduced into the Accession Treaty refers to certain aspects of the free movement of persons in dealings between “old” EU Members and “new” EU States. Certain EC Acts on free movement of persons, especially those which regulate access to employment, will not apply to Polish citizens in the “old” EU countries. These aspects are covered in the first chapter (articles 1-6) of the 1612/68 Regulation. Also in the transitional period the Member States may set aside (only if it is unavoidable) the application of certain

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28 *Journal of Laws [Dziennik Ustaw]* 2004, no. 123, item 1293.

29 *Journal of Laws [Dziennik Ustaw]* 2002, no. 96, item 849.

provisions of the 360/68 Directive. In practice, during the transitional period the right of Polish citizens to engage in work in the EU countries will depend on the internal law of each State and any bilateral agreements.<sup>30</sup> However, no further restrictions can be imposed upon Polish citizens, meaning that their situation cannot be worse after Poland's accession to the EU (so-called "standstill clause", paragraph 14).

The "old" EU Members may cancel restrictions after two, five or seven years. Full freedom of movement of workers shall be guaranteed from 1-05-2011 at the latest. At present Polish citizens have limited access to employment (Art. 1-6 of Regulation 1612/68 and relevant provisions of Directive 360/68) but other provisions of EC law on free movement should apply to them in full. (However, the principles governing the crossing of Polish borders will be unified after full implementation of the Schengen system).

Most importantly, Paragraph 10 of the second part of the Annex XII contains the provision of reciprocity. It stipulates:

"Whenever national measures, or those resulting from bilateral agreements, are applied by the present Member States by virtue of the transitional provisions laid down above, Poland may maintain in force equivalent measures with regard to the nationals of the Member State or States in question".

Poland is not allowed to introduce any restrictions unilaterally but only in response to restrictions introduced by other EU Members. They may be equivalent if not identical.

It should also be noted that according to the Accession Treaty, the transitional periods do not apply to Polish citizens who have been working legally for a period of at least 12 months in the territory of the one of the EU States at the time of accession. It seems that the situation of workers from EU States is the same because Poland may only introduce equivalent restrictions.

Relationships between the "new" EU countries with respect to the free movement of persons have been regulated in a different way. According to paragraph 11 of the second part of Annex XII, if the application of Articles 1 to 6 of Regulation 1612/68 is suspended by any of the present Member States, the European Commission (not Poland) may resort to the procedures laid down in paragraph 7<sup>31</sup> with respect to the Czech Republic, Estonia, Latvia,

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30 Poland concluded bilateral agreements with Germany, Switzerland, France, Belgium, Luxembourg, Spain, Czech Republic and Lithuania. The agreements regulate the principles of engaging in seasonal work or undergoing training.

31 "Those Member States in which, by virtue of paragraphs 3, 4 or 5, Articles 1 to 6 of Regulation (EEC) No. 1612/68 apply as regards Polish nationals, may resort to the procedures set out in the subparagraphs below until the end of the seven year period following the date of accession. When a Member State referred to in the first subparagraph undergoes or foresees disturbances on its labour market which could seriously threaten the standard of living or level of employment in a given region or occupation, that Member State shall inform the Commission and the other Member States thereof and shall supply them with all relevant particulars. On the basis of this information, the Member State may request the Commission to state that the application of Articles 1 to 6 of Regulation (EEC) No 1612/68 be wholly or partially suspended in order to restore to normal the situation in that region or occupation. The Commission shall decide on the suspension and on the duration and scope thereof not later than two weeks after receiving such a request and shall notify the Council of such a decision. Any Member State may, within two weeks from the date of the Commission's Decision, request the Council to annul or amend the Decision. The Council shall act on such a request within two weeks, by qualified majority. A Member State referred to in the first subparagraph may, in urgent and exceptional cases, suspend the application



Lithuania, Hungary, Slovenia or Slovakia. However, during such a period, work permits issued by Poland for monitoring purposes to nationals of these countries shall be issued automatically.

The principle of free movement of persons is binding for the “new” EU countries; they can only undertake activities aimed at protecting the internal labour markets in the case of disturbances which could seriously threaten the standard of living or level of employment in a given region or occupation.

Summing up, it is possible to state that all the negotiation processes and finally the form of the Accession Treaty result in the situation of the Polish migrant workers differing in individual EU Member States but the situation of migrant workers in Poland will depend on their citizenship. In the area of access to employment it is possible to divide the migrant workers in Poland into three groups:

1. nationals of “old” EU countries and EEA – in their case the principle of reciprocity will apply (so for example, the situation of the British or Irish citizens will differ from the situation of a German citizen);
2. nationals of the seven “new” EU countries Czech Republic, Lithuania, Estonia, Latvia Hungary, Slovenia, Slovakia – in their case restrictions may only be introduced in exceptional circumstances if the labour market is threatened by any disturbances.
3. nationals of Cyprus and Malta – in their case there are no transitional periods, so there are no limitations with respect to them and no limitations will be introduced in the future.

This differentiation will be reflected in internal Polish laws, mainly in the so called “Transitional Regulation” of 26-05-2004 (issued just after the accession) – The Regulation of the Minister of Economy and Labour<sup>32</sup> on the scope of restrictions on the undertaking of work by foreigners within the territory of the Republic of Poland. It directly refers to Annex XII of the Accession Treaty and it contains a list of the States whose citizens the work restrictions apply to, and the scope of those restrictions. Also the Transitional Regulation states which provisions should apply for nationals of a particular EU Member State or State of the European Economic Area.

Transitional periods cause differences between Polish citizens and certain EU nationals in reference to taking up employment in the territory of Poland.

Firstly, the general rules of taking up employment were described in the amended Act on employment and counteracting unemployment which determined the tasks of the State in the field of unemployment effects mitigation, employment and promotion of vocational activation of the unemployed and other job seekers. The general rules of treatment of foreigners in the labour market are covered by the presently binding Act of 20-04-2004 on promoting of employment and institutions of the labour market.

Its Article 1, sect. 3, p. 2 states that the Act would be applied, *inter alia*, to the nationals of EU Member States and the nationals of States which are not Member States of the European Union but subject to agreements on free movement of persons concluded with the European Union. According to information obtained at the Ministry of Economy and La-

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of Articles 1 to 6 of Regulation (EEC) No 1612/68, followed by a reasoned ex-post notification to the Commission”.

32 In 2003 the Ministry of Labour and Social Policy was abolished. The labour matters were taken over by the Minister of Economy and Labour. The Ministry of Social Policy deals with social matters; so the labour and social policies have been separated.

bour, the works on the draft of the amendment to the Regulation of 19-12-2001 relating to foreigners undertaking jobs without the need to obtain work permits (so called: “Exempting Regulation”) have been started. The main aim of the amendment is to adjust this Regulation to the EU provisions referring to Turkish citizens in connection with the Association Treaty with Turkey and the Decision 1/80.

According to Article 87 of this Act, a foreigner may perform work in the territory of the Republic of Poland if the obtain a work permit issued by the *Voivode* authorised for the employer’s registered office location. This requirement is unnecessary for foreigners having a permanent residence card, refugee status in the Republic of Poland, a tolerated stay, temporary protection or (important in the light of this Report) EU nationals or members of their families.<sup>33</sup> However, EU nationals and members of their families need not comply with this requirement only in accordance with Annex XII, p. 2, sect. XII of the Accession Treaty. Hence the situations of EU nationals may differ.

The above Regulation of the Minister of Labour and Social Policy on the extent of restrictions on foreigners working within the territory of the Republic of Poland was based on Article 90, sect. 60 of the Act on promotion of employment and institution of the labour market. Annex no. 1 to the Regulation contains a list of States of the EEA whose citizens have limited access to the Polish labour market (i.e. they need work permits). These are: Austria, Belgium, Denmark, Finland, France, Greece, Spain, Liechtenstein, Luxemburg, Holland, Germany, Norway, Portugal, Switzerland and Italy.

Annex no. 2 to this Regulation defines the extent of the limits. The nationals of Austria, Belgium, Denmark, Finland, France, Greece, Spain, Liechtenstein, Luxemburg, Holland, Germany, Norway, Portugal and Italy are obliged to obtain work permits issued by the *Voivode* if they intend to perform work in Poland. However permits for the citizens of Denmark, Holland, Norway and Italy are issued without any assessment of the situation on the local labour market, of criteria for issuing promises and permits or of circumstances for refusal of promises or permits,<sup>34</sup> so it is a simplified procedure. Such situation arises from the reciprocity principle.

Simultaneously, on the basis of reciprocity, citizens of Austria and Germany, even these who are transferred to Poland by employers (according with Directive 96/71/EC of the European Parliament and Council of 16 December 1996 concerning the transfer of workers for the provision of services), should hold work permits issued by the *Voivode*.

The *Voivode* issues permits on the basis of abnormal circumstances and the procedure for issuing promises and work permits for foreigners, or on abnormal circumstances and the procedure for issuing the promises and permits for foreigners who are employed in export services rendered by foreign employers in the territory of the Republic of Poland,

a) providing that Austrian nationals carry out services in following sectors:

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33 Stated precisely: nationals of EU Member States, nationals of states which are not Member States of the EU but have concluded with the EU agreements of free movement of persons, members of families of such nationals if they perform any work or economic activity in the territory of Poland, members of families of foreigners who stay in Poland according to provisions binding the EU Member States on the rights of residence, persons who were migrant workers, persons carrying out economic activity or students.

34 In this case the “Simplified Regulation” applies. The Regulation issued by the Minister of Labour and Social Policy on 19-12-2001 relating to cases of the promise and permission for a foreigner to work being issued by *Voivode* regardless of either the situation in the local labour market or the criteria for issuing promises and work permits for foreigners.

## Poland

- horticultural activities (NACE code: 01.41);
- stone masonry (code: 26.70);
- metal fabrication (code: 28.11);
- construction works, including works itemized in the Annex to Directive 96/71 (code: 45.11-45.28);
- security activities (code: 74.60);
- industrial cleaning (code: 74.70);
- home nursing (code: 85.32);
- social work and activity performed without accommodation (code: 85.32).

b) providing that German nationals carry out services in following sectors:

- construction works, including works itemized in the Annex to Directive 96/71 (code: 45.11-45.28)
- industrial cleaning (code: 74.70)
- interior decorating (code: 74.84)

Citizens of Switzerland also should obtain work permits if they intend to perform any work. The Voivode issues the permits on basis of any of the foregoing provisions, depending on the case.

Considering the above requirements, until the end of the transitional periods it is rather difficult to discuss the equality of treatment of all EU nationals in the area of access to work. Only Irish, British and Swedish nationals as well as nationals of the “new” EU Member States have the same access to work as Polish citizens (providing that they have residence permits). There are also differences among nationals of the “old” Member States. Simplified provisions apply for citizens of Italy, Denmark and Holland (also to Norwegian citizens). The most restrictive provisions apply (due to the principle of reciprocity) to nationals of Austria and Germany.

### *Current practice*<sup>35</sup>

The most important fact is that employers, not employees, apply for work permits. Employers must submit applications accompanied by documents declaring their intention to carry out the particular economic activities and make tax payments.<sup>36</sup> Also residence permits must be submitted with the applications.

If EU nationals do not have residence permits or temporary residence permits, the procedure consists of two stages – firstly the Voivode issues the promises of work which are a basis for either of the permits. The second stage is the issue of the work permits. The promise of work is not necessary if EU nationals already have residence permits when applying for the work permits.

A Voivode makes decisions about issuing promises or permits (when the prior granting of promises are not necessary) taking into consideration the employment situation (this does not apply to nationals of Italy, Denmark, Holland or Norway and to nationals of the EU States who are allowed to perform their work without any restrictions) and the criteria for

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35 Information obtained from the Silesian *Voivode*'s office.

36 *Voivode* refuses promises for work if employers are unable to prove that the employees are to be gainfully employed or will carry out any activity useful for the economy, growth of investment, transfer of technologies or creation of extra employment and if they do not show any means of fulfilling one of these conditions in the future.

issuing promises and work permits. These criteria are formulated individually by each Voivode. They cannot contain requirements which discriminate against candidates with regard to their sex, age, disability, race, nationality, beliefs (especially political or religious) or trade union membership.

Translated documents<sup>37</sup> certifying the qualifications required for particular positions, the scope of the foreigners' skills and that the foreigners had not been convicted<sup>38</sup> should also accompany the application. For transferred employees, translated statements on such transfer are also necessary.

If necessary, information produced by the head of district administration (*starosta*) about the situation on the local labour market should also accompany the application. For doctors, nurses, chemists and teachers, documents certifying their qualifications and allowing them to practice their professions<sup>39</sup> are required.

Finally, proof of payment of charges to the account of the Ministry of Economy and Labour should also be enclosed.<sup>40</sup>

All the documents should be submitted 30 days prior to the intended date of employment or extension of employment.

Decisions are issued in compliance with the Administrative Code. They may be sent by post. If (theoretically) the decision on work permit is not taken in 30 or 60 days it does not mean that a foreigner has the right to take up an employment legally. He or she has the right to lodge the complaint regarding the inactivity of an organ. Such a complaint is submitted to the organ of the higher instance. If they are negative, employers have the right to submit (via the *Voivode*) an appeal within 14 days to the Minister of Economy and Labour. Administrative decisions may be subjects of claims in administrative courts.

Decisions of the Voivode would be negative if the employer:

1. refuses to employ those unemployed who were eligible to be hired in the positions to be taken by foreigners without well-founded reasons.
2. applies for a promise to be granted to foreigners whose qualifications, skills or proposed remuneration are inadequate for the work to be carried out by the foreigners.
3. applies for a promise to be granted to foreigners who had previously offended regulations applying in Poland, especially those concerning public safety.

### **Non-discrimination in employment**

Another aspect of the issue is equal treatment and non-discrimination in employment. Articles 11 [2] and 11 [3] of the Labour Code contain two of the basic principles of labour law. Article 11 [2] contains the principle of equality of employees. "Employees shall enjoy equal rights for the same performance of the same duties. This applies in particular to equal treatment of men and women in employment". The main criterion is "performance of the same duties", not the criterion of citizenship. This principle corresponds with Article 94 which outlines the duties of employers; its paragraph 9 stipulates that employers apply objective and fair criteria for the assessment of employees and the results of their work.

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37 All translations must be done by a registered translator.

38 From National Criminal Record.

39 Documents issued by the Ministry of Health, the Board of Medical Practitioners, Nurses Association or Pharmacists Guild (or appropriate professional body); for teachers in public schools, authorization by the school's supervisory body.

40 The current charge is 824 PLN.

Article 11 [3] states that:

“Any discrimination in employment, direct or indirect,<sup>41</sup> in particular on grounds of sex, age, disability, race, religion, nationality, political convictions, union membership, ethnic origin, creed, sexual orientation, as well as on grounds of the terms of employment for a fixed or unfixd term or full time or part time, shall be inadmissible”.

It is easy to notice that “citizenship” is not itemized in this Article. There is an opinion in legal literature that “citizenship of an EU Member State” should be added to Article 11 [3] as another criterion which cannot be grounds for discrimination. On the other hand, this Article contains the phrase “in particular”, which means that other grounds may be considered.

However, the ban on discrimination on the grounds of citizenship is expressed in the ILO Convention no. 111 and in the European Social Charter, both of which Poland is a party to.

The general principles of equality and non-discrimination have been summarized in the new Chapter IIa of the Labour Code.

Article 18 [3a], paragraph 1 states that “employees shall be accorded equal treatment as far as the entering into and terminating of an employment relation, terms of employment, promotion and access to training for the improvement of professional qualifications are concerned”, noting the requirements of Article 11 [3].

Also subsequent paragraphs of this Article give definitions of “equal treatment” and various types of discrimination.

According to paragraph 2, equal treatment in employment shall mean that “one should not be discriminated against in any way, directly or indirectly, on grounds set out in paragraph 1”. Next, “direct” and “indirect discrimination” are also explained. The first one occurs where, on one more of the grounds set out in paragraph 1 of Article 18 [3a] and in Article 11 [3], “an employee has been, is, or might be treated in a comparable situation in a manner less favorable than other employees”.

According to paragraph 4, the indirect discrimination “occurs where, as a result of a seemingly neutral decision, a criterion applied, or action taken, there are differences in terms of employment to the detriment of all, a substantial number of employees, or one of the groups singled out, on one or more of the grounds set out in paragraph 1, if such differences cannot be justified on objective grounds”.

It should be stressed that introducing to the Code the types of discriminations and their interpretation were inspired by the judgments of the ECJ<sup>42</sup> and Directive 97/80 (Article 2, sect. 2b).

Paragraph 5 of Article 18 [3a] indicates the symptoms of discrimination. Firstly it is “encouraging another person to breach the principle of equal treatment in employment”. Secondly, it is “behavior aimed at, or resulting in, violation of the dignity or in humiliation or abasement of an employee (harassment)”.

Following Directives 2000/43 and 2000/78 harassment and sexual harassment have been recognized as types of discrimination. Paragraph 6 of Article 18 [3a] states that:

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41 The terms “direct” or “indirect” were introduced in 2001 and 2003, following negotiations with the EU.

42 For example: *Mary Brown v. Rentokil Ltd* (C – 394/96); *Joan Gillespie and others v. Northern Health and Social Service Board, Department of Health and Social Services, etc.* (C – 342/93), *Jon O’Flynn v. Adjudication Officer* (C-237/94).

“Discrimination of sex shall also include any unacceptable behavior of a sexual nature or referring to the employee’s sex aimed at, or resulting in, violation of the dignity or in humiliation or abasement of an employee; such behavior may include physical, verbal or non-verbal action (sexual harassment)”.

Article 18 [3b] explains the meaning of “breach of the principle of equal treatment”. According to paragraph 1, the principle is violated if differentiation of the position of employees has in particular<sup>43</sup> the following consequences

“1. Refusal to enter into or the termination of an employment relation; 2. Unfavorable terms of remuneration for work or other terms of employment or the overlooking of an employee in promotion or the granting of other work-related benefits; 3. Overlooking an employee in the selection of participants in training for the improvement of professional qualifications. These shall be deemed to be breaches of the principle of equal treatment in employment, subject to provisions of paragraphs 2-4, unless the employer proves that he was guided by objective reasons”.

It is noteworthy that the burden of proof rests with the employer not the employee, in accordance with Directive 97/80. On the other hand, the employee must show actual discrimination, not presumed discrimination.

Article 18 [3b] paragraphs 2-4 outlines the situations which are not breaches of the principle of the equal treatment; these are:

- a. refusal of employment of an applicant for one or more grounds set out in Article 18 [3a] paragraph 1, if this is justified from the type of job in question, the conditions in which it is to be performed, or the professional qualifications required;
- b. giving notice of a change in the terms of employment as far as working time is concerned, where this is justified by reasons not concerned with the employees;
- c. application of measures which differentiate between legal situations of employees in order to ensure protection of parenthood, or because of the age or disability of the employee;
- d. determination of the terms on which employees are employed or dismissed, of the rules for remuneration and promotion and access to training for the improvement of professional qualifications, subject to criteria based on the length of employment;
- e. taking measures for certain time, aimed at ensuring equal opportunities for all or a substantial number of employees, in accordance with one or more grounds as set out in Article 18[3a] paragraph 1 by reducing, to the benefit of such employees, any actual inequalities to the extent stipulated therein;
- f. differentiation among employees on grounds on religion or creed if the religion or creed of an employee is a major, reasonable and justified professional requirement, given the type and nature of the activities conducted by churches and other religious organizations, as well as those of organizations whose objective is directly connected with a religion or creed.

The issue of equal pay has been regulated in the Labour Code separately. Article 18 [3c] stipulates: “employees shall have the right to equal remuneration for the same work or for work of the same value”. Remuneration means all components of remuneration as well as

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43 Therefore not all consequences of breach of the principle of equal treatment are itemised in this provision.

other work-related benefits; also those granted to employees in other forms than money. This is in accordance with Article 141 TEC and Article 1 of Directive 75/117.

Paragraph 3 defines “work of the same value”. It is work which requires comparable professional qualifications, certified by appropriate documents or practice and professional experience, and also comparable responsibility and effort.

Situations where the principle of equal treatment has been breached can result in the following consequences:

- a. recognition that certain provisions of employment contracts (or other instruments creating employment relations) are invalid; instead of them the appropriate provisions of the labour law should apply (Article 18 paragraph 3 of the Labour Code);
- b. recognition of agreements as not binding following Article 9 paragraph 4 of the Labour Code; it refers to collective bargaining agreements and other collective agreements, regulations and statutes;
- c. determination of compensation. According to Article 18 [3d] of the Labour Code “A person who is the victim of a breach by an employer of the principle of equal treatment in employment shall be entitled to damages in an amount not less than the minimum remuneration for work established under separate provisions”.

It is also worth mentioning that since 1-01-2004, in accordance with Article 94 [1] of the Code, employers are obliged to

“make available to employees the text of provisions on equal treatment in employment by disseminating at their workplace written information on the subject or shall ensure access by employees to such provisions in a manner customary with the employer”.

Also the employer is obliged to oppose widespread mobbing (Article 94 [3]).

The Labour Code is not the only legal act which expressly forbids discrimination. Some very important provisions have been introduced into the Act on promotion of employment and institutions of the labour market of 2004. Article 36 sect. 5 states that employers are not allowed to have in their job advertisements any discriminating requirements relating to sex, age, disability, race, ethnic origin, nationality, sexual orientation, opinion (particularly political or religious), or membership of trade unions. Also Article 123 of this Act states that if an employer refuses to employ a person because of any of the above reasons (despite there being a vacant position) is currently liable to a fine of 3000 PLN. This applies also to employment agencies.

It should also be noted that because of the amendments introduced by the Act of 20-04-2004 on the annulment of certain acts in connection with Poland obtaining EU membership, the Act of 27-08-1997 on vocational and social rehabilitation and employment of disabled persons [*ustawa o rehabilitacji zawodowej i społecznej oraz zatrudnianiu osób niepełnosprawnych*]<sup>44</sup> has been adjusted to Directive 2000/78/EC, establishing a general framework for equal treatment in employment and occupation.

Concluding, it is worth mentioning that the Directives referring to equal treatment of employees (76/207, 2000/73 and 75/117) require the Member State to issue information on their implementation. Despite the fact that they are really implemented by Polish labour law, they have been omitted in annexes and notes in the Labour Code, the Act on promotion and

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44 *Journal of Laws [Dziennik Ustaw]* 1997, no. 123, item 776.

institutions of the labour market and in the Act on amendment and annulment of certain Acts in connection with Poland obtaining EU membership in 2004.

According to the opinions of the labour law doctrine, this is an example of inappropriate implementation of EC law.

#### *Current practice*

It seems that the most practical significance in the area of equal treatment has been the creation of the post of the Plenipotentiary of the Government on the Equal Status of Women and Men.

The task of the Plenipotentiary is not only symbolic. According to the Regulation, their activities should focus on furthering the Government's policy towards equality of men and women, *inter alia*, by taking measures aimed at establishing an office for the counteracting of discrimination on the grounds of race, ethnic origin, religion, opinion, age or sexual preferences; by analysing and assessing the legal and social situations in the area of equal treatment of, and equal chances for, women and men; by preparing drafts of legal acts on the issues of equality and non-discrimination; by coordination of activities in these areas; by actively implementing the principle of equality; by providing comments on proposed legal acts, promoting the idea of the equality of men and women; by cooperation with various institutions, monitoring and coordinating programs on equality and non-discrimination, etc.<sup>45</sup>

Another initiative in the area of non-discrimination is the adoption in 2004 of the National Program for Counteracting Racial Discrimination, Xenophobia and the Intolerance Connected with these<sup>46</sup> for the years 2004–2009. The aim of the Program is the practical implementation of the principle of non-discrimination contained in Acts of international law, European law (*sensu largo*), *inter alia* Council Directive 2000/43/EC of 29-6-2000 implementing the principle of equal treatment of persons irrespective of racial or ethnic origin and Council Directive 2000/78/EC of 27-11-2000 establishing a general framework for equal treatment of persons in employment and occupation.

#### *Drafts*

As it was stated before, the Ministry of Economy and Labour has started the works on the draft of the amendment to the Regulation of 19-12-2001 relating to foreigners undertaking jobs without the need to obtain work permits.

#### *Selected recent literature*

Florek, L., Zakaz dyskryminacji w stosunkach pracy [Prohibition of discrimination in labour relations], *Praca i Zabezpieczenie Społeczne* [Employment and Social Security] 1997, no. 1.

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## Chapter III

### Employment in the public sector

#### *Texts in force*

- Constitution of the Republic of Poland of 2-04-1997
- Ustawa z 16-09-1982 o pracownikach urzędów państwowych<sup>47</sup> the Act of 16-09-1982 on employees of government offices
- Ustawa z 13-02-1984 o funkcjach konsułów Rzeczypospolitej Polskiej<sup>48</sup> – The Act of 13-02-1984 on the functions of consuls of the Republic of Poland
- Ustawa z 18-12-1998 o służbie cywilnej<sup>49</sup> – the Act of 18-12-1998 on civil service
- Ustawa z 20-03-1990 o pracownikach samorządowych<sup>50</sup>- the Act of 20-03-1990 on employees of self-government
- Ustawa z 8-03-1990 o samorządzie gminnym<sup>51</sup> – the Act of 8-03-1990 on communal self-government
- Ustawa z 5-06-1998 o samorządzie powiatowym<sup>52</sup> – the Act of 5-06-1998 on district self-government
- Ustawa z 15-09-1998 o samorządzie wojewódzkim<sup>53</sup> – the Act of 15-09-1998 on regional self-government
- Ustawa z 20-04-2004 o zmianie ustawy – Ordynacja wyborcza do rad gmin, rad powiatów i sejmików województw oraz niektórych innych ustaw<sup>54</sup> – the Act of 20-04-2004 amending the principles of elections to communal, district and regional councils and regional parliaments and on amendment of certain other Acts
- Ustawa z 21-11-1967 o powszechnym obowiązku obrony Rzeczypospolitej Polskiej<sup>55</sup> – Act of 21-11-1967 on common duty of the defence of the Republic of Poland
- Ustawa z 6-10-1990 o Policji<sup>56</sup> – Act of 6-10-1990 on the Police
- Ustawa z 12-10-1990 o Straży Granicznej<sup>57</sup> – the Act of 12-10-1990 on Border Guards
- Ustawa z 26-04-1996 o Służbie Więziennej<sup>58</sup> – the Act of 26-04-1996 on the Penitentiary Service

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47 Consolidated text: *Journal of Laws [Dziennik Ustaw]* 2001, no. 86, item 953.

48 Consolidated text: *Journal of Laws [Dziennik Ustaw]* 2002, no. 215, item 1823 with subsequent amendments. The requirement of citizenship does not apply to honorary consuls.

49 *Journal of Laws [Dziennik Ustaw]* 1999, no. 49, item 483 with subsequent amendments.

50 Consolidated text: *Journal of Laws [Dziennik Ustaw]* 2001, no. 142, item 1593 with subsequent amendments.

51 Consolidated text: *Journal of Laws [Dziennik Ustaw]* 2001, no. 79, item 855 with subsequent amendments

52 Consolidated text: *Journal of Laws [Dziennik Ustaw]* 2001, no. 142, item 1592 with subsequent amendments.

53 Consolidated text: *Journal of Laws [Dziennik Ustaw]* 2001, no. 142, item 1590 with subsequent amendments.

54 *Journal of Laws [Dziennik Ustaw]* 2004, no. 102, item 1055.

55 Article 4, sect. 1 of the Act. Consolidated text: *Journal of Laws [Dziennik Ustaw]* 2002, no. 21, item 205 with subsequent amendments.

56 Article 25 of the Act. Consolidated text: *Journal of Laws [Dziennik Ustaw]* 2002, no. 7, item 58 with subsequent amendments.

57 Article 31 of the Act. Consolidated text: *Journal of Laws [Dziennik Ustaw]* 2002, no. 171, item 1399 with subsequent amendments.

58 Article 24 of the Act. Consolidated text: *Journal of Laws [Dziennik Ustaw]* 2002, no. 207, item 1761 with subsequent amendments.

Poland

- Ustawa z 29-08-1997 o Straży Gminnej<sup>59</sup> – the Act of 29-08-1997 on Municipal Security Guards
- Ustawa z 31-08-1999 o Służbie Celnej<sup>60</sup> – The Act of 31-08-1999 on the Customs Service
- Ustawa z 24-05-2002 o Agencji Bezpieczeństwa Wewnętrznego i Agencji Wywiadu<sup>61</sup> – the Act of 24-05-2002 on the Agency of Internal Security and Agency of Secret Service
- Ustawa z 27-07-2001 – prawo o ustroju sądów powszechnych<sup>62</sup> – the Act of 27-07-2001 – Law on the structure of common law courts
- Ustawa z 25-07-2001 – prawo o ustroju sądów administracyjnych – The Act of 25-07-2001 – Law on the structure of administrative courts<sup>63</sup>
- Ustawa z 23-11-2002 o Sądzie Najwyższym<sup>64</sup> – the Act of 23-11-2002 on the Supreme Court
- Ustawa z 20-06-1985 o prokuraturze<sup>65</sup> – the Act of 20-06-1985 on the public prosecutor's office
- Ustawa z 14-02-1991 – prawo o notariacie<sup>66</sup> the Act of 14-02-1991 on notaries prawo o notariacie<sup>67</sup>
- Ustawa z 29 – 08-1997 o komornikach sądowych i egzekucji<sup>68</sup> – the Act of 29-08-1997 on court executive officers and execution
- Ustawa z 27-07-2001 o kuratorach sądowych<sup>69</sup> the Act of 27-07-2001 on court-appointed curators
- Ustawa z 5-07-2002 o świadczeniu pomocy prawnej przez prawników zagranicznych w Rzeczypospolitej Polskiej<sup>70</sup> – the Act of 5-07-2002 on rendering legal assistance by foreign lawyers in the Republic of Poland
- Ustawa z 6-07-1982 o radcach prawnych<sup>71</sup> – the Act of 6-07-1982 on legal advisers
- Ustawa z 26-05-1982 – prawo o adwokaturze<sup>72</sup> the Act of 26-05-1982 – Law on the Bar
- Ustawa z 19-04-1991 o samorządzie pielęgniarek i położnych<sup>73</sup>- the Act of 19-04-1991 on self-administration of nurses and midwives

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59 Article 24 of the Act. *Journal of Laws [Dziennik Ustaw]* 1997, no. 123, item 799 with subsequent amendments.

60 Article 24 of the Act. *Journal of Laws [Dziennik Ustaw]* 1999, no. 72, item 802 with subsequent amendments.

61 Article 15 of the Act. *Journal of Laws [Dziennik Ustaw]* 2002, no. 74, item 676.

62 *Journal of Laws [Dziennik Ustaw]* 2001, no. 98, item 1070 with subsequent amendments.

63 *Journal of Laws [Dziennik Ustaw]* 2002, no. 153, item 1269.

64 *Journal of Laws [Dziennik Ustaw]* 2002, no. 240, item 2052 with subsequent amendments.

65 Act of 20-06-1985 on the public prosecutor's office [*ustawa o prokuraturze*]. Consolidated text: *Journal of Laws [Dziennik Ustaw]* 2002, no. 21, item 206 with subsequent amendments.

66 Act of 14-02-1991 on notaries [*prawo o notariacie*]. Consolidated text: *Journal of Laws [Dziennik Ustaw]* 2002, no. 42, item 369 with subsequent amendments.

67 Act of 14-02-1991 on notaries [*prawo o notariacie*]. Consolidated text: *Journal of Laws [Dziennik Ustaw]* 2002, no. 42, item 369 with subsequent amendments.

68 Act of 29.1997 on court executive officers and execution [*ustawa o komornikach sądowych i egzekucji*]. *Journal of Laws [Dziennik Ustaw]* 1997, no. 133, item 882 with subsequent amendments.

69 Act of 27-07-2001 on court-appointed curators [*ustawa o kuratorach sądowych*] *Journal of Laws [Dziennik Ustaw]* 2001, no. 98, item 1071 with subsequent amendments.

70 *Journal of Laws [Dziennik Ustaw]* 2002, no. 123, item 1069.

71 *Journal of Laws [Dziennik Ustaw]* 1982, no. 19, item 145 with subsequent amendments. Amendment referring to EU nationals in: *Journal of Laws [Dziennik Ustaw]* 2002, no. 123, item 1069.

72 Consolidated text: *Journal of Laws [Dziennik Ustaw]* 2002, no. 123, item 1058.

## Poland

- Ustawa z 1-12-1996 o zawodzie lekarza<sup>74</sup> the Act of 5-12-1996 on the medical profession
- Ustawa z 17-05-1989 o izbach lekarskich<sup>75</sup> – the Act of 17-05-1989 on the self-administration of medical practitioners
- Ustawa z 19-04-1991 o izbach aptekarskich<sup>76</sup> – the Act of 19-04-1991 on the self-administration of pharmacists;
- Ustawa z 20-04-2004 o zmianie ustawy o zawodach pielęgniarstwa i położnej oraz innych ustaw<sup>77</sup> – the Act of 20-04-2004 on the amendment of the Act on the profession of nursing and midwifery and certain other Acts
- Karta Nauczyciela 1982<sup>78</sup> – The Teachers’ Charter of 1982
- Ustawa z 12-09-1990 o szkolnictwie wyższym<sup>79</sup> – Act of 12-09-1990 on higher education

The requirement of Polish citizenship exists where there is direct or indirect exercise of the State’s powers – in positions at offices requiring loyalty towards the State. So there are some positions unavailable for nationals from other EU Member States, like the leading representatives of the Republic of Poland (from the Constitution). Also it is obvious that access to the uniformed services requires citizenship of the Republic of Poland – these are, *inter alia*, the Army, the Police, Border Guards, Prison Officers, Municipal Security Guards and Customs Officers; other services would include the Agency of Internal Security (*Agencja Bezpieczeństwa Wewnętrznego*) or Secret Service and other such services.

According to other Acts, the personnel of other state institutions should be citizens of the Republic of Poland. From the Act of 16-09-1982, this applies to employees of government offices, Parliamentary offices (chancellery), the President’s Office (chancellery), office of the Constitutional Tribunal, offices of the Commissioner for Citizens’ Rights and the Commissioner for Children’s Rights, the Public Interest Commissioner, National Remembrance Institute, Supreme Chamber of Control, the National Electoral Bureau, the State Labour Inspection, the National Council of Radio Broadcasting and Television, the Government Centre for Strategic Studies, the Government Centre of Legislation, Regional Accounting Chambers and other State inspections.

According to the opinion of labour law experts, the provisions of the Act of 16-09-1982 on government offices employees should be interpreted so that not only persons taking decisions or planning national strategy should possess Polish citizenship but also other persons employed in the above mentioned institutions should be Polish citizens. However, the requirement refers to civil servants, not to all employees working at those offices.<sup>80</sup> On the other hand, the list of civil servants is very wide. Not only heads of departments, legal advi-

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73 *Journal of Laws [Dziennik Ustaw]* 1991, no. 41, item 178 with subsequent amendments. The title of the Act has been changed to “Act on doctor and dentist professions”.

74 Consolidated text: *Journal of Laws [Dziennik Ustaw]* 2002, no. 21, item 204 with subsequent amendments.

75 *Journal of Laws [Dziennik Ustaw]* 1989, no. 30, item 158 with subsequent amendments.

76 Consolidated text: *Journal of Laws [Dziennik Ustaw]* 2003, no. 9, item 108 with subsequent amendments.

77 *Journal of Laws [Dziennik Ustaw]* 2004, no. 92, item 855.

78 Consolidated text: *Journal of Laws [Dziennik Ustaw]* 2003, no. 118, item 1112.

79 *Journal of Laws [Dziennik Ustaw]* 1990, no. 65, item 385 with subsequent amendments.

80 It would be strange to introduce the nationality criterion for, for example, persons working in cleaning service or at canteens, etc.

sors, chiefs of secretariats, accountants in these offices are civil servants but also typists, section clerks or cash clerks and others.

L. Mitrus has also noticed that the requirement of Polish citizenship for servants working<sup>81</sup> for some institutions, like for example the office of the National Council of Radio Broadcasting and Television may in future be recognised as rather controversial, especially in the light of the ECJ judgement in *Commission v. Hellenic Republic* (C-290/94).<sup>82</sup> The ECJ stated that employment in mass media does not fall into the scope of employment in the public service because it is not directly or indirectly connected with the execution of State power.

The other Act containing the requirement of Polish citizenship is the Act of 18-12-1998 on civil service. This Act defines the status of officials of the State administrative agencies, voivodeships and other offices which are the responsibility of ministers and other central administrative agencies.

It is obvious that Polish citizenship should be held by diplomatic representatives and consuls.

Also judges, public prosecutors, court executive officers, court appointed curators, notaries should have Polish citizenship.

Regarding the position of various types of lawyers, it must be stressed that because of Poland's accession to the EU, the Acts referring to legal advisers (solicitors) and advocates (barristers) have been amended. Their position has been defined by the Act of 5-07-2002 on rendering legal assistance by foreign lawyers in the Republic of Poland. The Act allows foreign legal advisers or advocates to render legal assistance in Poland, but lawyers from third countries are allowed to render such assistance only on the principle of reciprocity (from agreements between Poland and their home countries) and only in connection with international law or law of their home country. Since the day of accession to the EU the position of legal advisers or advocates from the EU States is almost the same as for Polish lawyers. "Almost", because they have the same rights and duties as Polish advocates or legal advisers except being ineligible to be elected to the autonomy of the Bar or the autonomy of Legal Advisers.

This Act amended the Act of 6-07-1982 on legal advisers and the Act of 26-05-1982 – Law on the Bar. Each regional Bar decides about admission to the list of advocates.

The regional council of legal advisors decides if EU nationals can be exempted from legal post-graduate practical training (*aplikacja radcowska*) and about admitting EU nationals to the list of the legal advisors. They must produce appropriate documents regarding their qualifications as well as demonstrating appropriate knowledge of the Polish language.

The Act of 20-04-2004 on amendment and annulment of certain Acts connected with the obtaining by Poland of EU membership has introduced two main amendments to the above Acts. Firstly, there is provision for implementation of Directive 98/5/EC of 16-02-1998 to facilitate practice of the profession of law on a permanent basis in Member States

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81 Not members of the Council but persons working at the office like, e.g., secretaries, section clerks and others. They are civil servants on the ground of the Regulation of the President of the Republic of Poland of 23-12-2002 on the rules of payments and qualification requirements of employees of the Office of the National Council of Radio Broadcasting and Television. [*Rozporządzenie Prezydenta RP z 23 grudnia 2002 r. w sprawie zasad wynagradzania oraz wymogów kwalifikacyjnych pracowników Biura Krajowej Rady Radiofonii i Telewizji*]. *Journal of Laws [Dziennik Ustaw]* 2002, no. 241, item 2075.

82 See: L.Mitrus; *Swoboda przemieszczania się pracowników po przystąpieniu Polski do Unii Europejskiej* [Free Movement of Workers after the Poland's Accession to the EU]. Warszawa 2003, p. 342.

other than those in which qualifications were obtained. Secondly, there is the unification of standing of lawyers from the Member States in EFTA or EAA with the lawyers from the EU.

Continuing the consideration of EU nationals' access to the public sector, their situation regarding access to self-government at the local level should be also taken into consideration. The main amendment in this area results from the Act which became law on the day of accession to the EU – the Act of 20-04-2004 on amendment of the Act regulating the principles of elections to communal, district and regional councils and regional parliaments and on amendment of certain other Acts. The Act has implemented Directive 94/80/EC, detailing arrangements for exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the EU residing in a Member State of which they are not nationals.

EU nationals will have the right to participate in the next local elections if they have the same rights in their own country, either for voting or for standing as candidates. However, from Article 26 sect. 2a of the Act of 8-03-1990 on communal self-government, Article 26 sect. 2a of the Act of 5-06-1998 on district self-government and Article 31 sect. 2a of the Act of 15-09-1998 on regional self-government, persons who are not Polish citizens cannot be elected to the positions of heads of a communes [*wójt*] or heads of towns [*prezydent* or *burmistrz*]. Persons who are not Polish citizens also cannot be elected as members of district and regional managements .

According to article 3 of the Act of 20-03-1990 on employees of self-government,<sup>83</sup> employees who are elected, nominated or appointed should be Polish citizens. Such requirements do not apply to employees who work under employment contracts. Unfortunately, it is difficult to clearly determine who are contract workers at the lowest level because each commune regulates this group of employees in their statutes. It means that the situation regarding access of EU nationals to employment in offices of self-government may vary, depending on the commune.

As a result of the EU accession, the laws on access to the various professions in the public sector *sensu largo* have been amended. EU nationals have access to all medical professions (e.g. doctors, nurses, midwives, pharmacists, veterinary surgeons, hospital attendants, etc.) as well as other professions like social workers or teachers.

The first principle of employment of EU nationals is that they should meet the same requirements as Polish citizens, so they should have equivalent professional qualifications and usually they also need to prove that they know the Polish language. The second principle is that if EU nationals are admitted to any profession, their standing is the same as Polish citizens.<sup>84</sup>

Some large amendments were introduced into the Polish legal system just before the accession. The first Act which should be noted is the Act of 20-04-2004 on the amendment of the Act on the profession of nursing and midwifery and certain other Acts [*ustawa o zmianie ustawy o zawodach pielęgniarstwa i położniczej oraz innych ustaw*].<sup>85</sup> Regarding the nurses and midwives, the Act implements Directives 77/452/EEC, 77/453/EEC, 80/154/EEC, 80/155/EEC, 2001/19/WE and others amended by the last Directive. The Act contains the requirements for practicing the stated professions by EU nationals and sets out the rights of the Nurses and Midwife's Association [*Naczelna Rada Pielęgniarek i Położnych, Okręgowa*

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83 Self-government means: *Urząd Marszałkowski* [the office of the Speaker of the local *sejm* (diet)], *starostwo powiatowe* [office of head of a district], communal offices and other administrative local institutions.

84 See chapter V.

85 *Journal of Laws [Dziennik Ustaw]* 2004, no. 92, item 855.

*rada pielęgniarek i położnych, okregowa izba pielęgniarek i położnych*] with regard to the issue of certificates allowing recognition of qualifications and documents.

Following these amendments, the Act of 19-04-1991 on self-administration of nurses and midwives [*ustawa o samorządzie pielęgniarek i położnych*]<sup>86</sup> was adjusted to the above Directives.

The Act of 20-04-2004 affected the laws relating to doctors, necessitating amendments to the Act of 5-12-1996 on the medical profession and the Act of 17-05-1989 on the self-administration of medical practitioners. Now these Acts implement Directives 78/686/EEC, 78/687/EEC, 93/16/EEC and 2001/19/EC, and all the Directives amended by the last one. The scope of the amendments of 20-04-2004 corresponds to the amendments relating to nurses and midwives.

Conforming to the Act of 20-04-2004, the Act of 19-04-1991 on the self-administration of pharmacists has been also amended. Now it is adjusted to Directives 85/432/EEC, 85/433/EEC and 2001/19/EC (and all the Directives amended by the last one).

Continuing the medical theme, it should also be noted that the Ministry of Health, in its regulations of 30-04-2004, indicated the depth of knowledge of the Polish language indispensable for performance of the professions of nursing or midwifery<sup>87</sup> by nationals of EU Member States should be equivalent to that required previously for doctors, dentists<sup>88</sup>, pharmacists<sup>89</sup> and hospital attendants.<sup>90</sup> Similarly, the Minister of Agriculture has issued a Regulation applying to veterinary surgeons.<sup>91</sup>

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86 *Journal of Laws [Dziennik Ustaw]* 1991, no. 41, item 178 with subsequent amendments. The title of the Act has been changed to “Act on doctor and dentist professions”.

87 *Rozporządzenie Ministra Zdrowia z 30-04-2004 w sprawie szczegółowego zakresu znajomości języka polskiego, koniecznego do wykonywania zawodu pielęgniarki i położnej przez obywateli państw członkowskich Unii Europejskiej* [Regulation of the Ministry of Health on depth of knowledge of the Polish language indispensable for performance of the professions of nursing or midwifery by the EU nationals]. *Journal of Laws [Dziennik Ustaw]* 2004, no. 104, item 1102.

88 *Rozporządzenie Ministra Zdrowia z 10-10-2002 w sprawie zakresu znajomości języka polskiego w mowie i piśmie, koniecznego do wykonywania zawodu lekarza lub lekarza stomatologa na terenie Rzeczypospolitej Polskiej* [Regulation of the Ministry of Health on depth of knowledge of the Polish language (oral and in writing) indispensable for performance of the professions of a doctor or a dentist by the EU nationals], *Journal of Laws [Dziennik Ustaw]* 2002, no. 74, item 688.

89 *Rozporządzenie Ministra Zdrowia z 5-06-2002 w sprawie zakresu znajomości języka polskiego, koniecznego do wykonywania zawodu farmaceuty na terenie Rzeczypospolitej Polskiej oraz egzaminu z polskiego* [Regulation of the Ministry of Health on depth of knowledge of the Polish language indispensable for performance of the profession of a pharmacist in Poland and on the exam of the Polish language], *Journal of Laws [Dziennik Ustaw]* 2002, no. 218, item 1846

90 *Rozporządzenie Ministra Zdrowia z 28-06-2002 w sprawie zakresu znajomości języka polskiego, koniecznego do wykonywania zawodu felczera na terenie Rzeczypospolitej Polskiej oraz egzaminu z polskiego* [Regulation of the Ministry of Health on depth of knowledge of the Polish language indispensable for performance of the profession of a hospital attendant in Poland and on the exam of the Polish language], *Journal of Laws [Dziennik Ustaw]* 2002, no. 160, item 1675.

91 *Rozporządzenie Ministra Rolnictwa i Rozwoju wsi z 25-08-2004 w sprawie zakresu znajomości języka polskiego przez lekarzy weterynarii będących obywatelami państw członkowskich Unii Europejskiej koniecznego do wykonywania zawodu lekarza weterynarii* [Regulation of the Ministry Agriculture on depth of knowledge of the Polish language indispensable for performance of the professions of a veterinary surgeon by the EU nationals], *Journal of Laws [Dziennik Ustaw]* 2004, no. 205, item 2100.

## Poland

EU nationals should submit a declaration on their language capability. Usually citizens of third countries must sit for examinations in the Polish language (as veterinary surgeons have to).

Considering access to public sector, attention should also be paid to the regulation allowing persons to carry out the profession of teaching. The Act of 20-04-2004, on amendment and annulment of certain Acts resulting from Poland obtaining EU membership, introduced into the principal Act relating to teachers – The Teachers’ Charter of 1982 a provision allowing EU nationals and citizens of EEA States access to the profession as “*nauczyciel mianowany*” and “*nauczyciel dyplomowany*” – the highest categories of teachers (Article 10 sect. 5, p. 1).

According to the amended Act of 12-09-1990 on higher education, universities are free to employ foreigners (Article 84) and citizenship is not a criterion of employment.

### Literature

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Bogdan, L., *Usługi prawnicze w Unii Europejskiej* [Legal assistance in the EU]. Kraków 2000

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Talik, M., *Swoboda przepływu pracowników w UE* [Free Movement of Workers in the EU], Katowice 2004 (unpublished)



## Chapter IV Family Members

### *Texts in force*

- Ustawa z 13-06-2003 o cudzoziemcach – the Act of 13-06-2003 on aliens
- Ustawa z 27-07-2001 o zasadach i warunkach wjazdu i pobytu obywateli państw członkowskich Unii Europejskiej oraz członków ich rodzin na terytorium Rzeczypospolitej Polskiej – the Act of 27-07-2002 on the principles and conditions of entry and residence of nationals of the Member States of the European Union and members of their families within the territory of the Republic of Poland
- Ustawa z 7-09-1991 o systemie oświaty<sup>92</sup> – the Act of 7-09-1991 on the system of education
- Kodeks postępowania administracyjnego – The Code of Administrative Procedures
- Ustawa z dnia 9-09-2000 o opłacie skarbowej – the Act of 9-09-2000 on stamp duty
- Rozporządzenie ministra zdrowia z dnia 25-09-2003 w sprawie wykazu chorób uznanych za zagrażające zdrowiu publicznemu, z powodu których można odmówić zezwolenia na pobyt lub pobyt czasowy obywatelowi Unii Europejskiej i członkowi jego rodziny – the Regulation of the Minister of Health of 25-09-2003 on specifying diseases recognised as dangerous to public health, as reason for refusal of residence permits or temporary residence permits to EU nationals and their family members.
- Rozporządzenie z dnia 26-04-2004 w sprawie wzorów wniosków, dokumentów i rejestrów dotyczących wjazdu i pobytu obywateli państw członkowskich Unii Europejskiej oraz członków ich rodzin na terytorium Rzeczypospolitej Polskiej] – the Regulation issued by the Minister of Internal Affairs and Administration of 26-04-2004 on specimens of applications, documents and registers referring to the entry and residence of the nationals of EU Member States and members of their families within the territory of the Republic of Poland
- Rozporządzenie Rady Ministrów z dnia 30-11-2000 w sprawie opłaty za wydanie dowodu osobistego – the Regulation of 30-11-2000 issued by the Council of Ministers on payment for the issuing of identity cards
- Rozporządzenie Ministra Edukacji Narodowej z 4-10-2001 w sprawie przymowania osób nie będących obywatelami polskimi do publicznych przedszkoli, szkół, zakładów kształcenia nauczycieli placówek<sup>93</sup> – the Regulation of 4-10-2001 issued by the Minister of Education on admission of persons who are not Polish citizens to public nursery schools, schools and educational institutions for teachers

The position of family members, their right of entry and residence is strictly connected with the position of EU nationals who arrive in Poland with the intention of taking up any occupation. This issue has been discussed in the first chapter. The entry, residence and departure of family members are regulated by the Act of 27-07-2002 on the principles and conditions of entry and residence of nationals of Member States of the European Union and members of their families within the territory of the Republic of Poland.

Article 3 sect.2 of the Act refers to family members of EU nationals. If family members are not citizens of an EU Member State, they may enter the territory of the Republic of Po-

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92 Consolidated text: *Journal of Laws [Dziennik Ustaw]* 2004, no. 256, item 2572.

93 *Journal of Laws [Dziennik Ustaw]* 2001, no 131, item 1458.

land if they possess valid travel documents (identity and citizenship documents are not required) and visas (only if it is required). The Announcement of 15-09-2003 of the Minister of Foreign Affairs on the list of States whose citizens are not obliged to possess visa on the basis of bilateral agreements or on the basis of unilateral abolishing of visas requirements.<sup>94</sup> The list contains, except all the EU Members, 27 States and Macao and Hong-Kong. Other nationals should possess visas. It corresponds with the EU visa requirements.<sup>95</sup> However, the visa for family members of EU nationals who need such a document may be issued at the border by the commanding officer of the Border Guard checkpoint (Article 3 sect. 4). So it is relatively simple procedure.

Article 2 of the Act describes a “family member” as:

- a. a person not having Polish citizenship and being a spouse of an EU national. Their marriage must be recognised by Polish law.<sup>96</sup> It means that unmarried partners are not protected.<sup>97</sup>
- b. a person not having Polish citizenship and being a descendant of an EU national and being under the age of 21 years or being dependant on an EU national
- c. a direct relative who is dependant on an EU national or on the spouse of this EU national.<sup>98</sup>

Article 21 of the Act states that in situations when family members are nominated in the application for residence or extension of residence, documents confirming marriage or other family ties or documents confirming that a particular family member is dependant on an EU national should accompany the application. *In the event that the application includes the spouse, or another family member who is of the age of 16 or more, the consent of that person expressed in writing is necessary.*

According to Article 17, sect. 5, together with Article 5, sect. 5, for family members of EU nationals who die as the result of accidents at work or occupational diseases during the time of employment, independent occupations or economic activities, residence permits cannot be withdrawn,<sup>99</sup> even if they do not possess sufficient financial means to cover living costs. If they want to remain in Poland they should present the death certificates of the EU nationals and their marriage certificates, proof of direct relationship or documents showing

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94 *Obwieszczenia Ministra Spraw Zagranicznych z 15-09-2003 w sprawie ogłoszenia listy państw, z którymi Polska zawarła umowy o całkowitym lub częściowym zniesieniu obowiązku wizowego dla obywateli których jednostronnie został zniesiony obowiązek wizowy*, published in the “*Monitor Polski*” 2003, no. 45, item 691.

95 The EC Regulation 539/2001 and the new Regulation 851/2005 are directly implemented.

96 Article 18 of the Constitution of the Republic of Poland of 1997, and the Family and Guardianship Code of 1964.

97 It seems that in future this definition may turn out controversial, but nowadays the Polish unmarried couples are also not recognised by Polish law (they are not treated as a family even in relation for example to taxes and inheritance). As Polish unmarried couples are not treated as a family, unmarried alien couples cannot be recognised as a family either. That is why it is impossible to treat this provision as discriminative in the context of nationality.

98 In case of this group of family members, the text of the Act may seem to be unclear because it is not certain if “direct line” refers only to kins or also to relatives, if it refers to both kinds of the family member, the scope of the provision would be narrower than the scope of Article 10 of Regulation 1612/68; however, in both cases the fact of dependence and living under the roof of the EU national is the most important.

99 In accordance with Article 3 of 1251/70 of the EC of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that state.

that family members were dependant on the EU national or they had lived together in the country of origin before they came to Poland.

In the case of death of EU nationals from other causes, if family members intend to remain, they are obliged to perform some work or economic activity. This requirement does not apply to adolescent members of families.

According to Article 87 of the Act of 2004 on promotion of employment and the institutions of the labour market, foreigners may perform work in the territory of Poland if they possess work permits. It is a general rule. However, as it was stated above, some foreigners are not obliged to apply for work permits. Exemption from the requirement to obtain work permits applies, inter alia, to EU nationals and their family members (so also to citizens of third countries). The situation of family members is relevant to the situation of a migrant worker. If he or she is not obliged to obtain a work permit, members of his or her family are not either. The provisions of Annex XII to the Accession Treaty and the principle of reciprocity apply also to family members of those EU nationals who have the right to residence, to migrant workers, students and those who carry out their own economic activities.

There is no doubt that provisions on the access to education are particularly important for migrant workers and their families. According to Article 94a, sect. 2, paragraph 1 of the Act of 7-09-1991 on the system of education EU nationals and members of their families<sup>100</sup> are allowed to attend all kinds of public schools (nursery schools, primary, secondary schools – lower as well as upper, artistic schools and special schools for teachers) on the same basis as for Polish citizens. It should be stressed that third country nationals (except recognized refugees) may attend public schools on the same basis as Polish nationals only at nursery school, primary school and the lower–secondary school (*gimnazjum*) levels. This restriction means that EU nationals are privileged.

Also Article 94a, sect. 4 requires local administration to organize Polish language lessons for persons who are not Polish citizens but are required to be educated if their language capability is not sufficient to participate in lessons at schools. The details of arrangements of this kind of additional education are determined by the Regulation of 4-10-2001 issued by the Minister of Education on admission of persons who are not Polish citizens to public nursery schools, schools and educational institutions for teachers. Paragraph 6 of the Regulation relating to courses<sup>101</sup> teaching the Polish language and coaching<sup>102</sup> became law on the day of Poland's accession to the EU, so it was adopted mainly in favor of EU nationals.

It may also be added that nationals of Slovakia, Germany, Lithuania, and Czech Republic have the possibility to attend minority schools where they are taught in their mother tongue or at least the special courses of their languages are organized. The minority schools are State/public schools. However, in practice there are not many minority schools in Poland. They depend on a number of national minorities living in Poland and therefore they are usually situated near borders. There are not any special public schools in Poland for children of migrant workers because as for now the number of legal migrant workers is not significant. Illegal workers arrive usually without children or they try to avoid any contact with all kinds of State institutions. The children of the EU nationals usually attend private schools or schools set up by their embassies.

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100 There is no requirement that family members must be nationals of the EU Member States.

101 When there are at least 15 participants.

102 When there are fewer than 15 participants.

*Poland*

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## Chapter V Relevance, Influence, Follow-up of Recent ECJ Decisions

### *Texts in force*

- Ustawa z 26-04-2001 o zasadach uznawania nabytych w państwach członkowskich Unii Europejskiej kwalifikacji do wykonywania zawodów regulowanych<sup>103</sup> – the Act of 26-04-2001 on the rules governing the recognition of the qualifications required in EU Member States for the pursuit of the regulated professions
- Ustawa z 10-05-2002 o zasadach uznawania nabytych w państwach członkowskich Unii Europejskiej kwalifikacji do podejmowania lub wykonywania niektórych działalności<sup>104</sup> – the Act of 10-05-2002 on the rules governing the recognition of qualifications acquired in EU Member States for the taking up or pursuit of some of activities
- Ustawa z 12-09-2003 o zmianie ustawy o zasadach uznawania nabytych w państwach członkowskich Unii Europejskiej kwalifikacji do wykonywania zawodów regulowanych<sup>105</sup> – the Act of 12-09-2003 amending the Act on the rules governing the recognition of qualifications acquired in EU Member States for the pursuit of a regulated profession and amending certain other Acts
- Ustawa z 20-04-2004 o zmianie i uchyleniu niektórych ustaw w związku z uzyskaniem przez Polskę członkostwa w Unii Europejskiej<sup>106</sup> the Act of 20-04-2004 on the annulment of certain acts in connection with Poland obtaining EU membership
- Rozporządzenie Ministra Edukacji Narodowej i Sportu z 6-04-2004 w sprawie stażu adaptacyjnego i testu umiejętności w toku postępowania o uznaniu nabytych w państwach członkowskich Unii Europejskiej kwalifikacji do wykonywania zawodów nauczyciela<sup>107</sup> – the Regulation of the Minister of National Education and Sport of 6-04-2004 on probationary training and competence tests for recognition of the qualifications for employment in the teaching profession obtained in EU States
- Rozporządzenie Ministra Gospodarki, Pracy i Polityki Społecznej z 25-07-2004 w sprawie warunków, sposobu i trybu przeprowadzania testu umiejętności oraz stażu adaptacyjnego, sposobu i trybu wykonania nadzoru nad odbywanym stażem oraz oceny umiejętności wnioskodawcy, będącego obywatelem państwa członkowskiego Unii Europejskiej w zawodzie regulowanym pracownik socjalny<sup>108</sup> – The Regulation of the Minister of Economy, Labour and Social Policy on the content and methods of competence tests and probationary training, the supervision of such training and the assessment of skills of applicants, who are nationals of EU States in regulated professions – social workers
- Rozporządzenie Ministra Zdrowia z 26-04-2004 w sprawie stażu adaptacyjnego i testu umiejętności w toku postępowania o uznaniu nabytych w państwach członkowskich Unii Europejskiej kwalifikacji do wykonywania medycznych zawodów regulowanych<sup>109</sup> – the Regulation of the Minister of Health of 26-04-2004 on probationary

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103 *Journal of Laws [Dziennik Ustaw]*. 2001, no. 87, item 954 with the subsequent amendments.

104 *Journal of Laws [Dziennik Ustaw]*. 2002, no. 71, item 655

105 *Journal of Laws [Dziennik Ustaw]*. 2003, no. 191, item 1864.

106 *Journal of Laws [Dziennik Ustaw]*. 2004, no. 96, item 959.

107 *Journal of Laws [Dziennik Ustaw]* 2004, no. 76, item 711.

108 *Journal of Laws [Dziennik Ustaw]* 2003, no. 142, item 1382.

109 *Journal of Laws [Dziennik Ustaw]* 2004, no. 97, item 977.

- training and competence tests for recognition of qualifications obtained in EU States for practicing of medical regulated professions
- Rozporządzenie Ministra Infrastruktury z 24-04-2004 w sprawie odbywania stażu adaptacyjnego i przeprowadzania testu umiejętności oraz sposobu ustalania ich kosztów<sup>110</sup> – the Regulation of the Minister of Infrastructure of 24-04-2004 on the work carried out during probationary periods, the carrying out of aptitude tests and the method of determination of charges
  - Rozporządzenie Ministra Edukacji Narodowej i Sportu z 6-04-2004 w sprawie stażu adaptacyjnego i testu umiejętności w toku postępowania o uznanie nabytych w państwach członkowskich Unii Europejskiej kwalifikacji do wykonywania zawodów regulowanych w dziedzinie kultury fizycznej i sportu<sup>111</sup> – the Regulation of the Minister of National Education and Sport of 6-04-2004 on probation periods and aptitude tests for recognition of the obtained in EU Member States qualifications for practicing regulated professions in the area of physical education and sport
  - Ustawa 9-11-2000 z o bezpieczeństwie morskim<sup>112</sup> the Act of 9-11-2000 on maritime safety
  - Rozporządzenie Ministra Infrastruktury z 6-02-2003 w sprawie wyszkolenia i kwalifikacji zawodowych marynarzy<sup>113</sup> – the Regulation of the Minister of Infrastructure of 6-02-2003 on training and qualifications of seafarers

According to experts there is no doubt that in establishing the system of recognition of qualifications, the Polish legislators took into consideration the jurisprudence of the ECJ thorough implementation of the Directives reflecting this jurisprudence. They quote for example the judgments in such cases as: *Thieffry v. Conseil de l'Ordre des Avocats a la Cour de Paris* (C- 71/76); *Irene Vassopoulou v. Ministerium fur Justiz, Bundes- und Europaangelegenheiten Baden-Wurtemberg* (Case 340/89); *Union Nationale des entraineurs et Cadres techniques professionnels du football (UNECTEF) v. Georges Heylens and Others* (Case – 222/86).<sup>114</sup>

The main Act in this field was adopted in 2001, so the judgment in the *Burbaud* case was not taken into consideration during the preparation of this Act.

Undoubtedly the process of creation of laws in this area has not been completed, yet. Therefore it is quite difficult to assess what influence the ECJ judgment in the *Burbaud* case could have until there is some activity in this area. Unfortunately, at present there is no jurisprudence of the Polish courts necessary for carrying out such an assessment. It seems that there are at least two reasons for such situation. Firstly (and obviously), rules on the free movement of workers have been binding on Poland for just a few months. Secondly, transitional periods still apply. Thirdly, EU nationals are not interested in seeking jobs in Poland (refer to Chapter VIII). Hence it is only possible to present current laws which apply for

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110 *Journal of Laws [Dziennik Ustaw]* 2004, no. 89, item 856.

111 *Journal of Laws [Dziennik Ustaw]* 2004, no. 76, item 712.

112 *Journal of Laws [Dziennik Ustaw]* 2000, no. 109, item 1156 with subsequent amendments.

113 *Journal of Laws [Dziennik Ustaw]* 2003, no. 81, item 734.

114 L. Mitrus, *Swoboda przemieszczania się pracowników po przystąpieniu Polski do Unii Europejskiej* [Free Movement of Workers after the Poland's Accession to the EU], Warszawa 2003, pp. 152–153; R.Janas: *Systemy wzajemnego uznawania kwalifikacji w świetle orzecznictwa Europejskiego Trybunału Sprawiedliwości (wybrane aspekty)* [Systems for the mutual recognition of qualifications in the light of the European Court of Justice (selected aspects)] in: S. Biernat (ed.), *Studia z prawa Unii Europejskiej*, Kraków 2000, p. 330.

example to the management of hospitals (the issue of the *Burbaud* case), to sport, to the maritime sector or to some other sectors.

The medical professions, mentioned in Chapter III, belong to the group of the so-called “regulated professions”, meaning that practicing in such professions depends on obtaining appropriate qualifications and fulfilling other requirements. All these matters are covered in the Act of 26-04-2001 on the rules governing the recognition of qualifications required in EU Member States for practice in regulated professions. The Act determines the rules for recognition of degrees, certificates and other documents. Also it confirms that EU nationals, whose qualifications have been recognized, have the right to practice any regulated profession in the Republic of Poland in the same way as persons who have obtained their qualifications in Poland (Article 1 sect. 3).

The Act of 20-04-2004 on amendment and annulment of certain acts, after Poland obtained EU membership, introduced into the Act of 26-04-2001 provisions confirming implementation of Directives 89/48/EEC, 92/51/EEC, 94/51/EC, 95/43/EC, 97/38/EC, 2000/5/EC and 2001/19/EC. Also these amendments extend the rules for recognition of qualifications of nationals of other EFTA and EAA states.

The Act of 2001 is a document of a rather general character. That is why the Act had to be complemented by enactment legislation. There are more than 40 regulations issued by ministers which describe in detail the conditions for taking up work in regulated professions by persons who obtained qualifications in other EU States. Such regulations apply to teachers, social workers, persons intending to work in medical professions, as custom agents, detectives, firemen, tax advisers, tourist guides as well as those in the areas of sport, mining, geology, archeology, museology, architecture, hydrology, nuclear and radiological protection, energy industry, accountancy and others.<sup>115</sup>

The admission to, and practicing in, certain professions may depend on participation in a probationary period (no longer than 3 years) or on passing an aptitude test (the choice of one of these forms of assessment depends on the candidate), in accordance with Directive 89/48.

The general principles of probationary training and testing are given in the Regulation issued by the Minister of Infrastructure of 24-04-2004 on the work carried out during probationary periods, the carrying out of aptitude tests and the method of determination of charges.

Also the regulations of ministers responsible for respective fields determine the scope of the aptitude tests or probationary periods. The tests and periods are adjusted to the individual situations of the candidates, their degrees, experience and future positions. The assessment of candidates' skills usually occurs when there are differences in the teaching programs or the level of competence for the intended position varies between the two EU Member States.

The requirement for probationary periods or tests does not breach EC Directives 98/49/EC or 92/51/EEC which allow for the checking of skills of candidates in certain cases.

For instance, details of the employment of management staff of hospitals or similar institutions are regulated by the Regulation of the Minister of Health of 17-05-2000 on requirements for persons applying for executive posts in health-care institutions [*rozporządzenie w sprawie wymagań, jakim powinny odpowiadać osoby na stanowiskach*

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115 The full list of regulated professions is on the web site of *Biuro Uznawalności Wykształcenia i Wymiany Międzynarodowej* (Bureau for Academic Recognition and International Exchange), [www.buwiwm.edu.pl](http://www.buwiwm.edu.pl).

kierowniczych w zakładach opieki zdrowotnej określonego rodzaju].<sup>116</sup> The qualifications for personnel other than management are described in the Regulation issued by the Minister of Health on 29-03-1999 on qualifications of employees required in particular types of positions at public health-care institutions [*rozporządzenie w sprawie kwalifikacji wymaganych od pracowników na poszczególnych rodzajach stanowisk pracy w publicznych zakładach opieki zdrowotnej*].<sup>117</sup> The rules of competition for certain executive posts in public institutions of health care are described in the Regulation of the Minister of Health of 19-08-1998, amended in 2000 [*w sprawie szczegółowych zasad przeprowadzania konkursu na niektóre stanowiska kierownicze w publicznych zakładach opieki zdrowotnej, składu komisji konkursowej oraz ramowego regulaminu przeprowadzania konkursu*].<sup>118</sup> It must be stressed that there are no provisions to restrict the access of EU nationals to management positions of health-care institutions. These regulations are apply to all persons (regardless of their citizenship) who intend to apply for a post in health – care institutions. It is worth mentioning that, according to the Regulation of 2000, persons belonging to management staff should have (generally) degrees from medical schools at universities. Hence in practice all requirements regarding practicing in the medical profession and the requirements on recognition of degrees would apply.

Worth mentioning also is the Regulation of the Minister of National Education and Sport of 6-04-2004 on probation periods and aptitude tests for recognition of the obtained in EU Member States qualifications for practicing regulated professions in the area of physical education and sport. This fulfils the requirement of the Minister to comply with the Act of 2001. If necessary (not obligatory) the probation periods or the aptitude tests may be applied to such regulated professions as: coaches/trainers,<sup>119</sup> coaches of particular sports, trainers/coaches of disabled persons for recreation, sports therapists, sports managers, managers of particular sports and managers of sporting events.

Moreover due to the information obtained from the Board of the Polish Football Union, the issue of transfer of football players is regulated by the *Uchwała Zarządu Polskiego Związku Piłki Nożnej nr II/11 z dnia 19 maja 2002* – Resolution no. II/11 of 19-05-2002 of the Polish Football Union Board on the status of the Polish football players and the change of the club membership.<sup>120</sup> Parts VII and VIII of the Resolution regulates the rules of transfer of football players. These provisions refer directly to provisions of Chapter XIII of FIFA Regulations for status and status of players of 2001 (so not of 2003). Part VIII refers to access of foreign players to the Polish clubs. It may be stated that the situation of the football players from the EU countries are in better situation that players from third countries because the Regulation restricts the number of the players from the non-EU countries, not the EU nationals. The representative of the Union declared<sup>121</sup> that the Regulation implements the EC law

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116 *Journal of Laws [Dziennik Ustaw]* 2000, no. 44, item 520 and *Journal of Laws* 2003, no. 99, item 918.

117 *Journal of Laws [Dziennik Ustaw]* 1999, no. 30, item 300.

118 *Journal of Laws [Dziennik Ustaw]* 1998, no. 115, item 749 and *Journal of Laws* 2000, no. 45, item 530.

119 Titles and required qualifications in the area of physical education are described in the Regulation of the Minister of National Education of 27-06-2001 on qualifications, degrees and professional titles in the area of physical education and on the principles of their attainment [*rozporządzenie w sprawie kwalifikacji, stopni i tytułów zawodowych w dziedzinie kultury fizycznej oraz szczegółowych zasad i trybu ich uzyskiwania*] *Journal of Laws [Dziennik Ustaw]* 2001, no. 71, item 738 and *Journal of Laws* 2003, no. 8, item 93.

120 Text of the resolution on the Polish Football Union web site: [www.pzpn.pl](http://www.pzpn.pl).

121 Telephone call of 29-04-2005.



and the ECJ judgments (*inter alia* in the *Bosman* case) and he stated that the new UEFA rules will be introduced gradually.

On the other hand the expert of the labour law, professor Walerian Santera, indicates that statutes and rules of particular sports clubs on transfer of professional sportsmen are usually in conflict not only with the European law but with the Polish Constitution and the Labour Code as well.<sup>122</sup>

The principal Act which applies to qualifications in the maritime sector is the Act of 9-11-2000 on maritime safety. The third chapter of the Act refers to the qualifications of officers and crew of vessels. It stipulates in Article 18 that the qualifications of officers of vessels and procedures for the issue of certificates must be compatible with international conventions (STCW, SOLAS, ILO Conventions 69 & 74) as well as with further provisions of the Act in Articles 19-22. The provisions of the Act have required the minister responsible for the maritime sector to provide details of training programs and exam requirements.

The foregoing Act was amended by the Act of 20-04-2004 [*o zmianie ustawy o bezpieczeństwie morskim oraz o zmianie niektórych innych ustaw*]<sup>123</sup> to adjust Polish law in this area to the EU accession requirements. This Act requires, *inter alia*, that Directive 2001/25/EC on the minimum level of training of seafarers be implemented.

Details of the training and qualifications of seafarers is provided in the Regulation of the Minister of Infrastructure of 6-02-2003. Its Paragraph 7 [4] stipulates that qualifications obtained in EU Member States in the regulated profession “seafarer” will be recognized according to the Act of 26-04-2001 on the rules governing the recognition of qualifications required in EU Member States for practicing in regulated professions.

It must be stressed that there are not any provisions containing the nationality provisions for the access to posts of captains of vessels.

### Drafts

The Minister of Infrastructure has prepared a draft of the Regulation on programs of trainings and exam requirements for seamen [*Projekt rozporządzenia Ministra Infrastruktury w sprawie programów szkolen i wymagan egzaminacyjnych w zakresie kwalifikacji zawodowych marynarzy*]. It stipulates all the details of training and the exam rules according to the requirements of the International Maritime Organisation. The draft is awaiting further legislative steps in Parliament.

In July 2005 the government has submitted the draft of the amendment of the the Act of 26-04-2001 on the rules governing the recognition of the qualifications required in EU Member States for the pursuit of the regulated professions to the Parliament (*Parliamentary document* [*druk sejmowy*] no. 4410).

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122 W.Santera, Zmiana przez sportowca klubu sportowego w swietle polskiego prawa. Następstwa wynikające z tzw. sprawy Bosmana [The change of the sport club in the light of the Polish law. Consequences of the Bosman case], in: W. Santera (ed.), *Europeizacja polskiego prawa pracy* [*Europeisation of the Polish labour law*], Warszawa 2004, p. 89.

123 *Journal of Laws* [*Dziennik Ustaw*] 2004, no. 93, item 895.

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## Chapter VI

### General Policies with Possible Effects on the Free Movement of EU Citizens

#### *Texts in force*

- Ustawa z 15-02-1962 o obywatelstwie polskim<sup>124</sup> – the Act of 15-02-1962 on Polish citizenship
- Ustawa z 24-03-1920 o nabywaniu nieruchomości przez cudzoziemców<sup>125</sup> – the Act of 24-03-1920 on the Acquisition of Real Estate by Foreigners
- Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z 26-04-2004 w sprawie szczegółowych informacji oraz rodzajów dokumentów, jakie jest obowiązany przedstawić cudzoziemiec ubiegający się o wydanie zezwolenia na nabycie nieruchomości<sup>126</sup> – the Regulation of Minister of Internal Affairs and Administration of 26-04-2004 on detailed information and types of documents, which a foreigner, applying for a permission to purchase real estate, is obliged to present

All matters discussed in this report influence the free movement of persons and the economical and social situation in the country. It seems that the requirements of the migration system and the attitude of authorities and society towards foreigners may encourage or discourage them to come to Poland. If people decide to settle in any country it appears to be important to them to know about the possibility of acquiring citizenship and, *inter alia*, about the possibility of buying land or real estate.

Hence, apart from the main Acts applying to foreigners, the Act on Aliens and the Act on granting protection to aliens within the territory of the Republic of Poland of 2003, it is worth considering the rules on acquiring Polish citizenship.<sup>127</sup>

Citizens of EU countries who obtain residence permits or temporary residence permits after 1-05-2005 (in accordance with the Act of 2002 – see Chapter I), may apply for Polish citizenship based on Article 8, sect. 2 of the Act on Polish citizenship of 15-02-1962. In contrast to other foreigners, EU nationals may obtain Polish citizenship following a special procedure. Citizenship is granted to EU nationals by the President (as is the case for other foreigners) but the requirement for five years' residence (in accordance with the "permit for settlement") has been abolished.

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124 *Journal of Laws [Dziennik Ustaw]* 2000, no. 28, item 353.

125 Consolidated text in: *Journal of Laws [Dziennik Ustaw]* 2004, no. 167, item 1758.

126 *Journal of Laws [Dziennik Ustaw]* 2004, no. 94, item 925.

127 Writing about citizenship, it is worthwhile to mention the very specific procedure for acquiring the Polish citizenship *via* repatriation. Repatriation is a special, privileged form of the acquisition of Polish citizenship by aliens of Polish origin. It has been instituted with respect to the persons who themselves or whose ancestors have been taken away from their homeland against their will (deportations) and who have the intention to settle in Poland. The Repatriation Act of 9.11.2000 (*Journal of Laws* 2000, no. 106, item 118 with amendments) limits the scope of persons who may return to Poland on its ground to the Asian part of the former USSR, namely to the Republic of Armenia, the Republic of Azerbaijan, the Republic of Georgia, the Republic of Kazakhstan, the Republic of Kyrgyzstan, the Republic of Tajikistan, the Republic of Uzbekistan and the Asian part of the Russian Federation. However, it also provides for the possibility of the extension of repatriation to other countries or other parts of the Russian Federation if their inhabitants of Polish origin are discriminated against on such grounds as religion, national origin and political opinion.

## Poland

The other act which may encourage or discourage any decision on settlement in Poland is the Act of 24-03-1920 on the Acquisition of Real Estate by Foreigners. Following Poland's accession to the EU it has been amended, however there are some important restrictions.

The general rule of acquisition of real estate is contained in Article 1, which stipulates that:

“The acquisition of real estate by a foreigner requires a permit. A permit is issued through an administrative decision by a minister competent in internal affairs, with the consent of the Minister of National Defense, and in the case of agricultural real estate, also with the consent of a minister competent in the country development.”

However, the situation of EU (and EAA) nationals is different. According to Article 8, sect. 2, it is not obligatory for foreigners who are citizens or entrepreneurs of Member States of the European Economic Area to obtain a permit.

However, because of the transitional periods, there are some exceptions for the acquisition of:

“1) agricultural and forest real estate, during the period of 12 years of the Republic of Poland Accession to the European Union, 2) second house, during the period of 5 years of the Republic of Poland Accession to the European Union.”

Moreover, it is necessary to note that the procedure of acquisition of agricultural real estate depends on the region of Poland. According to section 2a of Article 8

“It is not obligatory to obtain a permit by foreigners being citizens of Member States of the European Economic Area in the periods provided for in paragraph 2, in the case of: acquisition of agricultural real estate located in:

- a) the *dolnośląskie, kujawsko-pomorskie, lubuskie, opolskie, pomorskie, warmińsko-mazurskie, wielkopolskie, zachodnio-pomorskie* voivodeships, after 7 years of concluding an agreement of lease with stated date, if during this period they conducted agricultural activities in person and legally dwelled in the territory of the Republic of Poland,
- b) the *lubelskie, łódzkie, małopolskie, mazowieckie, podkarpackie, Podlaskie, slaskie, świętokrzyskie* voivodeships, after 3 years of concluding an agreement of lease with stated date, if during this period they conducted agricultural activities in person and legally dwelled in the territory of the Republic of Poland”.

It should also be added that it is not obligatory for citizens of EEA Member States to obtain a permit in the case of the acquisition of a second house if the buyer has legally been continuously residing for at least 4 years in the territory of the Republic of Poland or buys the second house in order to conduct economic activities involving the provision of tourist services.

The Act regulates also the situation of shareholders and stockholders. According to Article 8, sect. 2b

“Citizens of Member States of the European Economic Area, being on the day of the Republic of Poland obtaining membership in the European Union the shareholders or stockholders of commercial partnership seated in the territory of the Republic of Poland, may include in the lease periods provided for in paragraph 2a item 1 the lease period of farmland by the partnership, if during this period, being the shareholders or stockholders of the com-

*Poland*

pany, they conducted agricultural activities in person and legally dwelled on the territory of the Republic of Poland.”

Practical details for the acquisition of real estate are contained in the Regulation of Minister of Internal Affairs and Administration of 26-04-2004 on detailed information and types of documents, which a foreigner, applying for a permission to purchase real estate, is obliged to present.

It is also worth mentioning the other Regulation of the Minister of Internal Affairs and Administration of 23-11-2004 on procedure and detailed principles of conducting registers of real estate, shares and stocks relinquished or taken over by foreigners [*Rozporządzenie Rady Ministrów z dnia 23 listopada 2004 r. w sprawie trybu postępowania i szczegółowych zasad prowadzenia rejestrów nieruchomości, udziałów i akcji nabytych lub objętych przez cudzoziemców*],<sup>128</sup> which may also be important for shareholders and stockholders in commercial partnerships.

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128 *Journal of Laws [Dziennik Ustaw]* 2004, no. 255, item 2556.

## Chapter VII EU Enlargement

As it was stated in Introduction the Association Agreement (the European Treaty) of 16-12-1991, (which came into force on 1-02-1994),<sup>129</sup> was Poland's first step towards accession to the European Community and subsequently the European Union. The Agreement established the framework for political and economic cooperation between Poland and the EC countries but it did not contain any reference to the free movement of workers. However, it guaranteed certain rights for Polish migrant workers and their families who were legally living and working in the EC countries (first chapter, Articles 37-43 of the Agreement).<sup>130</sup> Moreover, in its Article 68, the Contracting Parties recognized that the major precondition for Poland's economic integration into the EC was the alignment of the country's existing and future legislation with that of the EC. Poland was obliged to use its best endeavours to ensure that future legislation would be compatible with EC legislation.

Taking into account the main purpose of this Report, it is also worth mentioning that Article 69 stipulated that the approximation of laws shall extend to certain areas, *inter alia*, to the area of protection of workers at the workplace.

It is necessary to stress that the Treaty guaranteed the Polish legislator the freedom of means which should be undertaken and the rate of approximation. At that time Poland was only obliged to "use its best endeavours". The results of these endeavours were to be assessed at the succeeding stages of integration. The EC *acquis communautaire* and the interpretation of EC law by the European Court of Justice also became a pattern for steps taken by Poland on its way to the EU.

As it was mentioned in Introduction, during the negotiations the Polish Government declared the date "31-12-2002" as the time of full implementation of the community law but under the condition of reciprocity.

However the most important changes in the area of free movement of workers and their rights which took place on the level of internal law because the internal law really creates the situation of migrant workers in Poland. As it was stated in chapter I, all the law on aliens has been "reconstructed".

This "reconstruction" refers also to the labour law. It should stressed that the Labour Code of 26-06-1974 has been changed several times since it was introduced. The most important amendments caused by the adjustment of Polish law to the European standards were adopted on 24-08-2001 and 14-11-2003.

Moreover, in 2001, 2002 and 2003 the acts on the recognition of qualification required in the EU States for taking up or carrying out regulated professions or particular economic activity were adopted. They have been completing by significant number of regulations.<sup>131</sup>

On 20-04-2004, just before the accession, two significant acts were adopted – the Act on amendment and annulment of certain legal regulations (acts) resulting from Poland's accession to the EU and the Act on promotion of employment and institutions of the labour

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129 Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland (the European Agreement), *OJ* 1993, no. L 348, p. 2.

130 See for example cases: C –162/00 *Beata Pokrzepowicz-Meyer v. Land Nordrhein-Westfalen*; C-63/99, *The Queen v. Secretary of State for the Home Department, ex parte Wieslaw Gloszczuk, Elzbieta Gloszczuk*; C-257/99 *Aldona Malgorzata Jany and Others v. Staatssecretaris van Justice*. The judgements confirm the direct effect of provisions of the Agreement.

131 See Chapter III and V.

market. The first of them introduced 107 amendments to various acts (statutes only) and annulled 60 of them. The Act has amended the Labour Code mainly in accordance with the EC laws regarding conditions of employment. (Currently the Labour Code includes a list of 30 directives implemented in the Polish legal system).

Apart from the statutes, some legal acts of lower legal force have also been adopted. There are abovementioned four regulations, adopted in 2001, that are very significant for migrant workers. They determine the principles of issuing work permits and promises for work. These are acts of great practical importance for foreigners arriving in Poland and trying to find employment. In practice they have created the employment conditions for EC nationals and have prepared the Polish labour market for the new situation after the 1<sup>st</sup> of May 2004.

However, the enlargement process has been continuing what means that in future the number of migrant workers in Poland arriving from the future new States (like Romania, Bulgaria or Turkey) will be growing.<sup>132</sup> This process will probably determine the future legal and practical steps of the authorities in the migration area. As it was stated before, the works on the regulation implementing the rules of employing the Turkish workers are continued.

It should be also stressed that at present the Polish Government thinks that all the reciprocity measures towards access to employment should be maintained. It seems that no decisive steps will be taken in this area until the parliamentary and presidential elections in autumn 2005.<sup>133</sup>

*Selected relevant literature on negotiations and the process of approximation of laws*

Banasinski, C., The negotiations – making machinery. In: W. Czaplinski, *Poland's Way to the European Union. Legal Aspects*, Warszawa 2002

Cieslinski, A., *Umowa stowarzyszeniowa w systemie prawa Wspólnot Europejskich* [Association Agreement in the EC Law System], Wrocław 1999

Duszczyk, M., *Swobodny przepływ pracowników w negocjacjach Polski o członkostwo w Unii Europejskiej* [Free Movement of Workers in the Poland's Negotiations or the EU Membership], Warszawa 2002.

Kaleda, S.L., *Przejęcie prawa wspólnotowego przez nowe państwo członkowskie. Zagadnienia przejściowe i międzyczasowe* [Adoption of the EC Law by a New Member State. Transitional and Intertemporal Issues], Warszawa 2003.

Kaminski, A., Jak zatrudnić cudzoziemca? [How to employ a foreigner?], *Rzeczpospolita*, 20.10.2004 (Work and Benefits)

Kubicki, P., *The legal Framework of Accession to the European Union*. In: W. Czaplinski, *Poland's Way to the European Union. Legal Aspects*, Warszawa 2002

Matey-Tyrowicz, M., Polskie prawo pracy wobec integracji europejskiej [Polish Labour Law towards European Integration], *Panstwo i Prawo* [State and Law] 1996, no. 4-5,

Menkes, J., Zbliżanie prawa polskiego do prawa wspólnotowego a Traktat Amsterdamski [Alignment of Polish and EC Laws and the Amsterdam Treaty]. In: C. Mik, *Implementacja prawa integracji europejskiej w krajowych porządkach prawnych* [Im-

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132 The author of this Report has not received any information from the Office for Repatriation and Aliens that there are any changes in treatment of citizens of these states after Poland's accession to the EU.

133 Information obtained at the Ministry of Economy and Labour (August 2005).

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- Michonski, A., Aspekty proceduralne negocjacji akcesyjnych. [Procedural Aspects of the Accession Negotiation. In: J. Barcz, *Prawo Unii Europejskiej. Prawo materialne* [Material EU Law], Warszawa 2003,
- Michonski, A., Problemy polityczno – prawne w poszczególnych działach negocjacyjnych. [Political and Legal Problems in the Particular Area of Negotiations]. In: J. Barcz, *Prawo Unii Europejskiej. Prawo materialne* [Material EU Law], Warszawa 2003.
- Mitrus, L., Swoboda przemieszczania się pracowników w Unii Europejskiej a układ stowarzyszeniowy [Free Movement of Persons in the EU and the Association Agreement], *Panstwo i Prawo* [State and Law] 1998
- Mitrus, L., *Swoboda przemieszczania się pracowników po przystąpieniu Polski do Unii Europejskiej* [Free Movement of Workers after Poland's Accession to the EU], Warszawa 2003.
- Monitor Integracji Europejskiej* [Monitor of the European Integration] 1998, no. 18
- Saganek, P., Instrumenty prawne aktu akcesji [Legal Instruments of the Accession Act]. In: S. Biernat, S. Dudzik, M. Niedzwiedz (eds), *Przystąpienie Polski do Unii Europejskiej. Traktat Akcesyjny i jego skutki* [Poland's Accession to the EU. Accession Treaty and Its Consequences], Kraków 2003
- Szurgacz, H., Dostosowania prawa pracy do prawa europejskiego w świetle Układu Europejskiego [Adjustment of the Labour Law to European Law in the Light of the European Treaty], *Panstwo i Prawo* [State and Law] 1998, no. 1
- Talik, M., *Swoboda przepływu pracowników w UE* [Free Movement of Workers in the EU], Katowice 2004 (unpublished).



## Chapter VIII Statistics

Table 1. Applications submitted between 1-05-2004 and 31-12-2004 by EU nationals for residence permits or temporary residence permits, according to the Act of 2002

Country of citizenship	Residence			Temporary residence		
	Women	Men	Total	Women	Men	Total
Austria	48	155	203	2	15	17
Belgium	58	139	197	9	23	32
Cyprus	-	7	7	-	2	2
Czech	73	88	161	7	11	18
Denmark	68	148	216	10	20	30
Estonia	8	1	9	2	-	2
Finland	37	40	77	6	3	9
France	336	694	1030	64	108	172
Germany	328	1183	1511	96	236	332
Greece	10	41	51	2	4	6
Hungary	35	40	75	4	5	9
Ireland	15	58	73	5	6	11
Italy	56	399	455	21	67	88
Latvia	37	13	50	17	1	18
Lithuania	137	80	217	58	27	85
Luxemburg	4	3	7	-	1	1
Malta	-	1	1	-	-	-
Holland	81	300	381	4	24	28
Portugal	12	55	67	3	27	30
Slovakia	77	55	132	13	19	32
Slovenia	10	23	33	3	2	5
Spain	51	91	142	35	27	62
Sweden	117	196	313	22	29	51
United Kingdom	165	474	639	45	104	149
<b>Total:</b>	<b>1763</b>	<b>4284</b>	<b>6047</b>	<b>428</b>	<b>774</b>	<b>1189</b>
Country of citizenship	Residence			Temporary residence		
	Women	Men	Total	Women	Men	Total
Iceland	1	1	2	-	-	-
Lichtenstein	-	-	-	-	-	-
Norway	3	48	51	49	51	100
Switzerland	8	25	33	1	5	6
<b>Total</b>	<b>12</b>	<b>74</b>	<b>86</b>	<b>50</b>	<b>56</b>	<b>106</b>

Information obtained from the Office for Repatriation and Aliens.

Poland

Table 2. Work permits issued in the second half of 2004 in major work categories.

\* Nationals of these countries are not obliged to obtain the work permits

\*\* This Slovak national submitted his application for a work permit before 1-05-2004.

Country of citizenship	Work permits issued in the second half of 2004								
	total	manufacturing	constructing	trade	Hotels and restaurants	Real estate, financial agencies	Education	Health care and social welfare	Others
Austria	52	25	4	11	1	10	1	0	0
Belgium	34	17	1	3	0	12	0	0	1
Cyprus*	0	0	0	0	0	0	0	0	0
Czech Rep.*	0	0	0	0	0	0	0	0	0
Denmark	75	36	1	9	0	15	0	0	14
Estonia*	0	0	0	0	0	0	0	0	0
Finland	17	10	0	2	0	3	0	0	2
France	247	124	12	50	5	39	12	0	5
Germany	388	194	25	64	10	73	3	2	17
Greece	8	2	0	3	1	1	0	0	1
Hungary*	0	0	0	0	0	0	0	0	0
Ireland *	0	0	0	0	0	0	0	0	0
Italy	148	64	7	20	4	36	3	1	13
Latvia*	0	0	0	0	0	0	0	0	0
Lithuania*	0	0	0	0	0	0	0	0	0
Luxemburg	2	0	0	2	0	0	0	0	0
Malta*	0	0	0	0	0	0	0	0	0
Netherlands	99	38	1	15	2	24	2	0	17
Portugal	24	6	5	6	1	5	0	0	1
Slovakia**	1	1	0	0	0	0	0	0	0
Slovenia*	0	0	0	0	0	0	0	0	0
Spain	42	21	7	4	0	4	3	0	3
Sweden*	0	0	0	0	0	0	0	0	0
United Kingdom*	0	0	0	0	0	0	0	0	0
Total:	1137	538	63	189	24	222	24	3	74

Information obtained from the Ministry of Economy and Labour.

Country of citizenship	managers		Skilled workers	Unskilled workers	other
	total	Members of boards of legal persons			
	Austria	46	35	3	0
Belgium	34	20	0	0	
Denmark	69	37	2	0	1
Finland	16	9	0	0	0
France	224	144	8	0	1
Germany	305	193	61	2	
Greece	7	4	0	0	
Italy	133	85	11	0	
Luxemburg	2	2	0	0	
Holland	90	58	6	0	
Portugal	22	12	2	0	



Poland

Table 5. Applications submitted between 1-01-2005 and 30-06-2005 by EU nationals for residence permits or temporary residence permits, according to the Act of 2002.

Country of citizenship	Residence			Temporary residence		
	Women	Men	Total	Women	Men	Total
Austria	42	102	144	6	19	25
Belgium	17	65	82	4	10	14
Cyprus	3	5	8	0	2	2
Czech	59	56	115	4	7	11
Denmark	33	75	108	4	12	16
Estonia	5	6	11	3	0	3
Finland	10	22	32	5	6	11
France	140	294	434	32	56	88
Germany	315	2264	2579	77	503	580
Greece	4	30	34	3	5	8
Hungary	18	17	35	4	12	16
Ireland	23	33	56	1	2	3
Italy	38	269	307	10	52	62
Latvia	25	8	33	12	3	15
Lithuania	69	36	105	32	14	46
Luxemburg	1	1	2	0	0	0
Malta	0	0	0	0	0	0
Netherlands	36	168	204	6	12	18
Portugal	10	36	46	2	6	8
Slovakia	41	40	81	10	13	23
Slovenia	4	5	9	0	0	0
Spain	36	72	108	9	19	28
Sweden	69	96	165	9	11	20
United Kingdom	93	300	393	11	30	41
Total:	1091	4000	5091	244	794	1038
Country of citizenship	Residence			Temporary residence		
	Women	Men	Total	Women	Men	Total
Iceland	0	0	0	0	0	0
Lichtenstein	0	0	0	0	0	0
Norway	7	27	34	7	12	19
Switzerland	2	13	15	0	2	2
Total:	9	40	49	7	14	21

Information obtained from the Office for Repatriation and Aliens.

Poland

Table 6: Work permits issued in the first half of 2005 in major work categories.

Country of citizenship	Work permits issued in the first half of 2005								
	total	manufacturing	constructing	trade	Hotels and restaurants	Real estate, financial agencies	Education	Health care and social welfare	Others
Austria	55	12	5	12	2	18	0	2	4
Belgium	30	14	3	2	1	8	1	0	1
Cyprus *	0	0	0	0	0	0	0	0	0
Czech Rep.*	0	0	0	0	0	0	0	0	0
Denmark	57	29	1	7	2	8	2	0	8
Estonia*	0	0	0	0	0	0	0	0	0
Finland	22	17	0	0	0	5	0	0	0
France	193	122	9	13	8	34	3	0	4
Germany	289	155	20	44	4	39	8	1	18
Greece	4	3	0	0	0	1	0	0	0
Hungary*	0	0	0	0	0	0	0	0	0
Ireland*	0	0	0	0	0	0	0	0	0
Italy	153	64	7	23	45	7	2	0	5
Latvia*	0	0	0	0	0	0	0	0	0
Lithuania*	0	0	0	0	0	0	0	0	0
Luxemburg	1	1	0	0	0	0	0	0	0
Malta*	0	0	0	0	0	0	0	0	0
Netherlands	58	15	6	11	2	19	2	0	3
Portugal	12	4	4	2	0	2	0	0	0
Slovakia*	0	0	0	0	0	0	0	0	0
Slovenia*	0	0	0	0	0	0	0	0	0
Spain	39	15	15	2	0	3	4	0	0
Sweden*	0	0	0	0	0	0	0	0	0
United Kingdom*	0	0	0	0	0	0	0	0	0
Total:	913	451	70	116	64	144	22	3	43

\* Nationals of these countries are not obliged to possess the work permits

Country of citizenship (EEA/EFTA)	Work permits issued in the first half of 2005								
	Total	manufacturing	construction	trade	Hotels and restaurants	Real estate, financial services	Education	Health care and social welfare	other
Norway	5	2	0	2	0	0	0	0	1
Switzerland	13	9	1	2	0	0	0	0	1
Total:	18	11	1	4	0	0	0	0	2



From these statistics, it is easy to see that at present Poland is not a particularly attractive country for migrant workers from other EU countries. It appears that the salaries being much lower than in other countries is the main reason for this situation. It also follows that EU nationals who arrive to Poland are usually persons conducting their own economic activities. It explains the discrepancy between the number of persons applying for residence permits and the far fewer number of issued work permits. It should be also emphasised that they are usually managers in foreign or Polish–foreign companies.

From information supplied by the Office for Repatriation and Aliens, about 35,000 foreigners live or stay legally in Poland; about 20,000 of them work in Poland. Mainly they are EU nationals. Germans and then French nationals make up the biggest groups. It is usually connected with the location of their companies in Poland.<sup>134</sup> There were 5047 permits for residence issued for EU nationals and their families in the first half of 2005. Only 6 persons received a negative decision denying them the residence permit in Poland.

It should be also added that in the second half of 2004, the total number of work permits issued was 5,857; of these, 3,555 were issued for all Europeans.

The largest groups of legal migrant workers in Poland who obtained work permits in 2004 were Ukrainians (1,547 permits in the second half of 2004), Byelorussians (354 permits), Russians (277 permits) and Turks (219 permits).<sup>135</sup> Considering migrant workers who came from other regions of the world, Vietnamese citizens are the biggest group (602 permits), then USA citizens (244 permits), Indian citizens (196 permits), Chinese (153 work permits), Japanese (115 permits) and South Korean (100 permits). The situation in this area is rather stable. 1188 Ukrainians, 246 Byelorussians, 234 Russians, 206 Turks, 756 Vietnamese citizens, 216 USA citizens, 236 citizens of India, 105 Chinese and 160 Japanese citizens have obtained the work permits in the first half of 2005.<sup>136</sup>

Illegal migrant workers are another problem; their numbers are uncertain. Estimates generally range from 250,000<sup>137</sup> up to more than 400,000 persons.<sup>138</sup> However, a figure of 1.5 million has also been considered.<sup>139</sup> Illegal migrants (mainly Ukrainians and Byelorussians) often do seasonal work or work in the construction industry or as cleaners. Usually their stay is legal (e.g. coming as tourists or to visit their families), but their working is not.

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134 J. Bielecki, *Wiecej przyjeżdża niż wyjeżdża* [More entries than departures], interview with the General Director of the Office for Repatriation and Aliens. “*Rzeczpospolita*” of 12-03-05.

135 As for now Turkish nationals are treated as other citizens of the third country nationals.

136 Information obtained at the Ministry of Economy and Labour.

137 J. Bielecki: *Wiecej przyjeżdża niż wyjeżdża*, interview with the General Director of the Office for Repatriation and Aliens. “*Rzeczpospolita*” of 12-03-05.

138 Information from the Senate of the Republic of Poland.

139 Press information. A.Stankiewicz: Praca na czarno [“Black” work], “*Rzeczpospolita*” of 28-08-2001.

## Chapter IX Social security

### *Texts in force*

- Labour Code
- Ustawa z 20-12-1990 o ubezpieczeniu społecznym rolników<sup>140</sup> – the Act of 20-12-1990 on social insurance of farmers
- Ustawa z 7-12-1998 o emeryturach i rentach z Funduszu Ubezpieczeń Społecznych<sup>141</sup> – the Act of 7-12-1998 on pensions from the Social Insurance Fund
- Ustawa z 27-08-1997 o rehabilitacji zawodowej i społecznej oraz zatrudnianiu osób niepełnosprawnych<sup>142</sup> – the Act of 27-08-1997 on vocational and social rehabilitation and employment of disabled persons
- Ustawa z 25-06-1999 o świadczeniach pieniężnych z ubezpieczenia społecznego w razie choroby i macierzyństwa<sup>143</sup> – the Act of 25-06-1999 on cash social insurance benefits in respect of sickness and maternity
- Ustawa z 20-10-2002 o ubezpieczeniu społecznym z tytułu wypadków przy pracy i chorób zawodowych<sup>144</sup> – the Act of 20-10-2002 on social insurance in respect of accidents at work and occupational diseases
- Ustawa z 23-01-2003 o ubezpieczeniu w Narodowym Funduszu Zdrowia<sup>145</sup> – the Act of 23-01-2003 on universal health insurance in the National Health Fund
- Ustawa z 27-06-2003 o rencie socjalnej<sup>146</sup> – Act of 27-06-2003 on social pension
- Ustawa z 28-11-2003 o świadczeniach rodzinnych<sup>147</sup> – the Act of 28-11-2003 on family benefits
- Ustawa z 12-03-2004 z o pomocy społecznej<sup>148</sup> – the Act of 12-03-2004 on social assistance
- Ustawa z 20-04-2004 o promocji zatrudnienia i instytucjach rynku pracy – the Act of 20-04-2004 on promotion of employment and the institutions of labour

The Community law on the coordination of social security systems have replaced, since the moment of Poland's accession to the EU, the bilateral international agreements on social security which Poland had concluded with other EU States. However, not all the conventions<sup>149</sup> have expired. All the ILO conventions are still in force. Of greatest importance is that the provisions of the Polish–German agreements of 9-10-1975 and 8-12-1991 (Article 11 sect. 3, Article 19 sect. 4, Article 27 sect. 2, 4, 5 and Article 28 sect. 2) on social secu-

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140 Uniform text in *Journal of Laws [Dziennik Ustaw]* 1998, no. 7, item 25 with subsequent amendments.

141 *Journal of Laws [Dziennik Ustaw]* 2004, no. 39, item 353 with subsequent amendments.

142 *Journal of Laws [Dziennik Ustaw]* 2003, no. 45, item 391 with subsequent amendments.

143 *Journal of Laws [Dziennik Ustaw]* 1999, no. 60, item 636 with subsequent amendments.

144 *Journal of Laws [Dziennik Ustaw]* 2002, no. 199, item 1673 with subsequent amendments.

145 *Journal of Laws [Dziennik Ustaw]* 1997, no. 123, item 776 with subsequent amendments.

146 *Journal of Laws [Dziennik Ustaw]* 2003, no. 135, item 1268 and *Journal of Laws [Dziennik Ustaw]* 2004 no. 96, item 959 and no. 120, item 1252.

147 *Journal of Laws [Dziennik Ustaw]* 2003, no. 228, item 2255.

148 *Journal of Laws [Dziennik Ustaw]* 2004, no. 64, item 593.

149 Worth mentioning is that bilateral agreements on social security with Bulgaria, Bosnia and Herzegovina, Croatia, Macedonia, Serbia and Montenegro and Libya are in force.



rity<sup>150</sup> and Article 33 sect. 3 of the Polish-Austrian agreement of 7-09-1998 on social security<sup>151</sup> also remain in force.

Since the EU coordination system (Regulations 1408/71, 574/72 and the new Regulation 883/2004) does not introduce common “social security law” but is a set of standards which make provision for avoiding conflicts between the national systems in this area. However, the coordination systems in Poland are still “under construction” and they are untested in practice.<sup>152</sup> At present there is no relevant jurisprudence in this area. Hence only the authorities responsible for the coordination and the main legal acts referring to the scope of the Regulations can be presented in this chapter.

Firstly, it should be stressed that at present only small sections of the social security provisions directly refer to the EC rules on coordination. Mainly the Act of 2004, on promotion of employment and the institutions of labour, indicates the bodies and institutions as well as their tasks in the area of coordination systems for social security and free movement of workers. The tasks are divided between the Minister of Economy and Labour and the local self-government of districts (*powiat*) and voivodeships (*województwa*).

Secondly, it should be noted that not all acts on social security refer to coordination systems. However, *acquis communautaire* is of higher rank than the national legislation and takes precedence in a situation where the national legislation regulates on a given issue in a different way to the EU legislation. It should be pointed out that even if an act does not contain provisions on coordination, it is modified by the respective Community Regulations on social security.

## Unemployment

The Minister of Economy and Labour is a liaison institution in the area of unemployment benefits. Also the Minister has the authority to take decisions on appeals against decisions made by the marshals of voivodeships (*marszałkowie województw*) who are the bodies first contacted for granting unemployment benefits for EU nationals.

Apart from taking decisions on unemployment benefits, the tasks of local self-governments concerning labour market policy also comprise other functions connected with Poland’s participation in the coordination systems of social security and participation in the EURES network as well as performing other tasks arising from the principle of free movement of workers within EU Member States and EEA States which are bound with EC by appropriate agreements (Article 8 sect. 1 p. 8-9 of the Act of 2004 on promotion of employment and the institutions of labour).

According to Article 9, sect. 1, p. 15 and 16 the Act on promotion of employment and the institutions of labour, district self-government is obliged to carry out such tasks as, *inter alia*, paying unemployment benefits to EU nationals, thus implementing the decisions taken by the marshals of voivodeships.

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150 *Umowa między Polska Rzeczpospolita Ludowa a Republika Federalna Niemiec o zaopatrzeniu emerytalnym i wypadkowym* (*Journal of Laws [Dziennik Ustaw]* 1976, no. 16, item 101), *Umowa o zabezpieczeniu społecznym*, *Journal of Laws [Dziennik Ustaw]* 1991, no. 108, item 468.

151 *Journal of Laws [Dziennik Ustaw]* 2000, no. 104, item 1105.

152 The relevant literature on this issue indicates that Polish law on social security is unclear and not adjusted to EC law. See “Literature”.

## Poland

Article 71, sect. 7 and Article 75, sect. 4 refer to the rules of EC law on obtaining the right to unemployment benefits. These benefits are paid to EU nationals based on EC regulations.

For unemployed persons, the provisions on social assistance are of special significance. Article 5 of the Act on social assistance of 12-03-2004 stipulates that citizens of EU Member States as well as EEA Member States have the right to social assistance (inter alia, cash allowances or allowances *in re*) in Poland. Social assistance is also provided by local self-governments.

### Family benefits

The other Act which directly determines the tasks of institutions within the European coordination systems on social security is the Act of 28-11-2003 on family, in Article 21. But most importantly, Article 1, sect. 1 states that Polish citizens and aliens who are nationals of EU Member and EAA States are entitled to the benefits stipulated in the Act, meaning the family allowance (with other connected benefits) and the sickness allowance and other sickness benefits (Article 3). Article 1 sect. 2 p. 2 confirms *expressis verbis* the application of the principle of non-discrimination with respect to family benefits (family allowances with supplements and care benefits).

### Incapacity for work

Regarding incapacity for work, the following institutions are authorised to consider applications for pensions and disability pensions according to the EC coordination system:

- *Zakład Ubezpieczeń Społecznych (ZUS)* Social Insurance Institution – for former employees or persons who conducted their own economic activity (except for farmers)
- *Kasa Rolniczego Ubezpieczenia Społecznego (KRUS)* – Agricultural Social Insurance Institution – for farmers. Farmers are granted their respective rights and benefits in accordance with the Act of 20-12-1990 on social insurance of farmers

Special rules apply to insurance of the so-called “uniform services”. There are also special institutions making decisions on their behalf.

- *Wojskowe Biuro Emerytalne w Warszawie* – Military Pension Office in Warsaw for soldiers in professional service
- *Zakład Emerytalno-Rentowy Ministerstwa Spraw Wewnętrznych i Administracji* – Pension Institution of the Ministry of Internal Affairs and Administration for officers of agencies of State authority and administration (e.g. Police, Border Guard, security agencies, Fire Brigade, etc.)
- *Biuro Emerytalne Służby Więziennej* – Pension Office of the Penitentiary Service in Warsaw for officers of the Penitentiary Service.

The Ministry of Justice is responsible for the social security of judges and public prosecutors.

The requirements for eligibility for the pension in Poland (because of the universal system) by EU nationals are determined in the Act of 7-12-1998 r. on pensions from the Social

Insurance Fund [*ustawa o emeryturach i rentach z Funduszu Ubezpieczeń Społecznych*].<sup>153</sup> These requirements are modified by Regulations 1408/71 and 574/72.

These benefits contain: old-age pension, disability pension (also training pension), dependants' pension, nursing supplement to pensions, supplement to survivors' pensions for complete orphans<sup>154</sup> and death grant.

However, the requirements for eligibility for Polish pensions from work accidents or occupational disease and the amount of such pensions are determined in the Act of 20-10-2002 on social insurance in respect of accidents at work and occupational diseases.

EU nationals who have worked in Poland, or in Poland and in other EU States, should apply for pensions (arising from the coordination system) to one of the branches of the Social Insurance Institution.<sup>155</sup>

It is worth mentioning that the vocational and social rehabilitation and employment of disabled persons takes place on the basis of the Act of 27-08-1997 on vocational and social rehabilitation and employment of disabled persons.

### Pension scheme

The pension scheme (introduced in 1999) is based on correlation of benefit amount with the amount of actually paid contribution. The actually binding old – age pension scheme covers persons who on the day of its entry into force (1-01-1999) have not reached the age of 50 years. For persons under 30 years of age, participation in the first (pay-as-you-go) pillar and the second (funded) is compulsory. Persons between 30 and 50 years of age had an opportunity to decide whether they should stay hitherto, modified first pillar (pay-as-you-go) and also join the second pillar (they should have taken such a decision by 31-12-1999).

The first pillar is managed by the Social Insurance Institution. The second pillar is managed by private institutions (open pension funds). There is also third pillar. It has voluntary character and aims at ensuring above-standard benefits for an additional contribution. It consists mainly of occupational pension programs.

According to the information provided by the Social Insurance Institution,<sup>156</sup> the amount of the old-age pension is an equivalent of the amount of contributions after indexation (collected after 31-12-1998) and the amount of the so-called initial capital after indexation divided by the average life expectancy, expressed in months, for persons in the age equal to the retirement age of a given person applying for the pension.

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153 *Journal of Laws [Dziennik Ustaw]* 2004, no. 39, item 353 with subsequent amendments.

154 In the case of orphans applying for the Polish pension for orphans, they will obtain such pension if their deceased parent was at some time subject to the law of another EU state but that law does not grant such pensions (there are for example special allowances for orphans or pensions for dependants).

155 It depends on the country being lived in, or on the country of latest social insurance. EU nationals living in or having their latest insurance period in Cyprus, Greece, Spain, Italy, Malta and Portugal should apply to the Office in Łódź, in Czech Republic and Slovakia to the Office in Nowy Sącz; in Austria, Austria Slovenia, Liechtenstein and Hungary in Tarnów; in Denmark, Finland, Iceland, Lithuania, Latvia, Norway, and Sweden to the Office in Szczecin; in Belgium, Holland, Ireland, Luxemburg, Great Britain to the Office in Warsaw.

156 A. Ledkiewicz & B. Radzik-Kazenas (eds), *Social Insurance in Poland. Information, facts*, Social Insurance Institution, Warsaw 2004.

## Poland

Worth mentioning is that the old-age pensions are granted to women who reached at least 60 years of age and to men of at least 65 years of age.<sup>157</sup>

### *Other benefits*

Also, the coordination of social security systems comprise:

- maternity allowances;
- sickness allowances;
- rehabilitation benefits;
- care benefits.

The issue of remuneration for time of inability to work, up to 33 days in a calendar year, are regulated by Article 92 of the Labour Code. Where an inability to work lasts a total of more than 33 days in a calendar year, an employee shall be entitled to sickness benefits.

These matters are regulated in the Act of 25-06-1999 on cash social insurance benefits in respect of sickness and maternity and in the mentioned Act of 20-10-2002 on social insurance in respect of accidents at work and occupational diseases.

From 1-05-2004 EU nationals (and EAA) as well as members of their families in accordance with the Act of 23-01-2003 on universal health Insurance in the National Health Fund may be insured in this Fund if they perform legal work or carry out any economic activity, even if they, or members of their families, do not live within the territory of Poland. This is in accordance with the principle *lex loci laboris*. Persons seeking employment are also entitled to this type of insurance (however with some restrictions).

### *Social pensions*

It is worth mentioning that according to Act of 27-06-2003 on social pension, nationals<sup>158</sup> of other EU States also have the right to such benefits. However, it should be stressed that in Annex X to Regulation 883/2004, Poland excluded these benefits from the principle of the transfer of benefits).

### *Recent literature*

Brodecki, E. (ed.), *Zatrudnienie i ochrona socjalna* [Employment and social security], Warszawa 2004 (chapter on social security by M. Zieleniecki).

Cyzowska, E., Krowicka, A., Milkowski A. & Szewczyński, M., *Rzeczowe świadczenia z tytułu choroby i macierzyństwa* [Sickness and maternity benefits in re] In: G. Uscinska & B. Kazenas (eds), *Koordinacja polskiego systemu zabezpieczenia społecznego z regulacjami unijnymi* [Coordination of the Polish security system with the EU regulations], Warszawa 2002.

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157 There is a big public dispute in Poland on the different age of men and women entitled to old-age pensions.

158 The social pension is granted to adult persons who possess residence permits and who are unable to work because of their disability which emerged by the time a given person was 18 years old, or 25 if they were attending school or university or during doctoral studies (Art. 4).

- Kusmierczyk, G. & Sejdel, E., Emerytura [Old-age pension]. In: G. Uscinska & B. Kazenas (eds), *Koordinacja polskiego systemu zabezpieczenia społecznego z regulacjami unijnymi* [Coordination of the Polish security system with the EU regulations], Warszawa 2002.
- Kusmierczyk, G. & Sejdel, E., Renta rodzinna [Dependants' pension]. In: G. Uscinska & B. Kazenas (eds), *Koordinacja polskiego systemu zabezpieczenia społecznego z regulacjami unijnymi* [Coordination of the Polish security system with the EU regulations], Warszawa 2002.
- Kusmierczyk, G., Nurzynska, E. & Sejdel, E., Renta z tytułu niezdolności do pracy [Disability pension]. In: G. Uscinska & B. Kazenas (eds), *Koordinacja polskiego systemu zabezpieczenia społecznego z regulacjami unijnymi* [Coordination of the Polish security system with the EU regulations], Warszawa 2002.
- Ledkiewicz, A., B. Radzik & B. Kazenas (eds), *Social Insurance in Poland. Information, facts*, Social Insurance Institution, Warsaw 2004.
- Major, T. (ed.), *Ubezpieczenie społeczne migrujących pracowników oraz osób prowadzących działalność gospodarczą* [Social Insurance of migrant workers and persons carrying out an economic activity], Warszawa 2004.
- Szumlicz, J., Świadczenia rodzinne z pomocy społecznej i inne specjalne [Social assistance for families and other benefits]. In: G. Uscinska & B. Kazenas (eds), *Koordinacja polskiego systemu zabezpieczenia społecznego z regulacjami unijnymi* [Coordination of the Polish security system with the EU regulations], Warszawa 2002.
- Slazak, A., Świadczenia pieniężne z tytułu choroby i macierzyństwa [Sickness and maternity cash benefits] . In: G. Uscinska & B. Kazenas (eds), *Koordinacja polskiego systemu zabezpieczenia społecznego z regulacjami unijnymi* [Coordination of the Polish security system with the EU regulations], Warszawa 2002.

## Chapter X Right of Establishment, Students

### *Texts in force*

- Ustawa z 2-07-2 004 o swobodzie dzialalnosci gospodarczej<sup>159</sup> – the Act of 2-7-2004 on freedom of economic activity;
- Rozporządzenie Ministra Gospodarki, Pracy i Polityki Społecznej z 5-02-2004 w sprawie stażu adaptacyjnego i testu umiejętności przeprowadzanych w toku postępowania o uznanie nabytych w państwach członkowskich Unii Europejskiej kwalifikacji do podejmowania lub wykonywania działalności pilota wycieczek<sup>160</sup> – the Regulation issued by the Minister of Economy, Labour and Social Policy of 5-02-2004 on probation periods and the aptitude tests carried out during the process of recognition of qualifications obtained in EU States entitling holders to take up and perform the activities of guides;
- [Rozporządzenie Ministra Gospodarki, Pracy i Polityki Społecznej z 9-04-2004 w sprawie stażu adaptacyjnego i testu umiejętności przeprowadzanych w toku postępowania o uznanie nabytych w państwach członkowskich Unii Europejskiej kwalifikacji do podejmowania lub wykonywania niektórych działalności należących do działu gospodarka<sup>161</sup> – the Regulation of the Minister of Economy, Labour and Social Policy of 9-04-2004 on the probation periods and the aptitude tests carried out during the process of recognition of qualifications obtained in EU States entitling holders to take up and perform some activities in the economy sector;
- Ustawa z 12-09-1990 o szkolnictwie wyższym<sup>162</sup> the Act of 12-09-1990 on higher education;
- Ustawa z 17-07-1998 o pożyczkach i kredytach studenckich<sup>163</sup> – the Act of 17-07-1998 on loans or credit for students.
- Rozporządzenie Ministra Edukacji Narodowej i Sportu z 24-04-2002 w sprawie podejmowania i odbywania studiów przez cudzoziemców oraz ich uczestniczenia w badaniach naukowych i szkoleniach<sup>164</sup> – The Regulation of the Minister of Education and Sport of 24 –04-2002 on taking up and continuing studies by foreigners and their participation in scientific research and trainings.

### **Right of Establishment**

The principal legal Act in the area of establishment is the newly adopted Act of 2-07-2004 on freedom of economic activity which regulates the issues of taking up economic activity in Poland and the performance and discontinuance of such activity. Also it indicates the responsibilities of the State administration in this area.

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159 *Journal of Laws [Dziennik Ustaw]* 2004, no. 173, item 184.

160 *Journal of Laws [Dziennik Ustaw]* 2004, no. 32, item 279.

161 *Journal of Laws [Dziennik Ustaw]* 2004, no. 35, item 704.

162 *Journal of Laws [Dziennik Ustaw]* 1990, no. 65, item 385 with subsequent amendments. The latest amendment was adopted on 7-01-2005, *Journal of Laws* 2005, no. 23, item 183.

163 *Journal of Laws [Dziennik Ustaw]* 1998, no. 108, item 685 with subsequent amendments.

164 *Journal of Laws [Dziennik Ustaw]* 2002, no. 69, item 634.

## Poland

Considering the main purpose of the report, the most important section of the Act is Article 13. It contains the basic principle of EC law – the principle of non-discrimination. It means that EU nationals (as well as citizens of Iceland, Liechtenstein, Norway and Switzerland) and legal persons from these countries may take up and carry out their economic activities under the same rules as Polish citizens.

Foreigners who have obtained refugee status, permitted status or were granted temporary protection are in the same situation. However, the scope of the right of establishment of other foreigners depends on bilateral agreements which are *lex specialis* for the general rule contained in Article 13 [3]. According to this provision they are only allowed to take up and perform economic activities in the form of limited liability companies, limited partnerships and mixed shareholding and limited companies.

The other important Act is the Act of 10-05-2002 on the rules governing the recognition of qualifications acquired in EU Member States for the taking up or pursuit of some activities, reflecting the principles mentioned in Chapter V of this Report, the Act referring to migrant workers from EC countries.

Currently the Act has been complementing by regulations. Two of them appear to be important for EC nationals who want to take up some economic activities in the territory of Poland. Firstly, the Regulation issued by the Minister of Economy, Labour and Social Policy of 5-02-2004 on probation periods and the aptitude tests carried out during the process of recognition of qualifications obtained in EU States entitling holders to take up and perform the activities of guides. The other Regulation by the Minister of Economy, Labour and Social Policy of 9-04-2004 on the probation periods and the aptitude tests carried out during the process of recognition of qualifications obtained in EU States entitling holders to take up and perform some activities in the economy sector. The Regulation applies to a very limited scope of activities, like production of steel pipes, boilers for central heating, lifts for coalmines and foundries, metal fabrication as well as shaping of metal, etc.

### *Miscellaneous*

Considering that the number of EU nationals who intend to take up economic activities in Poland is relatively small, it is worth mentioning that The National Development Plan (NDP) for years 2007–2013 is currently being discussed. Its main goals may have some direct or indirect influence on EU nationals' decisions to set up economic activities in Poland. The plan includes development strategies – regional ones, very important strategies for certain economic sectors (agriculture, energy, housing, transport), and parallel strategies (e.g. education, R&D, innovation, environmental protection). The NDP should be a useful tool for internal policy but should also respond to the need for a flexible approach to EC proposals.

See English version of the assumptions of the Plan at: [www.mgip.gov.pl](http://www.mgip.gov.pl), the website of the Ministry of Economy and Labour.

### **Students**

According to Article 33a, sect. 2 of the Act of 12-09-1990 on higher education, foreigners having the right to settle in Poland, who are recognized as refugees or who have obtained temporary protection, migrant workers and nationals of EU (or EAA) Member States, if they live in, and are currently or have been previously employed in, the territory of Poland (and members of their families), may take up and continue their education at university under the

## *Poland*

same rules as Polish citizens. Such students obviously have the same rights and obligations and rules of entry to the universities as Polish nationals.

However, there is an exemption. If EU (or EAA and EFTA) nationals and members of their families possess the financial sources which are sufficient to cover their cost of living during their studies they are allowed to take up and continue their university education in Poland and have the same rights as Polish citizens except for the right to social scholarships (*stypendia socjalne*) which depends on their social status. However, they may obtain the right to these scholarships through international agreements, a decision by the Minister of Education or a decision by the head of the particular school.

All the students have the right to scholarships granted to students for their scholastic achievements (as all the students).

If EU nationals take up studies for which fees are charged (for example part-time studies or evening studies) or attend non-governmental schools, they pay the same tuition fees as Polish students.

Worth mentioning is the Act of 17-07-1998 on loans or credit for students. Its Article 6 stipulates that loans or credit may be obtained by students who are Polish citizens, who are migrant workers, EU nationals (or members of their families) who live in Poland or who work in Poland. The main requirement is that they must start their studies before they are 25 years old.

### *Drafts*

On 27-07-2005 the Parliament adopted the new Act – law on higher education. The draft has been sent to the President of the Republic of Poland (it is waiting for his signature). This draft in its Article 43 refers to foreigners taking up studies in Poland. It amends, *inter alia*, the rules referring to scholarships. According to it the group of EU (and EAA and EFTA) nationals residing on the basis of Article 5 of the Act of 27-07-2002 on the principles and conditions of entry and residence of the European Union Member States nationals and members of their families within the territory of the Republic of Poland cannot obtain any social scholarship or another kind of financial assistance if they possess sufficient financial sources to cover their costs of living during their studies.

### *Miscellaneous*

An important institution for persons intending to take up or continue their education in Poland is the Bureau for Academic Recognition and International Exchange. It is a State institution reporting to the Minister of National Education and Sport. The Bureau is the coordinator for EU directives of general systems of recognition of professional qualifications. The Bureau, as the Polish ENIC/ NARIC center, co-operates closely with the ENIC/NARIC Network.

### *Literature*

Garbacik, A., *Swoboda działalności gospodarczej* [The freedom of economic activity], *Sluzba pracownicza* 2004, no. 10.



*Poland*

Mitrus, L., *Swoboda przemieszczania się pracowników po przystąpieniu Polski do Unii Europejskiej* [Free Movement of Workers after the Poland's Accession to the EU], Warszawa 2003.

**Chapter XI**  
**Miscellaneous**

Nothing to report on.