REPORT
on the Free Movement of Workers in Poland in 2007

Rapporteur: Dr. hab. Leszek Mitrus
Jagiellonian University, Krakow

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Introduction

The year 2007 was the next year of Poland's membership in the European Union. The Polish law is continuously being approximated to the requirements of Community law. As far as national labour law is concerned there were no revolutionary changes concerning the status of foreign workers in Poland. However, it is possible to indicate some points concerning the general development of rules on free movement of persons.

First, in January 2007 Poland abolished all the restrictions on the access to employment of nationals of EU Member States, Bulgaria and Romania included. Therefore it should be stated that all Community workers are in principle entitled to take up employment on the terms binding Polish citizens. It was a unilateral decision taken by Polish authorities, i.e. that the restrictions were abolished also toward nationals of these countries who still maintain in force transitional measures which are allowed under accession treaty.

It should be stated, however, that there is no massive influx of EU workers to Poland. The working conditions (especially with regard to remuneration) usually are not so advantageous like in "old Member States". Therefore, there is no remarkable migration of EU nationals to Poland. Thus, there is a very limited case law concerning status of this group of persons.

Second, in the year 2007 some new rules concerning the employment of workers from neighbouring countries (which are not EU Member States) were introduced. The amendments are of vital importance especially to citizens of Byelorussia, Russia and Ukraine (quite often it concerns persons who have ties with Poland or even Polish origin). Employees from these countries are allowed to take up employment without permission for a period of 6 months within one year. It should be recalled that under Polish legal system there is still a fundamental difference concerning status of EU nationals and third country nationals. Practical problems connected with employment of foreign workers concern first of all situation of this group.

Third, last but not least, on 21 December 2007 Poland joined the Schengen area. Certainly, abolishing control at the borders is of great practical importance not only to employees, but to all persons who take advantages of Community free movement rules. Anyway, the easier procedure of border crossing may affect also mobility of labour force. It should be enhanced that joining Schengen area has great symbolic value, by some commentators the importance of this event was compared to Poland's accession to the European Union.

Besides, some amendments to the Polish labour law were introduced in 2007. All the amendments affect both Polish and EU nationals. In this context it should be just mentioned that national legal system is all the time approximated to requirements of Community law.

CHAPTER I
Entry, Residence, Departure

GENERAL OBSERVATIONS

The fundamental change in Polish law as far as status of EU nationals in Poland is concerned took place in 2006. On July 14th 2006 the Act on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members was enacted. It took effect on 26th August 2006 (see 2006 report by prof. Barbara Mikołajczyk).

In comparison with the 2006 report there were not many changes concerning possibilities of stay of foreigners on the Polish territory. Under Polish law there is still a fundamental difference between EU nationals and third country nationals. With reference to third country nationals it should be stressed that there are also provisions regarding those aliens who need international protection. However, they do not refer to status of EU nationals in Poland.

With relevance to implementation of Directive 2004/38 there were no retrogressive effects for EU citizens in 2007. As already said, the main body of national rules had been laid down in 2006. Some amendments which were introduced in 2007 simply clarified existing regulation. In this context following issues should be mentioned: clarifying the personal scope of application of an Act on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members; clarifying issues connected with expulsion of an EU national from Polish territory (i.e. express reference to the proportionality principle and new regulation on expulsion based on public health protection). None of the changes has retrogressive impact on EU nationals. It can be stated that existing rules became more precise. This fact should be evaluated as a positive outcome of the development. Within reported period there were no changes concerning practice, i.e. there are no new obligations or formalities.

The Act on Aliens of 2003 is the most important statutory law concerning the legal status of third country nationals. On the other hand, the Act of 2006 on entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members regulates the position of EU, EEA and Suisse nationals. The latter act implemented into Polish law the Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States[1]. The abovementioned act of Polish law took affect on August 26th, 2006. However, it should be stressed that in 2007 there were some amendments to this law. Some new implementing acts were enacted, too.

The amendment introduced in 2007[2] clarified the personal scope of application of the Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members. Art. 1 of the law refers currently (apart of EU citizens) to nationals of EFTA member states which are also a party to EEA agreement. Besides, this provision expressly indicates "the nationals of Suisse Confederation". The Act in its original version generally referred to nationals of these states

1 *Official Journal* 2004, L 158/77.

2 Journal of Laws (Dziennik Ustaw) 2007, No. 120, item 818.

which had signed an agreement on free movement of persons with the EC and its Member States.

According to the amendment introduced in 2007 there is new definition of "EU national" under Polish law. This notion covers the following categories of foreigners:

a) national of EU Member State,
b) national of EFTA Member State which is a party to Agreement on the European Economic Area,
c) national of Suisse Confederation.

It must be stressed, however, that the amendments were introduced mainly for the sake of clarity. They do not substantially change the position of EU nationals who take advantage of Community free movement rules. Previous terminology might have caused practical problems to establish the precise scope of application of the law of 14 July 2006. The previous wording was also not compatible with the terminology used in other acts of Polish law. It may be added that the abovementioned amendment had been suggested by the Committee of European Integration.[3]

A. ENTRY

Texts in force

- Ustawa z 13 czerwca 2003 o cudzoziemcach[4] – the Act of 13 June 2003 on Aliens;
- Ustawa z 22 kwietnia 2005 o zmianie ustawy o cudzoziemcach i ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw[5] – Act of 22 April 2005 on amendment of the Act on aliens and the Act on granting the protection to aliens within territory of Poland and other acts;
- Ustawa z 14 lipca 2006 o wjeździe na terytorium Rzeczypospolitej Polskiej, pobycie oraz wyjeździe z tego terytorium obywateli państw członkowskich Unii Europejskiej[6] – Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members;
- Ustawa z 24 maja 2007 r. o zmianie ustawy o cudzoziemcach oraz niektórych innych ustaw[7] (Act of 24 May 2007 on amendments of the Act on aliens and some other acts);
- Ustawa z 29 czerwca 2007 r. o zmianie ustawy o ochronie granicy państwowej oraz ustawy o zmianie ustawy o Straży Granicznej oraz niektórych innych ustaw[8] – Act of 29 June 2007 on an amendment of the Act on protection of national border and Act on amendment of the Act on Border Guard and some other acts;
- Ustawa z 24 sierpnia 2007 r. o udziale Rzeczypospolitej Polskiej w Systemie Informacyjnym Schengen oraz Systemie Informacji Wizowej[9] – Act of 24 August 2007 on the participation of the Republic of Poland in Schengen Information System and Visa Information System.

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3 The substantiation of the draft is available on the web site of the Polish Parliament www.sejm.gov.pl. The relevant text is the text No. 1338 of the Sejm of the 5th term.

4 Uniform text *Journal of Laws [Dziennik Ustaw]*. 2006, no. 234, item 1694.The act has been amended in 2007 but the amendment has not affecte the situation of the EU nationals.

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

6 *Journal of Laws [Dziennik Ustaw]*. 2006, no.144, item 1043.

7 *Journal of Laws [Dziennik Ustaw]* 2007, no. 120, item 818.

8 *Journal of Laws [Dziennik Ustaw]* 2007, no. 140, item 982.

9 *Journal of Laws [Dziennik Ustaw]* 2007, no. 165, item 1170.

The issue of entry (and departure) into Polish territory by the EU nationals is regulated by the chapter 2 (art. 9-14) of the abovementioned Act of 14 July. In 2007 this chapter was amended, but the changes refer to third country nationals who are family members of EU nationals. Therefore this development will be described in the chapter V.

According to the requirements of the Directive 2004/38, EU nationals may enter the territory of the Republic of Poland if they are in possession of valid travel documents or other documents certifying their identity and citizenship (art. 9 of the act). Decisions to refuse entry into the territory of the Republic of Poland can be taken by the Commander of the Border Guard Unit. The higher instance in such cases is the Commander of the Border Guard (art. 13). The relevant decision can be based on reasons of public security and public policy. The criteria are elaborated by the part of the Act concerning the expulsion.

The Act does not indicate any reasons for refusal to enter the territory of Poland but it may be interpreted that they are identical with the reasons which justify an expulsion.

The most important development concerning the right to enter into the territory of the Republic of Poland is the fact that Poland joined the Schengen area. The most important law in this field is an Act of 24 August 2007 on the participation of the Republic of Poland in Schengen Information System and Visa Information System. The Act of 29 June 2007 on an amendment of the Act on protection of national border should be mentioned as well.

Poland joined the Schengen area on 21 December 2007. No systematic control on the Polish border with other EU Member States will be carried out. The border can be crossed in all the places at any time, not only in particular locations. Thus, there are no particular formal requirements concerning the crossing of Polish border for all EU nationals. However, the mobile control can be carried out in the whole territory of Poland. According to the information provided by the Ministry of Internal Affairs and Administration, the aim of such controls is the verification of the possession of documents which certify the right to enter and stay in Poland.

In some press releases the importance of joining Schengen area was compared to the Poland's accession to the European Union. Certainly, this development concerns not only workers, but all the persons enjoying the free movement rights within the European Union. However, the importance of this fact for migrant workers cannot be underestimated. E.g. it may have a large impact for persons who live close to the border, especially frontier workers.

B. RESIDENCE

Texts in force:

- Ustawa z 13 czerwca 2003 o cudzoziemcach[10] – the Act of 13 June 2003 on Aliens;
- Ustawa z 22 kwietnia 2005 o zmianie ustawy o cudzoziemcach i ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw[11] – Act of 22 April 2005 on amendment of the Act on aliens and the Act on granting the protection to aliens within territory of Poland and other acts;
- Ustawa z 14 lipca 2006 o wjeździe na terytorium Rzeczypospolitej Polskiej, pobycie oraz wyjeździe z tego terytorium obywateli panstw członkowskich Unii Europejskiej[12] –

10 *Journal of Laws [Dziennik Ustaw]*. 2003, no. 128, item 1175.
11 *Journal of Laws [Dziennik Ustaw]*. 2005, no.94, item 778.
12 *Journal of Laws [Dziennik Ustaw]*. 2006, no.144, item 1043.

Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members;

- Rozporzadzenie Ministra Spraw Wewnetrznych i Administracji z dnia 24 sierpnia 2006 r. w sprawie wniosków i dokumentów w sprawach prawa pobytu na terytorium Rzeczypospolitej Polskiej obywateli panstw członkowskich Unii Europejskiej oraz członków ich rodzin[13] – the Regulation issued by the Minister of Internal Affairs and Administration of 24 August 2006 on applications and documents referring to right to residence within the territory of the Republic of Poland of the nationals of EU Member States and members of their families;
- Rozporzadzenie Ministra Spraw Wewnetrznych i Administracji z dnia 24 sierpnia 2006 r. w sprawie wniosków i dokumentów w sprawach prawa stałego pobytu na terytorium Rzeczypospolitej Polskiej obywateli panstw członkowskich Unii Europejskiej oraz członków ich rodzin[14] – the Regulation issued by the Minister of Internal Affairs and Administration of 24 August 2006 on applications and documents referring to right to permanent residence within the territory of the Republic of Poland of the nationals of EU Member States and members of their families;
- Rozporzadzenie Ministra Spraw Wewnetrznych i Administracji z dnia 24 sierpnia 2006 r. w sprawie wniosków i dokumentów w sprawach prawa stałego pobytu na terytorium Rzeczypospolitej Polskiej obywateli panstw członkowskich Unii Europejskiej oraz członków ich rodzin[15] – the Regulation issued by the Minister of Internal Affairs and Administration of 24 August 2006 on applications and documents referring to right to permanent residence within the territory of the Republic of Poland of the nationals of EU Member States and members of their families;
- Rozporzadzenie Ministra Spraw Wewnetrznych i Administracji z dnia 31 sierpnia 2006 r. w sprawie opłat za wydanie lub wymiane zaswiadczenia o zarejestrowaniu pobytu obywatela panstwa członkowskiego Unii Europejskiej oraz karty pobytu członka rodziny obywatela Unii Europejskiej[16] – the Regulation issued by the Minister of Internal Affairs and Administration of 31 August 2006 on fees for issuance or exchange of the certificate of registration on the EU national's residence or the residence card of a member of his/her family;
- Rozporzadzenie Ministra Spraw Wewnetrznych i Administracji z dnia 31 sierpnia 2006 r. w sprawie opłat za wydanie lub wydanie zaswiadczenia o potwierdzajacego prawo stałego pobytu lub karty stałego pobytu członka rodziny obywatela Unii Europejskiej[17] – the Regulation issued by the Minister of Internal Affairs and Administration of 31 August 2006 on fees for issuance or exchange of the certificate confirming the permanent residence of the EU national's or the permanent residence card of a member of his/her family;
- Rozporzadzenie Ministra Zdrowia z dnia 18 stycznia 2007 r. w sprawie wykazu chorób, które uzasadniają podjęcie decyzji o wydaleniu z terytorium Rzeczypospolitej Polskiej obywatela UE lub czlonka rodziny niebedacego obywatelem UE z powodu zagrozenia dla zdrowia publicznego[18] – the Regulation of 18 January 2007 issued by the Ministry of Health on the list of deseases which justify taking the decision on expulsion from the

13 *Journal of Laws [Dziennik Ustaw]* 2006, no. 154, item 1105.
14 *Journal of Laws [Dziennik Ustaw]* 2006, no. 154, item 1106.
15 *Journal of Laws [Dziennik Ustaw]* 2006, no. 154, item 1106.
16 *Journal of Laws [Dziennik Ustaw]* 2006, no. 160, item 1133.
17 *Journal of Laws [Dziennik Ustaw]* 2006, no. 160, item 1134.
18 *Journal of Laws [Dziennik Ustaw]* 2007, no 18, item 112.

territory of the Republic of Poland an EU national or family member who is not an EU national because of threat to public health;

- Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 8 sierpnia 2007 r. zmieniające rozporządzenie w sprawie wniosków i dokumentów w sprawach prawa pobytu na terytorium Rzeczypospolitej Polskiej obywateli Unii Europejskiej i członków ich rodzin[19] – the Regulation issued by the Minister of Internal Affairs and Administration of 8 August 2007 on amendment of the Regulation issued by the Minister of Internal Affairs and Administration of 24 August 2006 on applications and documents referring to right to residence within the territory of the Republic of Poland of the nationals of EU Member States and members of their families;
- Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 8 sierpnia 2007 r. zmieniające rozporządzenie w sprawie wniosków i dokumentów w sprawach prawa stałego pobytu na terytorium Rzeczypospolitej Polskiej obywateli Unii Europejskiej i członków ich rodzin[20] – the Regulation issued by the Minister of Internal Affairs and Administration of 8 August 2007 on amendment of the Regulation issued by the Minister of Internal Affairs and Administration of 24 August 2006 on applications and documents referring to right to permanent residence within the territory of the Republic of Poland of the nationals of EU Member States and members of their families.
- Kodeks postepowania administracyjnego[21] – The Code of Administrative Procedure.

The most important legal act concerning the residence of EU nationals in Poland is the abovementioned Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members. Chapter 3 (art. 15-41) concerns the issue of the right to stay for a period less than 3 months as well as for a period longer than 3 months. Chapter 4 (art. 42 – 65) refers to the right to permanent stay.

Residence up to 3 months

As far as residence up to 3 months is concerned – the only requirement for EU national and his/her family member who is third country nationals is a possession of travel documents or other identity proof (stating the identity and nationality of the person concerned). For a family member who is third country national a travel document is required (art. 9 of the abovementioned act).

An EU national and his/her family member staying outside the hotel centre, centre providing living quarters with relation to work, education, treatment or leisure shall report his/her stay no later than on the fourth day, counting from the moment of crossing the border of Poland. It should be stressed that the obligation to report the stay in other place than that of permanent residence concerns also Polish citizens who move within the country.

Residence for over 3 months

Residence over 3 months is regulated by art. 16 and following of the Act. Under art. 16 it is necessary to fulfill one of the following conditions:

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19 *Journal of Laws [Dziennik Ustaw]* 2007, no 172, item 1214.

20 *Journal of Laws [Dziennik Ustaw]* 2007, no 172, item 1215.

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

- he/she is an employee or self-employed person employed in Poland,
- he/she is covered by general health insurance or is entitled to health care under regulations on co-ordination[22] as well as possess financial means sufficient to support himself and family members in a way to avoid becoming a burden on social assistance system,
- he/she studies or undergoes vocational training and is entitled to health care under regulations on co-ordination as well as possess financial means sufficient to support himself and family members in a way to avoid becoming a burden on social assistance system,
- is a spouse of a Polish citizen.

Thus, the Polish law introduces (according to the directive 2004/38) distinction between economically active EU nationals and those who do not carry out professional activity but have sufficient means to support himself/herself and family members. It should be noted that art. 16 was slightly amended in 2007[23]. The previous words "without the need of making use of social assistance benefits" have been replaced by the words "in a way to avoid becoming a burden on social assistance system". The amendment approximated the Polish regulation to the wording of art. 7 point 1 of the directive 2004/38. It also seems to be in accordance with the *Grzelczyk* judgment (although this ruling was not mentioned in an explanatory memorandum of the draft).

Article 16 item 2 of the Act refers to the transitional periods in the domain of free movement of workers within the European Union. Nationals of those Members States who are covered by such measures should obtain a promise of an employment permit. It should be stressed, however, that in 2007 Poland abolished all the obstacles on the access to Polish labour market by EU and EEA nationals (see chapter II). Therefore it seems that this provision has currently no practical effect.

Article 17 of the Act refers to a situation when an EU national finishes his/her work or economic activity. He or she keeps the rights to residence in following situations:

- if he/she does not undertake employment or any other gainful activity in his/her own name and on his/her own behalf because he/she is temporarily unable to work as the result of an illness or accident;
- where he/she is in duly recorded involuntary unemployment in accordance with the unemployment register kept by the Poviat Employment Office;
- where he/she embarks on education or vocational training.

This provision was not amended in 2007.

The residence for more than 3 months implies the obligation to fulfil procedural requirements. In short, an EU national in such a situation is obliged to register his/her presence in Poland (art. 20). The relevant procedure is regulated by art. 21-41 of the Act and implementing regulation. A person concerned is obliged to submit a request on the registration. The registration should be done without any delay. The authority which is in charge of the proceeding should review whether the person concerned is in possession of sufficient financial resources. In exceptionally justified cases an administrative organ may ask the competent authority of another Member State about the information concerning its national. In

22 The Act refers to Article 5 (23) of the Act of 27 August 2004 on health insurance benefits finances from public funds (Dz.U. no. 210, item 2135, as amended Amendments to the Act were published in: Dz.U. of 2005 no. 94, item 788, no. 132, item 1100, no. 138, item 1154, no. 157, item 1314, no. 164, item 1366, no. 169 , item 1411 and no. 179, item 1485 as well as of 2006, no. 75, item 519.

23 *Journal of Laws [Dziennik Ustaw]* 2007, No. 120, item 818.

2007 it was specified that the information can cover data of "penal registers". Previously the act referred to "police databases".

Under art. 31 of the Act a Union citizen may be refused registration of residence if the conditions of the residence as provided by the Act are not fulfilled, or if the residence of a Union citizen within the territory of the Republic of Poland constitutes a threat to defense or State security or protection of public security or public order. In 2007 the new item 3 was added. Under current art. 31 item 3 the decision on refusal to register may be taken only according to proportionality principle and has to be based exclusively on the personal conduct of an individual concerned when the conduct represents a genuine, present and sufficiently serious threat to the interests of the society. Besides, this provision expressly states that the abovementioned grounds can not be invoked to serve economic ends.

In short – it can be stated that the amended version of the abovementioned provision is compatible with the wording of the Directive 2004/38.

Permanent residence

The right to permanent residence of EU nationals in Poland is subject to chapter 4 (art. 42 – 65) of the Act on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members. Under art. 42 the right to permanent residence is acquired after 5 years of continuous residence within the territory of Poland. This provision has been amended. The phrase "if he or she fulfilled all the conditions of residence described in chapter 3 of the Act" was deleted. Similar amendment was introduced into art. 43 and art. 44 which concern rights of family members.

It should be stressed that the residence lasting 5 years is the only prerequisite to obtain the right to permanent residence. According to explanatory memorandum of the draft the amendments reflect the interpretation of art. 16 item 1 and 2. of the Directive 2004/38 as presented by the European Commission.

There are exceptions to the requirements of a residence lasting at least 5 years. This problem is regulated by art. 45 of the Act. This provision has not been amended. The following categories are entitled to right of residence:

- employed or self-employed who finished his activities and reached regular retirement age; the person who finished work due to early retirement, provided that he/she carried out an economic activity for 12 months and continuously resided in Poland for a period of more than three years;
- an employee or a self-employed person who ceased to work or to conduct self-employment within the territory of Poland for the reason of permanent inability to perform work, provided that this person resided within the territory of the Republic of Poland continuously for more than two years;
- an employee or a self-employed person, who, after working continuously for the period of three years within the territory of the Republic of Poland, performs work or other economic activity in another Member State, residing at the same time within the territory of the Republic of Poland or visiting the territory of the Republic of Poland at least once a week.

An EU national residing permanently in Poland is entitled to receive the documents which certify his/her right to permanent residence. It should be stressed that the Act implemented the procedure envisaged by the Directive 2003/88.

C. DEPARTURE

Texts in force

- Ustawa z 13 czerwca 2003 o cudzoziemcach[24] – the Act of 13 June 2003 on Aliens;
- Ustawa z 22 kwietnia 2005 o zmianie ustawy o cudzoziemcach i ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw[25] – Act of 22 April 2005 on amendment of the Act on aliens and the Act on granting the protection to aliens within territory of Poland and other acts;
- Ustawa z 14 lipca 2006 o wjezdzie na terytorium Rzeczypospolitej Polskiej, pobycie oraz wyjezdzie z tego terytorium obywateli panstw członkowskich Unii Europejskiej[26] – Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members.

The issue of departure from the Polish territory is subject of an art. 14 of the Act on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members. This provision states that an EU national can leave Polish territory if he/she produces travel document or any other document that indicates his/her identity and nationality. A family member who is a third-country national is obliged to produce a valid travel document.

Another problem is an issue of expulsion, which is regulated by chapter 5 (art. 66 – 78) of the Act on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members. However, it seems that more common cases concern the situation when EU national simply does not fulfil the conditions of right to residence or right to permanent residence in Poland. It should be stressed that lack of registration cannot be a ground for expulsion. Instead, not complying with procedural requirements can be subject to a fine.

As far as an expulsion is concerned, the Act introduces distinction between an EU national who has no right of permanent residence and an EU national who has the right to permanent residence.

With regard to the first category the decision on expulsion can be taken when the residence in the Republic of Poland poses a threat to defence policy or national security, as well as to public safety, public order or public health.

The Act of 2006 obliges the Minister responsible for health to issue a regulation containing a list of diseases that justify an expulsion of Union citizens or their family members without Union citizenship on grounds of public health. The Regulation shall indicate diseases with epidemic potential as defined by the relevant instruments of the World Health Organisation and other infectious diseases or contagious parasitic diseases, provided they are the subject of protection according to provisions applying to Polish nationals under the Act of 6 September 2001 on contagious diseases and infections.[27]

The Minister of Health issued on this basis the Regulation of 18 January 2007 on the list of diseases which justify taking the decision on expulsion from the territory of the Republic of Poland an EU national or family member who is not an EU national because of threat to public health.

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24 *Journal of Laws [Dziennik Ustaw]*. 2003, no. 128, item 1175.
25 *Journal of Laws [Dziennik Ustaw]*. 2005, no.94, item 778.
26 *Journal of Laws [Dziennik Ustaw]*. 2006, no.144, item 1043.
27 *Journal of Laws [Dziennik Ustaw]* 2001, no. 126, item 1384 with subsequent amendments.

The new regulation indicates 6 situations when a particular disease can justify the decision on expulsion.

- cholera,
- plague,
- yellow fever and other virus infections of this type,
- breath insufficiency SARS,
- tuberculosis,
- epidemic child paralysis, including Guillaine-Barre syndrom.

It should be added that under art. 66 of the Act a disease which occurs after 3 months of entering Polish territory can not be a sole ground for expulsion based on protection of public health.

With regard to EU nationals who have right to permanent residence other rules apply. EU nationals who enjoy the right to permanent residence can be expelled only when their presence constitutes a serious threat to the defence or security of the Republic of Poland, public policy or public security. However, an EU national who has resided in Poland for the period exceeding ten years cannot be expelled unless the decision on expulsion is based on imperative grounds of national defense, national or public security by constituting a threat for peace, humanity, independence or defense of the Republic of Poland, or due to a terrorist activity (Articles 67 and 68).

It should be stressed that in 2007 new art. 68a was inserted. This provision expressly states that a decision on expulsion should take into account the proportionality principle and can be based exclusively on the personal conduct of the individual concerned which constitutes genuine, present and sufficiently serious threat to the interests of society. The proportionality principle is not taken into account with regard to decisions based on threat to public health. Previous criminal conviction cannot be a single ground of expulsion. The abovementioned reasons cannot be invoked to serve economic ends. The amendment introduced the requirements stemming from the wording of art. 27(1) and 27 (2) of the Directive 2004/38.

The following factors should be taken into account when taking the decision on expulsion (art. 70):

- the period of residence in Poland,
- his/her age and state of health,
- family and economic situation,
- social and cultural integration in Poland,
- the extent of links with the country of origin.

There is also a provision concerning minor EU nationals. The decision on expulsion with regard to this category of persons can be taken in situations envisaged in art. 68 or when expulsion is necessary for the best interests of the child, as provided for in the United Nations Convention on the Rights of the Child.

It should be stressed that Turkish citizens enjoy protection which apply to EU nationals with regard to expulsion. Under art. 99a of the Act on Aliens the rules on the expulsion of aliens who are not EU nationals do not apply to those persons who have access to Polish labour market under Association Agreement between European Economic Community and Turkey and implementing legal acts based on this agreement. Instead, the chapter 5 of the Act on the entry into, residence in and exit from the Republic of Poland of nationals of the

European Union Member States and their family members applies. As already stated, this chapter concerns the expulsion of EU nationals.

The protection against expulsion covers Turkish workers and following family members:

- spouse,
- his descendant and descendant of his spouse, who is under 21 years or is dependant,
- dependent relative in ascending line of a worker and his spouse.

D. REMEDIES

As already stated, the decisions concerning the residence are taken by the Voivod. Any negative decision in matters regulated by the Act on the entry into the territory of the Republic of Poland, stay and exit from such territory of EU nationals and their family members shall be delivered in writing. The decision should state its grounds. Special attention should be paid to the instruction accompanying each decision concerning measures of an appeal, including the dates stated. Only before these dates there is a possibility to appeal against the decision.

In case of a negative decision, EU nationals or their family members have the right to appeal to the President of the Office for Foreigners. An appeal must be submitted within the term of 14 days. This period is provided by the Code of Administrative Procedure. Should the decision of the President of the Office for Foreigners be negative, there is a possibility to submit an appeal to the administrative court. Such an appeal should be submitted within 30 days.

Job-seekers

Regulation of the Minister of Labour and Social Policy of 10 January 2007 repealing the Regulation on the scope of restrictions on the undertaking of work by foreigners within the territory of the Republic of Poland abolished all transitional measures with regard to access to national labour market.[28] In other words, since 2007 nationals of all Member States enjoy full access to the Polish labour market. Poland does not apply transitional measures under accession treaty. In principle EU job-seekers are covered by the principle of equal treatment (e.g. as far as an assistance of employment agencies or recruitment procedure are concerned). There is no obligation to obtain work permit or fulfill other formalities.

Therefore, there are no particular rules or practices concerning job-seekers from EU Member States concerning entry to Poland or residence within the country. Such persons are simply obliged to possess relevant travel document while crossing Polish border. However, questions concerning a purpose of a trip to Poland are not allowed. On the other hand, the duty to report a presence in Poland applies to all EU nationals who reside in Poland, job-seekers included.

There are no provisions which would oblige a job-seeker to leave Poland after some time of looking for employment. Certainly, for persons who do not carry out an economic activity in order to stay for a period exceeding 3 months it is necessary to have sufficient financial resources (see above).

[28] See chapter II.

Family members

The main legal act which concerns the situation of EU family members is the Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members.

Article 2 point 4 of the Act defines the notion "family member" of an EU national. "Family member" means an alien who is or who is not an EU citizen:

- spouse of an EU national,
- direct descendant of an EU national or his/her spouse, who is in age till 21 or who is a dependant of an EU national or his/her spouse,
- direct ascendant of an EU national or his/her spouse who is a dependant of an EU national or his/her spouse.

Those family members of a migrant workers who are EU nationals enjoy right to enter and residence as described above in this chapter.

With reference to family members two technical amendments were introduced in 2007. The first change was introduced by the Regulation issued by the Minister of Internal Affairs and Administration of 8 August 2007 on amendment of the Regulation issued by the Minister of Internal Affairs and Administration of 24 August 2006 on applications and documents and referring to right to residence within the territory of the Republic of Poland of the nationals of EU Member States and members of their families. The act introduced a new pattern of "Residence Card of a Family Member of an EU national" ("Karta pobytu obywatela czlonka rodziny obywatela Unii Europejskiej").

The second change was introduced by the Regulation issued by the Minister of Internal Affairs and Administration of 8 August 2007 on amendment of the Regulation issued by the Minister of Internal Affairs and Administration of 24 August 2006 on applications and documents and referring to right to permanent residence within the territory of the Republic of Poland of the nationals of EU Member States and members of their families. This legal act introduced the new pattern of a Permanent Residence Card of a Family Member of an EU National ("Karta stalego pobytu czlonka rodziny obywatela Unii Europejskiej").

In 2007 changes concerning third country nationals who are family members of EU nationals were introduced. For an analysis of these changes see chapter V.

MISCELLANEOUS

Current practice

The practical issues are determined not only by the general rules introduced by the Act on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members. Implementing acts are relevant as well.

According to the information received at the Voivod office in Krakow within the reported period there were no changes concerning practice. The Voivod's office remains to be competent in the matters concerning the registration of the UE nationals in Poland. As a rule the obligation to register the presence comes into being when an EU national resides in Poland more than 3 months. The request should be submitted in person (this requirement does not cover a minor, i.e. a person under the age of 18). The registration should be carried out at

once. I case of family members who are third country nationals the procedure should last no more than 6 months.

An application should be submitted in Polish language. A relevant pattern should be used. Such form can be obtained on-line at websites of competent offices. A document done in a foreign language should be translated into Polish language by a sworn translator. A person concerned should indicate an address for delivery. As a rule the administrative office sends all the documents, replies etc. in form of registered letter.

All relevant documents concerning fulfillment of the conditions of right of residence should be submitted as well (e.g. evidence of his/her health insurance or verification of the financial means sufficient to cover the costs of residence). A travel document should be produced. It is allowed to produce another document which certifies an identity and nationality of a person concerned. An application should be submitted at the Voivodship office competent for the location of a place of residence of an EU national. The document certifying the right of permanent residence is issued by the Voivod. Certainly, the requirement of previous 5 years-long-residence within Polish territory has to be fulfilled.

An EU national is entitled to receive a certification of registration. The cost of registration has not been changed and amounts 1 PLN (around 0.35 Euro). There is another cost of residence card of a family member who is third-country national (it amounts 30 PLN, around 8 Euro). In case of nullifying the validity of a document or a death of person concerned the document should be given back to the relevant authority. It should be mentioned that the competent authorities are obliged to inform an EU national and his/her family member on their legal situation in a language which is understandable to them.

An application for a new document should be submitted in the following situations:

- change of data,
- damage of the document or other situation when it is difficult to establish the identity of a person concerned,
- its expiration.

Recent Legal Literature

J. Chlebny (ed), *Cudzoziemcy. Orzecznictwo sądów administracyjnych* [Foreigners. Judicial Decisions of administrative courts], LexisNexis, Warszawa 2007.

J. Chlebny, *Ochrona interesu publicznego a prawo cudzoziemca do pobytu w Polsce* [Protection of public interest and right of an alien to reside in Poland], Europejski Przegląd Sądowy [European Judicial Review] No. 10/2007.

A. Górny, P. Koryś (eds.) *Obywatelstwo wielokrotnego wyboru* (Citizenship of a multiple choice), Warszawa 2007.

A. Fihel, P. Kaczmarczyk, M. Okólski, *Migracje "nowych Europejczyków" – teraz i przedtem*" (Migrations of "new Europeans" – currently and before), Warszawa 2007.

M. Jaroszewicz, *"Skutki rozszerzenia Schengen dla wschodnich sąsiadów Unii Europejskiej"* [The consequences of broadening Schengen for Eastern Neighbours of the European Union], Warszawa 2007, also available at http://www.osw.waw.pl

Izabela Wróbel, *Status prawny obywatela państwa trzeciego w Unii Europejskiej*, [The legal status of third country national in the European Union], Wolters Kluwer, Warszawa 2007.

A. M. Świątkowski, *Swoboda przemieszczania się w Europie a ochrona rodziny* (Free movement in Europe and family protection), "Monitor Prawa Pracy" (Monitor of Labour Law), no. 6/2007.

Chapter II
Access to Employment

Texts in force

- Ustawa z 20 kwietnia 2004 o promocji zatrudnienia i instytucjach rynku pracy – Act of 20 April 2004 on promoting employment and institutions of the labour market,[29]
- Rozporzadzenie Ministra Pracy i Polityki Społecznej z 21 lipca 2006 w sprawie okreslenia przypadków, w których przyrzeczenie i zezwolenie na prace cudzoziemców jest wydawane przez wojewode bez wzgledu na sytuacje na lokalnym rynku pracy i kryteria wydawania przyrzeczen i zezwolen na prace cudzoziemców[30] – The Regulation issued by the Minister of Labour and Social Policy of 21 July 2006 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 nor the criteria for issuing promises and work permits for foreigners;
- Rozporzadzenie Pracy i Polityki Społecznej z 21 lipca 2006 w sprawie trybu i warunków wydawania zezwolenia na prace[31]- the Regulation of the Minister of Labour and Social Policy of 26 July 2006 on procedure and conditions of issuance of work permits for foreigners;
- Rozporzadzenie Ministra Pracy i Polityki Społecznej z 30 sierpnia 2006 w sprawie wykonywania pracy przez cudzoziemców bez koniecznosci uzyskania zezwolenia na prace[32] – The Regulation of the Minister of Labour and Social Policy of 30 August 2006 on performance of work by foreigners without necessity to obtain the work permits;
- Rozporzadzenie Ministra Pracy i Polityki Społecznej z dnia 10 stycznia 2007 r. uchylające rozporządzenie w sprawie zakresu ograniczeń w sferze wykonywania pracy przez cudzoziemców na terytorium Rzeczypospolitej Polskiej[33] – The Regulation of the Minister of Labour and Social Policy of 10 January 2007 repealing the Regulation on the scope of restrictions on performance of work by foreigners within the territory of the Republic of Poland,
- Rozporządzenie Ministra Pracy i Polityki Spolecznej z dnia 27 czerwca 2007 r. zmieniające rozporządzenie w sprawie wykonywania pracy przez cudzoziemców bez koniecznosci uzyskania zezwolenia na prace[34] The Regulation of the Minister of Labour and Social Policy of 27 June 2008 amending the regulation on performance of work by foreigners without necessity to obtain work permits,

1. EQUAL TREATMENT IN ACCESS TO EMPLOYMENT

The main statutory act concerning access to Polish labour market is the Act of 20 April 2004 on promoting employment and institutions of the labour market. Chapter 16 of the Act (art. 84 – 90) refers to the possibilities of taking up an employment by Polish citizens abroad and

29 *Journal of Laws [Dziennik Ustaw]* 2004, no. 99, item. 1001 with further amendments.
30 *Journal of Laws [Dziennik Ustaw]* 2006, no. 141, item.1004.
31 *Journal of Laws [Dziennik Ustaw]* 2006, no. 141, item 1002.
32 *Journal of Laws [Dziennik Ustaw]* 2006, no. 156, item 1116.
33 *Journal of Laws [Dziennik Ustaw]* 2007, no 7, item 54.
34 *Journal of Laws [Dziennik Ustaw]* 2007, no. 120, item. 824.

possibilities of taking up an employment by aliens in Poland. According to art. 87 of the Act an alien can take up an employment within the territory of the Republic of Poland, when he/she has the permission issued by the competent voivod (the seat of employer is decisive). However, there are numerous exceptions to this rule. The right to take up employment without necessity to obtain a permission have:

- nationals of EU Member States,
- nationals of those EEA states which do not belong to the European Union,
- nationals of those states which concluded the agreements of free movement of persons with European Communities and their Member States,
- family members of the abovementioned categories.

Therefore it could be said that EU nationals enjoy the privileged status under regulations concerning access to Polish labour market. Currently there is a uniform group of aliens who are entitled to take up employment in Poland without restriction. This group contains EU nationals, EEA nationals (Norway, Iceland and Liechtenstein) and nationals of Suisse Confederation.

It should be also added that Turkish nationals enjoy better status than other third country nationals. Under implementing regulations they can take up an employment without permission after certain period of residence in Poland (see below).

It should be stressed that besides the abovementioned Act of 20 April 2004 there are numerous implementing acts (*rozporzadzenia*) issued by the Minister of Labour and Social Policy. They concern procedure of obtaining permissions by those employees who are third country nationals. Implementing acts clarify also the scope of restrictions as far as the access to Polish labour market is concerned. It should be stressed that in January 2007 Poland abolished the restrictions concerning taking up an employment by nationals of all EU Member States. Previous regulations had kept in force restrictions against nationals of those Member States which applied transitional measures on the access to their labour markets.

Because of the abovementioned amendments there is an absolutely new situation in comparison with year 2006. As a rule EU nationals are entitled to take up an employment on the very same conditions which refer to Polish citizens, without any additional requirements. The change was introduced by the abovementioned Regulation of Minister of Labour and Social Policy of 10 January 2007.[35]

It should be emphasized that Poland resigned from the restrictions against nationals of all Member States, including these countries which still keep in force transitional measures allowed by the accession treaty. Poland opened its labour market also to nationals of Bulgaria and Romania which joined EU in the 2007.

As already stated, many important issues are regulated by implementing acts. For the situation of foreign workers the most important is the Regulation of the Minister of Labour and Social Policy of 30 August 2006 on performance of work by foreigners without necessity to obtain the work permits. This regulation was amended in 2007.[36]

This regulation is of fundamental importance for those workers who are third country nationals. There are several categories of third country nationals who are entitled to take up an employment in Poland without necessity to obtain permission, for example:

- citizens of non EU/EEA States temporarily posted by their employers to deliver services in Poland,

[35] *Journal of Laws [Dziennik Ustaw]* 2007, no. 7, item 54.

[36]. *Journal of Laws [Dziennik Ustaw]* 2007, no. 120, item. 824

- graduates from Polish medical schools during their postgraduate internships,
- foreign language teachers if they teach their mother tongues,
- Turkish citizens and their families who have been living in Poland for at least 5 years and have been working legally for at least 4 years,
- Turkish nationals who graduate Polish schools or higher schools,
- full-time students of Polish universities (and other higher schools) working during their holidays,
- permanent correspondents of various types of media,
- foreign researchers working for research institutes or members of the European Parliament or who are working on implementation of weaponry systems.

It should be enhanced that the abovementioned regulation is important to citizens of neighbouring countries which intend to take up employment in Poland. The amendment introduced in June 2007[37] allowed the citizens of neighbouring countries to take up an employment for a period not exceeding 3 months within 6 months. are exempted from the obligation to obtain a work permit.

The regulation applies also to Turkish nationals and their families. Besides, the regulation of 21 July 2006[38] on promise and permission for a foreigner to work being issued by Voivod regardless of either the situation in the local labour market or the criteria for issuing promises and work permits for foreigners should be mentioned in this respect. Under this act Turkish nationals are entitled to receive a promise and work permit after 1 year of legal employment by Polish employer, after submitting a motion on a prolongation of a permission to employment. In such a case a situation on the local labour market is irrelevant. As said in the chapter 1, provisions of the Act on aliens grant Turkish nationals a protection against expulsion at the same level that this granted to EU nationals. Thus, Turkish employees in Poland enjoy the protection provided by the EEC – Turkey association agreement.

Another legal act which should be mentioned is the regulation of the Minister of Labour and Social Policy of 26 July 2006 on procedure and conditions of issuance of work permits for foreigners.[39] In principle it concerns the procedure on the employment of third country nationals. It should be emphasized, however, that an employer should inform about his actions which were intended to find a candidate who is a Polish national or a national of these countries who are entitled to take up an employment without permission. Thus, national of EU and EEA Member States have priority to take up employment in comparison with third country nationals.

Practice – activities of employment agencies.

The Act of 20 April 2004 on promoting employment and institutions of the labour market introduces organisational framework for promotion of employment and countervailing unemployment. This act relates not only to the situation of Polish nationals, but also to EU nationals, EEA nationals and nationals of those states which concluded an agreement on free movement of persons. As far as an assistance of employment agencies is concerned – the

37 *Journal of Laws [Dziennik Ustaw]* 2007, no. 120, item. 824.

38 *Journal of Laws [Dziennik Ustaw]* 2006, no. 141, item.1004. This regulation concerns also EU nationals who are "key personnel" under art. 52 of the association agreement between Poland and EC. Since restrictions on the access to Polish labour market were abolished in 2007 this provision seems to be without practical importance.

39 *Journal of Laws [Dziennik Ustaw]* 2006, no. 141, item 1002.

principle of equal treatment applies. Thus, persons looking for job in Poland who have EU or EEA nationality are entitled to the same rights that Polish nationals. There are no special formal requirements which would apply to this category of persons.

Under the act on promoting employment and institutions of the labour market it is possible to establish a private employment agency (chapter 6, art. 18 –19). Such agencies carry out a commercial activity. As a rule they act on employer's request looking for an employee who possesses particular skills. There is no legal obligation to cooperate with state authorities which are in charge of employment market. There are no additional requirements with relevance to EU nationals looking for job in Poland. Such persons are treated as Polish nationals. It is the result of abolishing in 2007 the restrictions on access to Polish labour market by EU nationals.

However, according to information received in such an agency in Krakow it happens relatively rarely that an EU national is employed with assistance of such an institution. Usually it concerns persons with family ties in Poland.

2. LANGUAGE REQUIREMENTS.

Texts in force

- Ustawa z 7 pazdziernika 1999 o jezyku polskim[40] – the Act on the Polish language of 7 October 1999

First of all it should be enhanced that according to the art. 7 of the Act on the Polish language an employment contract and any other documents related to employment should be done in Polish language.

It is obvious that an employer needs to communicate with employees. Therefore the knowledge of Polish language can be required. It should be stressed that there are no special provisions on how the knowledge of the language can be proved. The Act on Polish language provides for the proceeding and organisation of exams which officially confirm the knowledge of a Polish language by foreigners (art. 11a – 11d of the act). It should be stressed, however, that any other possibility to prove language skills is allowed, even an interview with a candidate for a particular job (for example to check his/her ability to communicate with clients). Knowledge of a language can be of particular importance to those EU nationals who intend to take up so called regulated profession.[41]

With reference to some profession there are regulations concerning the required extent of language skills. The following acts should be mentioned:

- Rozporządzenie Ministra Zdrowia z dnia 23 lipca 2007 r. w sprawie zakresu znajomości języka polskiego w mowie i piśmie koniecznego do wykonywania zawodu lekarza lub lekarza dentysty na terenie Rzeczypospolitej Polskiej[42] (Regulation of Minister of Health of 23 July 2007 on the extent of the oral and written knowlegde of Polish language necessary to carry out a profession of a doctor or dentist within the territory of the Republic of Poland.

40 *Journal of Laws [Dziennik Ustaw]* 1999, no. 90, item 999 with subsequent amendments. *Journal of Laws* 2003 no. 73 item 661, *Journal of Laws [Dziennik Ustaw]* 2004, no. 92, item 878.

41 The list of these professions is available at website www.buwiwm.edu.pl.

42 *Journal of Laws [Dziennik Ustaw]* 2007, no. 145, item 1018.

- Rozporządzenie Ministra Zdrowia z dnia 23 maja 2007 r. zmieniające rozporządzenie w sprawie szczegolowego zakresu znajomości języka polskiego koniecznego do wykonywania zawodu pielęgniarki, położnej przez obywateli państw członkowskich Unii Europejskiej[43] (Regulation of Minister of Health of 23 May2007 amending the regulation on the extent of the knowlegde of Polish language necessary to carry out a profession of a nurse, midwife by nationals of EU Member States),
- Rozporządzenie Ministra Rolnictwa i Rozwoju Wsi z dnia 25 sierpnia 2004 r. w sprawie zakresu znajomości języka polskiego przez lekarzy weterynarii będących obywatelami państw członkowskich Unii Europejskiej[44] (Regulation of Minister for Agriculture and development of Rural Areas of 25 August 2004 on the extent of knowledge of Polish language by veterinary surgeons who are nationals of EU Member States),
- Rozporządzenie Ministra Zdrowia z dnia 17 maja 2002 r. w sprawie szczegółowego zakresu znajomości języka polskiego koniecznego do wykonywania zawodu pielęgniarki, położnej przez obywateli państw członkowskich Unii Europejskiej[45] (Regulation of Minister of Health of 17 May 2003 on the extent of the knowlegde of Polish language necessary to carry out a profession of a nurse, midwife by nationals of EU Member States),

3. RECOGNITION OF DIPLOMAS

Texts in force

- Ustawa z 26 kwietnia 2001 o zasadach uznawania nabytych w panstwach członkowskich Unii Europejskiej kwalifikacji do wykonywania zawodów regulowanych[46] – the Act of 26 April 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 maja 2002 o zasadach uznawania nabytych w panstwach członkowskich Unii Europejskiej kwalifikacji do podejmowania lub wykonywania niektórych działalnosci[47] – the Act of 10 May 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 wrzesnia 2003 o zmianie ustawy o zasadach uznawania nabytych w panstwach członkowskich Unii Europejskiej kwalifikacji do wykonywania zawodów regulowanych[48] – the Act of 12 September 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,
- Rozporzadzenie Ministra Infrastruktury z 21 lipca 2005 w sprawie stażu adaptacyjnego i przeprowadzania testu umiejetnosci w toku postepowania o uznanie kwalifikacji do wykonywania zawodów regulowanych[49] – the Regulation of the Minister of Infrastructure of 21 July 2005 on probationary period and carrying out of aptitude tests on recognition of qualifications for performance of regulated professions,

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43 *Journal of Laws [Dziennik Ustaw]* 2007, no. 99 item 673.
44 *Journal of Laws [Dziennik Ustaw]* 2004, no. 205 item 2100.
45 *Journal of Laws [Dziennik Ustaw]* 2002, no. 67 item 625.
46 *Journal of Laws [Dziennik Ustaw]*. 2001, no. 87, item 954 with the subsequent amendments.
47 *Journal of Laws [Dziennik Ustaw]*. 2002, no. 71, item 655.
48 *Journal of Laws [Dziennik Ustaw]*. 2003, no. 190, item 1864.
49 *Journal of Laws [Dziennik Ustaw]* 2005, no. 147, item 1226.

- Rozporzadzenie Ministra Gospodarki, Pracy i Polityki Społecznej z dnia 15 kwietnia 2004 r. w sprawie odbywania stazu adaptacyjnego oraz przeprowadzania testu umiejetnosci w toku postepowania o uznanie nabytych w panstwach członkowskich Unii Europejskiej kwalifikacji do wykonywania niektórych zawodów regulowanych[50] – Regulation of the Minister of Economy, Labour and Social Policy of 15 Arpil 2004 on probation period and carrying the aptitude test in procedure on recognition of qualifications for practicing certain regulated professions obtained in the EU Member States,
- Rozporzadzenie Ministra Gospodarki z dnia 27 stycznia 2006 r. uchylajace rozporzadzenie w sprawie odbywania stazu adaptacyjnego oraz przeprowadzania testu umiejetnosci w toku postepowania o uznanie nabytych w panstwach członkowskich Unii Europejskiej kwalifikacji do wykonywania niektórych zawodów regulowanych[51] – Regulation of the Ministry of Economy on annulment of the Regulation of the Minister of Economy, Labour and Social Policy of 27 January 2006 on probation period and carrying the aptitude test in procedure on recognition of qualifications for practicing certain regulated professions obtained in the EU Member States.
- Ustawa z 29 czerwca 2007 r. o zmianie ustawy o zasadach uznawania nabytych w państwach członkowskich Unii Europejskiej kwalifikacji do wykonywania zawodów regulowanych oraz ustawy o świadczeniu przez prawników zagranicznych pomocy prawnej w Rzeczypospolitej Polskiej[52] (Act of 29 June 2007 on the amendment of the Act on the rules governing the recognition of the qualifications required in EU Member States for the pursuit of the regulated professions and Act on providing legal assistance by foreign lawyers in Republic of Poland),
- Ustawa z dnia 24 sierpnia 2007 r. o zmianie niektórych ustaw w związku z członkostwem Rzeczypospolitej Polskiej[53] (Act of 24 August 2007 on amendment to some acts due to Poland's membership to the European Union).

There was not much of change with regard to recognition of diplomas in 2007. The Act of 26 April 2001 on the rules governing the recognition of the qualifications required in the EU Member States for the pursuit of the regulated professions remains in force. As a rule diplomas or certificates concerning qualifications to carry out regulated professions should be recognized in Poland. Admission to some professions can depend upon probationary period or on passing an aptitude test. There are numerous enacting regulations issued by the relevant ministers.

Within the reported period the change was introduced by the act of 29 June 2007 on the amendment of the Act on the rules governing the recognition of the qualifications required in EU Member States for the pursuit of the regulated professions and Act on providing legal assistance by foreign lawyers in Republic of Poland. The amendments concern situation of nationals of Bulgaria and Romania. The act indicates diplomas and professional titles obtained in those new Member States as far as maritime sector and providing legal assistance are concerned.

50 *Journal of Laws [Dziennik Ustaw]*. 2004, no. 75, item 705.
51 *Journal of Laws [Dziennik Ustaw]*. 2006, no. 24, item 179.
52 *Journal of Laws [Dziennik Ustaw]* 2007, no. 147, item 1028.
53 *Journal of Laws [Dziennik Ustaw]* 2007, no. 176, item 1238.

MISCELLANEOUS

Recent legal literature

W. Cajsel, Prawne aspekty zatrudniania sportowcow w Polsce a prawo Unii Europejskiej [Legal Aspects of Employment of Sportsmen and Law of the European Union], in: Jacek Foks (ed.), *Unia Europejska i sport. Implikacje czlonkowstwa Polski w Unii Europejskiej dla polskiego sportu* [European Union and Sport. Implications of Poland's membership in the European Union for Polish Sport], Warsaw 2006.

E. Naumann, Dyskryminacja w prawie pracy [Discrimination in labour law], *Monitor Prawa Pracy* [Monitor of Labour Law] No. 6/2007.

Chapter III
Equality of Treatment on the Basis of Nationality

1. WORKING CONDITIONS

Texts in force

- Konstytucja Rzeczpospolitej Polskiej z 2 kwietnia 1997 – Constitution of the Republic of Poland 2 April 1997;
- Kodeks pracy z 24 czerwca 1974[54]- the Labour Code of 24 June 1974, with amendments;
- Ustawa z dnia 26 lipca 1991 r.[55] – the Act of 26 July 1991 on personal income tax;
- Ordynacja podatkowa z 26 sierpnia 1997r[56] – the Act of 26 August 1997 on the tax law system;
- Ustawa o zakładowym funduszu świadczeń socjalnych z dnia 4 marca 1994 r.[57] – The Act on the company benefit fund of 4 March 1994.

There are a lot of antidiscrimination provisions in Polish legal system, labour law included. The general antidiscrimination clause is provided by art. 32 of the Constitution of 2nd April 2007: "All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities. No one shall be discriminated against in political, social and economic life for any reason whatsoever". Besides, art. 33 introduces *expressis verbis* the principle of equal treatment of men and women. It should be stated that Poland is a party to European Social Charter and UNO conventions.

As already stated, in 2007 all the obstacles concerning the access to employment of EU nationals in Poland were abolished. There is also a lot of provisions on equal treatment in labour relations which cover all workers employed in Poland, regardless of their nationality. It should be said that there is no express reference to ban on discrimination based on EU Member State citizenship. However, EU nationals are covered by all anti-discrimination rules on equal footing with Polish workers.

Article 11[2] of the Labour Code states that employees shall enjoy equal rights for performance of the same duties. This applies in particular to equal treatment of men and women in employment.

Article 11[3] and Chapter IIa "Equal treatment in employment" (articles 18[3a] – 18[3e]) implement directives 2000/43, 2000/78 and 2006/54. The discrimination is prohibited in particular because of:

- gender,
- age,
- disability,
- race,

54 *Journal of Laws* 1998, No 21, item 94 with subsequent amendments. The Labour Code was amended almost 60 times.

55 *Journal of Laws [Dziennik Ustaw]* 1991, no. 80, item 350 with subsequent amendments.

56 The unified text is published in: *Journal of Laws [Dziennik Ustaw]* 2005, no. 8, item 60 with subsequent amendments.

57 *Journal of Laws [Dziennik Ustaw]* 1996, No. 70, item 335 with amendments (the last amendment *Journal of Laws* 2007, No. 89, item 589.)

- religion,
- nationality58,
- political opinions,
- trade union membership,
- ethnic origin,
- belief,
- sexual orientation,
- fixed-term employment,
- part-time employment.

"EU citizenship" has been not expressly mentioned in the quoted provision. However, this is not an exhaustive list of forbidden criteria. Should the performance of duties be the same, it would be against the law to discriminate foreign workers. It seems that for migrant workers the ban on discrimination due to belief, race or ethnic origin may be of particular importance.

The scope of anti-discrimination provisions is also broad. It covers:

- access to employment contract,
- dismissal,
- employment conditions (especially remuneration),
- promotion,
- access to vocational training.

Thus, EU nationality may not be a criterion for employer's decisions in abovementioned matters. It should be also added that Polish law does not discriminate foreign workers with regard to collective labour law. EU nationals are entitled to participate in trade unions (e.g. be elected to boards), as well as they can participate in employee councils (i.e. bodies entitled to receive information and carry out consultation with employers).

According to directives 2000/43, 2000/78 and 2006/54 the Labour Code introduces the following kinds of discrimination:

- direct discrimination,
- indirect discrimination,
- instruction to discriminate,
- harassment,
- sexual harassment.[59]

In 2007 the anti discriminatory provisions remained unchanged. It can be added that new chapter on telework (art. 67[5] – 67[13]) was inserted to the Labour Code. Article 67 [5] banned a discrimination related to telework. Therefore "teleworkers" and "traditional workers" should be treated equally when they perform the same type of job. It should be enhanced, however, that this provision concerns the mode of performance of employee duties. Should an EU national be employed as "teleworker", this provision would apply to him/her in the same way as to Polish nationals.

Employment conditions can be settled not only by Parliament, but also by employers and employee representation.[60] In Poland under art. 9 of the Labour Code there exist collec-

[58] It should not be understood as "citizenship", i.e. legal ties between a particular person and his/her state of origin.

[59] This kind of discrimination is connected with gender.

[60] Under Polish law trade unions are main bodies that represent employees.

tive labour agreements, other agreements, internal regulations, statutes. They are regarded as sources of labour law when they determine the rights and obligations of employers and employees. According to art. 9 § 4 provisions of such legal acts which breach the principle of equal treatment in employment shall not be binding. On the other hand, provisions of individual employment contract which breach the principle of equal treatment shall not be binding.

It should be stated that it is not allowed to insert any discriminatory clause with regard to nationality in collective agreements or individual contracts. Such provisions are *ex lege* invalid. They are automatically replaced by labour law provisions which are not discriminatory. This regulation may be of importance to EU employees since it forbids any discriminatory action (both collective and individual) which may taken by an employer.

Besides, employers are obliged to countervail any discrimination in employment (art. 94 [2a] of the Labour Code). According to art. 94[1] employer should distribute in an undertaking texts of provisions related to equal treatment in employment.

To conclude: Polish labour law fully introduces the principle of equal treatment of EU nationals employed in Poland. There were not judicial decisions which would concern unequal treatment of nationals of Member States employed in Poland[61].

As far as tax system is concerned, EU nationals employed in Poland are treated in the same way as Polish nationals. According to art. 217 of the Constitution the imposition of taxes, as well as other public imposts, the specification of those subjects to the tax and the rates of taxation, as well as the principles for granting tax reliefs and remissions, along with categories of taxpayers exempt from taxation, shall be done by statute.

There are no special acts relating to migrant workers employed in Poland. The tax system is quite complicated, with many kinds of taxes (on the whole there are 12 types of taxes, including nine direct taxes) . The same rules apply both to Polish and EU employees. Contract of employment is covered by the Act on personal income tax of 1991.[62]

The most important provision is article 3 of the Act. According to this article, all individuals, whose place of residence is in Poland, are subject to unlimited tax liability in Poland, which means that they are liable to pay Polish taxes on the total of their income, irrespective of where it was generated. Individuals who do not have their place of residence in Poland are subject to limited tax liability, which means that they are liable to pay taxes only on income resulting from work carried out in the territory of Poland according to a service relationship or employment relationship, irrespective of where they receive their payment, and on other income received on the territory of Poland. So there is no special treatment of EU nationals employed in Poland. Other rules may be subject of international agreements on elimination of double taxation.[63]

With regard to social advantages the Act on the company benefit fund of 4 March 1994 [64] should be mentioned. Under this act an employer which employs at least 20 persons as calculated into full-time posts is obliged to create a company fund.[65] This fund can be a source for financial benefits for employees (e.g. holiday allowance). The internal rules adopted in particular establishment introduce precise way of division of financial means.

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61 On the other hand there are quite a lot of cases which concern discrimination based on other criteria, e.g. because of gender or equal performance of the same. Such decisions, however, do not relate directly to the free movement workers.

62 The Act of 1991 was amended many times. Just in 2006 there were 10 amendments.

63 The list of such agreements can be found on the website of the Ministry of Finance: www.mf.gov.pl.

64 *Journal of Laws [Dziennik Ustaw]* 1996, No. 70, item 335 with amendments).

65 There are some exceptions to this rule.

This law does not expressly relate to foreign workers. However, it is obvious that it applies to EU nationals employed in such an undertaking.

2. OTHER OBSTACLES TO FREE MOVEMENT OF WORKERS?

Texts in force

- Ustawa z 7 pazdziernika 1999 o jezyku polskim[66] – the Act on the Polish language of 7 October 1999.

As stated in previous chapters, Polish law introduced a framework for equal treatment for EU nationals employed in Poland. There is no case law concerning the situation of this category of workers. It seems, however, that the most important practical obstacle is the necessity to speak Polish and convince an employer that a candidate is able to communicate with co-workers, clients, etc. However, this problems affects all migrant workers moving within the Community.

According to art. 7 point 1 of the Act on Polish language documents connected with labour law should be done in Polish when a person carrying work resides in Poland at the time of concluding a contract or when a contract is to be performed within the territory of Poland. All documentation connected with employment should be done in Polish (art. 8). State Labour Inspection is competent to control whether contracts of employment and other documents are done in Polish language (art. 7a).

There are no provisions which expressly regulate a possibility to conclude other language version of a contract. It seems that there is no obstacle to sign at the same time a foreign-language version of a contract if an employee wishes so. It seems, however, that Polish text would be relevant in case of difference between language versions. There is no reported case law on this issue. A conclusion of an employment contract exclusively in other language is contradictory to the Act on Polish language. Such an action is subject to a fine (art. 15).

With regard to some employee rights a period of previous employment (i.e. length of service) should be taken into account. For example length of paid holidays depends upon all periods of work for previous employers. Currently employers should take into account both periods of employment in Poland and other Member States. As already said, there is no reported case law on this issue, therefore such situation may be described only as "potentially disadvantageous" for migrant workers.

Once again it should be enhanced that in 2007 all the restrictions concerning access to Polish labour market by nationals of all Member States were abolished. There are no additional formal requirements on employer's or employee side connected with taking up employment in Poland. Such step undoubtedly makes the situation of foreign workers easier in comparison with earlier years of Poland's membership in the EU.

66 *Journal of Laws [Dziennik Ustaw]* 1999, no. 90, item 999 with subsequent amendments. The most important for EU nationals amendment was adopted on 2 April 2004. *Journal of Laws [Dziennik Ustaw]* 2004, no. 92, item 878.

3. SPECIFIC ISSUES

a. Frontier workers

Texts in force

- Rozporzadzenie Ministra Pracy i Polityki Społecznej z 30 sierpnia 2006 w sprawie wykonywania pracy przez cudzoziemców bez koniecznosci uzyskania zezwolenia na prace[67] – The Regulation of the Minister of Labour and Social Policy of 30 August 2006 on performance of work by foreigners without necessity to obtain the work permits.

The Regulation issued by the Minister of Labour and Social Policy on performance of work without a necessity to obtain work permit concerns situation of workers from countries in the neighbourhood of Poland. As stated in chapter II, it is possible to work for period of 3 months within 6 months without permission. However, since all the restrictions concerning taking up employment in Poland for EU nationals were abolished in 2007 it may be of relevance for employees of Byelorussia, Ukraine and Russia. Citizens of Member States which are Poland's neighbours can take employment without any obstacles.

There are no legal regulations concerning only frontier workers. According to information received in Krakow Voivodship Office in practice there are no additional formalities concerning this category of persons.

It seems, however, that joining Schengen area and abolishing regular controls on Poland's border with other Member States may positively influence the development of cross-border-employment. The possibility to cross the border at any moment without any formalities may be taken into account when taking the decision on employment in neighbouring country. It is definitely to early to evaluate (potential) impact of abolishing controls at the borders for the number of frontier workers. However, the media reported interesting trend in Western Poland: there is a growing tendency for Polish citizens to buy or rent flats or houses in German (close to the border) while keeping employment in Poland.

Some judgments of Polish courts may be important for entitlement of a frontier worker to social benefits (for example possible application of Hartmann case). For an analysis of this issue see below chapter VI.

b. Maritime sector

Texts in force

- Ustawa 9 listopada 2000 z o bezpieczenstwie morskim[68] – the Act of 9 November 2000 on maritime safety;
- Ustawa z 18 września 2001 r. Kodeks morski[69] – The Act of 18 September 2001 Maritime Code.

The Maritime Code regulates the status of captain of a ship, as well as his rights and duties. This issue is a subject of Title III of the Code (art. 53 – 72). With Poland's accession to the

67 *Journal of Laws [Dziennik Ustaw]* 2006, no. 156, item 1116, with further amendments.
68 Uniform text *Journal of Laws [Dziennik Ustaw]* 2006, no. 99, item 693.
69 *Journal of Laws [Dziennik Ustaw]* 2001, no 138, item 1545 with subsequent amendments.

European Union nationality condition was abolished. Thus, nationals of Member States are in a position to occupy such a post. There is no nationality requirement with regard to crew of sea going vessels.

The Act on maritime safety and its implementing regulations refer to qualifications of crew of vessels. As a rule qualifications obtained in other Member States are recognized.

In the Labour Code there is a chapter on conditions of employment of employees posted to Poland by employers who have their seats in another states (art. 67[1] – 67 [4]). In principle the minimum standards of Polish labour law apply to such persons. However, according to art. 67[4] of the Labour Code[70] provisions of this chapter do not apply to maritime undertakings with regard to crews of sea going vessels, when an armator has a seat in Member State of the European Union or EFTA Member State which is a party to EEA Agreement.

c. Researchers/artists

Texts in force

- Ustawa z 27 lipca 2005 – Prawo o szkolnictwie wyższym[71] – Act of July 2005 Law on Higher Education.

The Law on Higher Education of 2005 introduced an advantageous solution for those foreigners who take up employment in Polish universities and other high schools. According to art. 109 point 3 it is allowed to employ a foreigner without necessity to obtain permission. The permission is not necessary also with reference to other work (e.g. on civil law contract) provided that the type of job is connected with tasks of high schools.

In 2007 new art. 109 point 3a was introduced. When employing an alien (or a Polish citizen who obtain scientific degree abroad) it is allowed to skip requirements provided by art. 114 of the Act on higher education. This provision expressly introduces requirements which should be fulfilled to be eligible for particular posts. Since Polish system of scientific degrees and titles is very complicated, Polish degrees do not always have equivalent in other countries.

Since there are no obstacles concerning employment of EU nationals, this provision may be of importance to third country nationals. It should be added that nationality conditions cannot be imposed by internal statutes adopted by universities and other high schools.

Also artists enjoy the same status that Polish citizens.

d. Sportsmen/sportswomen

As a rule the regulations of the international sports association apply in Poland. No special problems have been reported with regard to foreign players. Regulation concerning football can be mentioned in this respect. Polish Football Union Board adopted the Resolution no. III/39 of 14 July 2006 amending its own Resolution on the status of the Polish football players and the change of the club membership.[72] This Resolution invokes directly the FIFA and UEFA Regulations.

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70 Introduced in 2006, Journal of Laws 2006, No. 133, item 935.

71 *Journal of Laws [Dziennik Ustaw]* 2005, no. 164, item 1365., amended by Act of 24 August 2007, Journal of Laws 2007, no. 176, item 1283.

72 Uchwała nr III/39 z dnia 14 lipca 2006 roku Zarządu Polskiego Związku Piłki Nożnej – see: www.pzpn.pl. The Resolution of 1992 was amended few times, see for example the Report on 2005.

In principle all EU nationals have free access to professional sport clubs. There are no quotas on EU or Polish professional players. As an example of recent tendencies a situation in hockey can be indicated. In season 2007/2008 nationality quotas for hockey players were abolished.

It was enhanced in the literature that there is a theoretical possibility that sport clubs will employ exclusively aliens. Possibility to employ foreigners may have positive influence on league games but may negatively affect national teams. Such situation already exists in basket – ball and cinder – track racing: high level of competition between clubs and relatively weak national representation (see W. Cajsel, "*Legal aspects*…", p. 88 and following).

No "home grown players" system has been introduced.

4. RELATIONSHIP BETWEEN REGULATION 1408/71 AND ART. 39 EC AND REGULATION 1612/68

Texts in force

- Ustawa z 20 grudnia 1990 o ubezpieczeniu społecznym rolników[73] – the Act of 20 December 1990 on social security of farmers;
- Ustawa z 13 października 1998 r. o systemie ubezpieczeń społecznych[74] – the Act of 13 October 1998 on social security system,
- Ustawa z 7 grudnia 1998 o emeryturach i rentach z Funduszu Ubezpieczen Społecznych[75] – the Act of 7 December 1998 on old-age pensions and pensions from the Social Security Fund;
- Ustawa z 27 sierpnia 1997 o rehabilitacji zawodowej i społecznej oraz zatrudnianiu osób niepełnosprawnych[76] – the Act of 27August 1997 on vocational and social rehabilitation and employment of disabled persons;
- Ustawa z 25 czerwca 1999 o swiadczeniach pienieznych z ubezpieczenia społecznego w razie choroby i macierzynstwa[77] – the Act of 25 June 1999 on cash social security benefits in respect of sickness and maternity;
- Ustawa z 30 pazdziernika 2002 o ubezpieczeniu społecznym z tytułu wypadków przy pracy i chorób zawodowych[78] – the Act of 30 October 2002 on social security in respect of accidents at work and occupational diseases;
- Ustawa z 27 sierpnia 2004 o swiadczeniach opieki zdrowotnej finansowanych ze środków publicznych[79] – the Act of 27August 2004 on the health care benefits financed from the public sources;
- Ustawa z 27 sierpnia 2003 o rencie socjalnej[80] – Act of 27 June 2003 on social pension;
- Ustawa z 28 listopada 2003 o swiadczeniach rodzinnych[81] – the Act of 28 November 2003 on family benefits;

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73 Uniform text in: *Journal of Laws [Dziennik Ustaw]* 1998, no. 7, item 25 with subsequent amendments.
74 Uniform text: *Journal of Laws [Dziennik Ustaw]* 2007, No. 17, item 11, with subsequent amendments.
75 *Journal of Laws [Dziennik Ustaw]* 2004, no. 39, item 353 with subsequent amendments.
76 *Journal of Laws [Dziennik Ustaw]* 1997, no. 123, item 776 with subsequent amendments.
77 Uniform text *Journal of Laws [Dziennik Ustaw]* 2005, no. 31 item 267 with subsequent amendments.
78 *Journal of Laws [Dziennik Ustaw]* 2002, no. 199, item 1673 with subsequent amendments.
79 *Journal of Laws [Dziennik Ustaw]* 2004, no. 210, item 2135. The amendment of 2006 does not refer to the situation of the EU nationals.
80 Uniform text: *Journal of Laws [Dziennik Ustaw]* 2006, no. 139, item 992.
81 *Journal of Laws [Dziennik Ustaw]* 2003, no. 228, item 2255, last amendment *Journal of Laws* 2007, No. 109, item 747.

- Ustawa z 12 marca 2004 z o pomocy społecznej[82] – the Act of 12 March 2004 on social assistance;
- Ustawa z 20 kwietnia 2004 o promocji zatrudnienia i instytucjach rynku pracy – the Act of 20 April 2004 on promotion of employment and the institutions of labour market;
- Ustawa z 27 lipca 2005 – prawo o szkolnictwie wyzszym[83] – the Act of 27 July 2005 on higher education.

Community law introduces a framework for co-ordination of national social security systems, as provided by regulation 1408/71 (and enacting regulation 574/72), which is to be replaced by regulation 883/2004. Only to a limited extent Community law affects national substantive rules of social security (e.g. with reference to equal treatment of men and women). As far as social advantages within the meaning of art. 7(2) of the Regulation 1612/68 are concerned – also educational grants should be taken into account.

It should be underlined that any EU national who carries out a commercial activity in Poland is subject to a Polish social security statute.

The Act on social security system provides framework for being subjects of rights and duties connected with social security. According to its art. 2a the act is based on equal treatment principle, especially with regard to conditions of subordination of social security rules, calculation of contributions, calculation of benefits, periods of entitlement to benefits. Although nationality is not expressly mentioned it is obvious that any differentiation between Polish and EU nationals is forbidden.

Article 6 and following of the Act introduce the principles of subordination to social security provisions. Different kinds of economic activities cause mandatory subordination to social security system. To put some examples it is about: employees, self-employed persons, members of cooperatives, persons carrying out activity on the basis of civil contracts,[84] etc. These provisions are fundamental to determine the personal scope of social security provisions and subsequently to determine the scope of coordination rules. In short, all social security definitions of "employee" apply on equal footing both to Polish and EU nationals. Such persons are entitled to benefits according to rules stipulated by particular acts of national legal system.

The main pillars of the system remain the same, as there were described in previous report. It should be added, however, that there were some amendments which concern possibility to retire in an early age. The national system of health care system is under process of transformation, but the perspective remains unclear. There is also public debate on retirement age. Currently 60 years for women and 65 for men is the statutory limit, there are ideas to introduce uniform (or even higher) retirement age. However, so far the draft was not proposed. Instead, there is tendency to allow early retirement for various professional groups. Any potential amendments can affect both Polish and EU nationals carrying out an economic activity in Poland.

The leading basis for social security in Poland is Act on social security systems of 1998. This statute provides for following branches of social security:

- retirement scheme,

82 *Journal of Laws [Dziennik Ustaw]* 2004, no. 64, item 593. Last amendment *Journal of Laws* 2007, No. 120, item 818.

83 *Journal of Laws [Dziennik Ustaw]* 2005, no. 164 item 1365.

84 Special situation arises when an employer and employee conclude parallel civil law contract for provision of services. In such situation all contributions are calculated as if there was an additional employment contract.

- pension scheme,
- maternity and sickness scheme,
- accidents at work scheme.[85]

It should be underlined that there is special social security scheme for farmers and some categories of civil servants (e.g judges and public prosecutors). With reference to old age scheme there are still in force regulations on privileges to certain employee groups, e.g. miners and teachers. Another law covers general health care system.

The retirement scheme provides benefits in case of old age:
- old age pension,
- incapacity to work pension,[86]
- family pension,
- supplements to various benefits,
- funeral allowance.

There are also possibilities for private retirement benefits within the framework of so-called II and III pillar.

The sickness and maternity scheme covers:
- sickness benefit,
- rehabilitation benefit,
- maternity benefit,
- child care benefit.

It should be added that provisions on maternity leave are subject of art. 180 of the Labour Code. The leave lasts (according to circumstances) 18, 20 or 28 weeks. After women uses 14 weeks of a maternity leave, the remaining part may be used by an employee who is a father of a child. Besides, it is possible to apply for parental leave (art. 186-186[6] of the Labour Code). As a rule such leave may last up to 3 years till the child reaches the age of 4 years.[87] Certainly these rules apply to an employee who is a national of EU Member State.

With reference to benefits connected with child-raising the Act of 23 November 2003 on family benefits should be mentioned. The act provides for bonuses to other social security benefits when a particular person takes personal care of a child. The one-time-allowance due to child birth is also provided by this law. According to art. 1 the benefits in question can be provided to Polish nationals and those EU nationals who are covered by rules on coordination of national social security schemes.

There are also employer's duties connected with employee's illness. It should be mentioned that an employer is obliged to pay 80%[88] of remuneration for 33 days (counted for a calender year) of employee inability to work due to sickness. Only for 34 day and following the sickness benefits are provided by Social Security Institution.

With reference to accidents at work there are following benefits:
- sickness benefit,
- rehabilitation benefit,

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85 The relevant law relates also to occupational diseases.

86 It is about permanent incapacity to work.

87 There is another limit when child is disabled, then the leave can be taken till the child reaches 18 years.

88 In some cases even 100%.

- pension due to incapacity to work,
- one-time compensation,
- family pension,
- various health care benefits.

With relevance to the relation between regulation 1408/71 on the one hand and art. 39 EC together with regulation 1612/68 on the other hand, focus should be concentrated on a legal nature of particular benefits. The contributory benefits (i.e. those financed by contributions paid by employees and/or employers) as a rule are covered by Community coordination provisions. Social advantages in the meaning of art. 7(2) of regulation 1612/68 cover a very broad range of various benefits. They can be provided both by employers or state institutions. Usually such advantages are financed by public funds, without prior contributions of potential beneficiaries.

Therefore, it should be analysed which non-contributory benefits may be granted also to EU nationals. According to rulings of the European Court of Justice to be eligible for "social advantages" of this type it is not always necessary to be "migrant worker" within the meaning of art. 39 EC Treaty. There is growing case law of ECJ that indicates that a national of EU Member State residing in another Member State should be entitled to benefits which can be granted to local citizens. See analysis on follow – up of ECJ rulings in Chapter VI.

In this respect the following acts should be mentioned: Act of 27 June 2003 on social pension, the Act of 28 November 2003 on family benefits and the Act of 12 March 2004 on social assistance. These legal acts provide a possibility to receive some non-contributory benefits (i.e. no prior economic activity and paying contributions is required.)

The Act on social assistance[89] provides benefits for persons who are in need (e.g. because of poverty, homelessness, long-term unemployment) and are not able to overcome the difficult situation by themselves. There is a wide range of benefits financed by the state budget, they cover various financial allowances as well as benefits in kind and services.

The Act on social pension provides for financial allowance (so-called "social pension" – *renta socjalna*) for persons who became completely unable to work before reaching the age of 18. This allowance applies also to persons who became unable to work before reaching the age 25 provided that such a person was a student or doctoral student. To be eligible for such a benefit no prior employment is required.

In 2007 the personal scope of application of these legal acts was clarified. The amendment is important for EU nationals who reside in Poland. The changes were introduced by Act of 24 May 2007 on amendments to Act on aliens and some other acts.[90] Currently art. 2 point 3 of Act on social pension and art. 5 point 3 of the Act on social assistance expressly state that following categories of persons are eligible for benefits:

- Polish nationals who reside in Poland,
- Aliens (third country nationals) who have residence permit,
- EU nationals, nationals of EFTA States who are party to EEA agreement, nationals of Suisse Confederation, as well as their family members as defined by Act of 14 July 2006 on entry into, residence and exit from the Republic of Poland of nationals of European Union Member States and their family members.

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89 Sometimes the notion "social welfare" is also used to described Polish term "pomoc spoleczna".

90 *Official Journal [Dziennik Ustaw]* 2007, No. 120, item 818.

Thus, it could be stated that both Polish and EU nationals (not only workers) are entitled to receive non-contributory benefits on equal footing. The changes introduced in 2007 seem to be in line with ECJ judgments, e.g. *Grzelczyk*.

There is no reported case law concerning application of the abovementioned rules to the EU nationals. However, there are cases on situation of Polish nationals who spent a part of their professional career in a Member State of a European Union. As a result their social rights have been affected by migration.[91]

There was also a preliminary question posed by *Sąd Okręgowy* (Regional Court) in Koszalin in a dispute between Ms. Nerkowska and Social Security Institution (*Zakład Ubezpieczeń Społecznych*). Ms Halina Nerkowska was born in 1946 in the territory of current Byelorussia. Her parents were compulsory expelled to Siberia, they died when the applicant was 3 years old. She stayed in the Soviet Union for some years in very difficult conditions. She came to Poland in the 60s. She was entitled to a pension benefit for incapacity to work which was justified by injuries she suffered in the USSR. In 1985 she moved to Germany. The entitlement to benefit was suspended, because she did not reside in Poland (it was one of the conditions to receive this benefit). After Poland's accession to the EU, Ms. Nerkowska challenged the decision on suspension of the benefit in question as incompatible with provisions on EU citizenship.

The court in Koszalin posed the question:

> "Does article 18 EC, which guarantees citizens of the European Union the right to move and reside freely within the territory of the Member States, preclude the binding force of the national rules laid down in art. 5 of the Ustawa o zaopatrzeniu inwalidów wojennych i wojskowych oraz ich rodzin (Law on provision for war and military invalids and their families) of 29 May 1974 (Journal of Laws of 2 September 1987, as subsequently amended) in so far they make payment of pension benefit for incapacity for work that is linked to a stay in places of isolation subject to fulfillment of the condition that the person entitled be resident in the territory of the Polish State?" (C-499/06).

It seems that Polish regulations as not compatible with Community rules on EU citizenship, especially because of a judgment of the ECJ in case C-192/05, *Tas-Hagen*.

The right to educational grants should be also mentioned in this respect. Such benefits can constitute social advantages under art. 7(2) of the Regulation 1612/68. Under art. 43 of the Act on Higher Education[92] migrant workers who are nationals of EU Member States, nationals of EFTA states which are parties to EEA agreement and nationals of Suisse Confederation and their family members when they reside in Poland – are entitled to take up and follow studies, doctoral studies as well as participate in scientific research and other activities. The same rules that these concerning Polish nationals apply also to certain categories of foreigners, i.a. migrant workers from EU and EEA states.

There is another situation of those migrants (and their families) who are not economically active. They should be in possession of financial resources which are sufficient to cover cost of studies. However, such persons are not entitled to all educational grants and allowances. In this respect see chapter V.

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91 With relation to social advantages see Chapter VI.

92 As amended in 2007: *Journal of Laws [Dziennik Ustaw]* 2007, No. 176, item 1238.

Recent literature

L. Adamska, *Swiadczenia rodzinne w UE* (Family benefits in the EU), "Polityka Spoleczna" 7/2007.

W. Burek, *Zakaz dyskryminacji w dostępie do dóbr i usług świadczonych publicznie w prawie polskim – uwagi wokół implementacji dyrektywy rasowej* (2000/43/WE) (Prohibition of discrimination in access to goods and public services – remarks concerning the implementation of racial directive (2000/43/EC), "Praca i Zabezpieczenie Społeczne" [Labour and Social Security] no 12/2007.

W. Cajsel, *Prawne aspekty zatrudniania sportowcow w Polsce a prawo Unii Europejskiej* [Legal Aspects of Employment of Sportsmen and Law of the European Union], in: Jacek Foks (ed.) *Unia Europejska i sport. Implikacje czlonkowstwa Polski w Unii Europejskiej dla polskiego sportu* [European Union and Sport. Implications of Poland's membership in the European Union for Polish Sport], Warsaw 2006

J. Foks, *Polskie prawo sportowe a prawo Unii Europejskiej* [Polish Sport Law and Law of the European Union], in: Jacek Foks (ed.) *Unia Europejska i sport. Implikacje czlonkowstwa Polski w Unii Europejskiej dla polskiego sportu* [European Union and Sport. Implications of Poland's membership in the European Union for Polish Sport], Warsaw 2006

J. Foks (ed.), *Unia Europejska i sport. Implikacje czlonkowstwa Polski w Unii Europejskiej dla polskiego sportu* [European Union and Sport. Implications of Poland's membership in the European Union for Polish Sport], Warsaw 2006

J. Jończyk, *Prawo zabezpieczenia społecznego* (Law of social security), Warszawa 2006.

D.E. Lach, *Spełnianie świadczeń zdrowotnych na terytorium UE – kolejki a "turystyka zdrowotna"* (Health care benefits in the territory of EU – queues and "health tourism"), "Praca i Zabezpieczenie Społeczne" (Labour and Social Security), no 5/2007.

R.B. Martins, *Swoboda przemieszczania sie a sport* [Free Movement and Sport], in: Jacek Foks (ed.) *Unia Europejska i sport. Implikacje czlonkowstwa Polski w Unii Europejskiej dla polskiego sportu* [European Union and Sport. Implications of Poland's membership in the European Union for Polish Sport], Warsaw 2006

W. Muszalski, *Ubezpieczenia społeczne* (Social security), Warszawa 2007.

A. Rafalski, *Przewodnik po emeryturach i rentach. Tekst ustawy. Komentarz*, (Vademecum on pensions and old-age pensions, Legal text, Comments), Warszawa 2007.

I. Sierpowska, *Prawo pomocy społecznej* (Law of social assistance), Warszawa 2006.

M. Tomaszewska, S. Majkowska-Szulc, *Obywatelstwo UE a dostęp do świadczeń socjalnych – glosa do postanowienia Sądu Okręgowego w Koszalinie z 13.11.2006 r. (IV U 1660/06*), "[EU nationality and access to social benefits, annotation to ruling of a Regional Court in Koszalin of 13.11.2006, IV U 1660/06) "Europejski Przegląd Sądowy" ("European Judicial Review) nr 6/2007.

G. Uscinska, *Koordynacja swiadczen rodzinnych w regulacjach wspolnotowych* (Coordination of family benefits in Community regulations", "Polityka Spoleczna" [Social policy] no. 7/2007.

J. Wantoch – Rekowski (ed.) *Ustawa o systemie ubezpieczeń społecznych. Komentarz* (Law on social security system. Comment), Warszawa-Torun 2007.

CHAPTER IV
Employment in the Public Sector

1. ACCESS TO PUBLIC SECTOR

Texts in force:

- Ustawa z 16 wrzesnia 1982 o pracownikach urzedów panstwowych[93] – the Act of 16 September 1982 on employees of government offices;
- Ustawa z 13 lutego 1984 o funkcjach konsulów Rzeczypospolitej Polskiej[94] – The Act of 13 February 1984 on the functions of consuls of the Republic of Poland;
- Ustawa z 24 sierpnia 2006 o słuzbie cywilnej[95] – the Act of 24 August 2006 on civil service;
- Ustawa z 20 marca 1990 o pracownikach samorzadowych[96] – the Act of 20 March 1990 on employees of self-government;
- Ustawa z 8 marca 1990 o samorzadzie gminnym[97] – the Act of 8 March 1990 on communal self–government;
- Ustawa z 5 czerwca 1998 o samorzadzie powiatowym[98] – the Act of 5 June 1998 on district self–government;
- Ustawa z 15 września 1998 o samorzadzie wojewódzkim[99] – the Act of 15 September 1998 on regional self–government;
- Ustawa z 20 kwietnia 2004 o zmianie ustawy – Ordynacja wyborcza do rad gmin, rad powiatów i sejmików województw oraz niektórych innych ustaw[100] – the Act of 20 April 2004 amending the principles of elections to communal, district and regional councils and regional parliaments and on amendment of certain other Acts;
- Ustawa z 6 pazdziernika 1990 o Policji[101] – Act of 6 October 1990 on the Police;
- Ustawa z 12 pazdziernika 1990 o Strazy Granicznej[102] – the Act of 12 October 1990 on Border Guards;
- Ustawa z 26 kwietnia 1996 o Słuzbie Wieziennej[103] – the Act of 26 April 1996 on the Penitentiary Service;

93 Consolidated text: *Journal of Laws [Dziennik Ustaw]* 2001, no. 86, item 953.
94 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.
95 *Journal of Laws [Dziennik Ustaw]* 2006, No. 49, item 1218.
96 Consolidated text: *Journal of Laws [Dziennik Ustaw]* 2001, no. 142, item 1593 with subsequent amendments.
97 Consolidated text: *Journal of Laws [Dziennik Ustaw]* 2001, no. 79, item 855 with subsequent amendments, .
98 Consolidated text: *Journal of Laws [Dziennik Ustaw]* 2001, no. 142, item 1592 with subsequent amendments.
99 Consolidated text: *Journal of Laws [Dziennik Ustaw]* 2001, no. 142, item 1590 with subsequent amendments. .
100 *Journal of Laws [Dziennik Ustaw]* 2004, no. 102, item 1055 with subsequent amendments .
101 Article 25 of the Act. Consolidated text: *Journal of Laws [Dziennik Ustaw]* 2002, no. 7, item 58 with subsequent amendments.
102 Article 31 of the Act. Consolidated text: *Journal of Laws [Dziennik Ustaw]* 2002, no. 171, item 1399 with subsequent amendments. (*Journal of Laws* 2007, No. 82, item 558).
103 Article 24 of the Act. Consolidated text: *Journal of Laws [Dziennik Ustaw]* 2002, no. 207, item 1761 with subsequent amendments.

- Ustawa z 31 sierpnia 1999 o Słuzbie Celnej[104] – The Act of 31 August 1999 on the Customs Service;
- Ustawa z 24 maja 2002 o Agencji Bezpieczenstwa Wewnetrznego i Agencji Wywiadu[105] – the Act of 24 May 2002 on the Agency of Internal Security and Agency of Secret Service;
- Ustawa z 27 lipca 2001 – prawo o ustroju sadów powszechnych[106] – the Act of 27 July 2001 – Law on the structure of common courts;
- Ustawa z 25 lipca 2001 – prawo o ustroju sadów administracyjnych[107] – The Act of 25 July 2001 – Law on the structure of administrative courts;
- Ustawa z 23 listopada 2002 o Sadzie Najwyzszym[108] – the Act of 23 November 2002 on the Supreme Court;
- Ustawa z 20 czerwca 1985 o prokuraturze[109] – the Act of 20 June 1985 on the public prosecutor's office;
- Ustawa z 14 lutego 1991 – prawo o notariacie[110] – the Act of 14 February 1991 on public notary's office;
- Ustawa z 29 sierpnia 1997 o komornikach sadowych i egzekucji[111] – the Act of 29 August 1997 on court executive officers and execution;
- Ustawa z 27 lipca 2001 o kuratorach sadowych[112] – the Act of 27 July 2001 on court-appointed curators;
- Ustawa z 5 lipca 2002 o swiadczeniu pomocy prawnej przez prawników zagranicznych w Rzeczypospolitej Polskiej[113] – the Act of 5 July 2002 on rendering legal assistance by foreign lawyers in the Republic of Poland;
- Ustawa z 6 lipca 1982 o radcach prawnych[114] – the Act of 6 July 1982 on legal advisers;
- Ustawa z 26 maja 1982 – prawo o adwokaturze[115] the Act of 26 May 1982 – Law on the Bar;
- Ustawa z 19 kwietnia 1991 o samorzadzie pielegniarek i połoznych[116] – the Act of 19 April 1991 on self-administration of nurses and midwives;
- Ustawa z 20 kwietnia 2004 o zmianie ustawy o zawodach pielegniarki i połoznej oraz innych ustaw[117] – the Act of 20 April 2004 on the amendment of the Act on the profession of nursing and midwifery and certain other Acts;
- Ustawa z 1 grudnia 1996 o zawodzie lekarza[118] – the Act of 5 December 1996 on the medical profession;

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104 Article 24 of the Act. *Journal of Laws [Dziennik Ustaw]* 1999, no. 72, item 802 with subsequent amendments.
105 Article 15 of the Act. Journal of Laws[Dziennik Ustaw] 2002, no. 74, item 676..
106 *Journal of Laws [Dziennik Ustaw]* 2001, no. 98, item 1070 with subsequent amendments. (Journal of Laws 2007, No.98, item 1070).
107 *Journal of Laws [Dziennik Ustaw]* 2002, no. 153,item 1269.
108 *Journal of Laws [Dziennik Ustaw]* 2002, no. 240, item 2052 with subsequent amendments.
109 Consolidated text: *Journal of Laws [Dziennik Ustaw]* 2002, no. 21, item 206 with subsequent amendments.
110 Act of 14 February 1991 on notaries [prawo o notariacie]. Consolidated text: *Journal of Laws [Dziennik Ustaw]* 2002, no. 42, item 369 with subsequent amendments.
111 Consolidated text: *Journal of Laws [Dziennik Ustaw]* 2006, no. 167, item 1191.
112 *Journal of Laws [Dziennik Ustaw]* 2001, no. 98, item 1071 with subsequent amendments.
113 *Journal of Laws [Dziennik Ustaw]* 2002, no. 126, item 1069 with subsequent amendments.
114 *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.
115 Consolidated text: *Journal of Laws [Dziennik Ustaw]* 2002, no. 123, item 1058 with subsequent amendments. (*Journal of Laws* 2007, No. 80, item 540).
116 *Journal of Laws [Dziennik Ustaw]* 1991, no. 41, item 178 with subsequent amendments.
117 *Journal of Laws [Dziennik Ustaw]* 2004, no. 92, item 855.
118 Consolidated text: *Journal of Laws [Dziennik Ustaw]* 2002, no. 21, item 204 with subsequent amendments.

- Ustawa z 17 maja 1989 o izbach lekarskich[119] – the Act of 17 May 1989 on the self–administration of medical practitioners;
- Ustawa z 19 kwietnia 1991 o izbach aptekarskich[120] – the Act of 19 April 1991 on the self-administration of pharmacists;
- Karta Nauczyciela 1982[121] – The Teachers' Charter of 1982;
- Ustawa z 27 lipca 2005– Prawo o szkolnictwie wyzszym[122] – Act of 27 July 2005 – Law on higher education;
- Ustawa z 24 sierpnia 2007 o zmianie ustawy o promocji zatrudnienia i instytucjach rynku pracy[123] – Act of 24 August 2007 on the amendment of the Act on promotion of employment and institutions of labour market.
- Ustawa z 8 lipca 2005 o Prokuratorii Generalnej Skarbu Panstwa[124] – Act of 8 July 2005 on General Office of Attorney of the State Treasure.
- Ustawa z 9 czerwca 2006 r. o Centralnym Biurze Antykorupcyjnym[125] – Act of 9 June 2006 on Central Anti-Corruption Office.
- Rozporządzenie Prezesa Rady Ministrów z 24 stycznia 2007 r. w sprawie sposobu przeprowadzania postępowania kwalifikacyjnego w służbie cywilnej[126] Regulation of 24 January 2007 of the Prime Minister on the qualification procedure in civil service
- Ustawa z 13 kwietnia 2007 r. o Państwowej Inspekcji Pracy[127] – Act of 13 April 2007 on State Labour Inspection.

1.1. Nationality requirement

The issue of access to public service is a subject of art. 60 of the Constitution of the Republic of Poland. According to this provision "Polish citizens enjoying full public rights shall have a right of access to the public service based on the principle of equality". Thus, a possibility to take up employment in public sector is open to all Polish nationals who have relevant skills and qualifications.

The abovementioned art. 60 of the Constitution introduces a possibility for all Polish citizens to have an equal access to employment in public service. However, it does not introduce a ban for EU nationals to take up employment in this sector. On the other hand, statutes concerning particular categories of employees provide (or not provide) nationality requirement. In this context art. 39 (4) EC Treaty should be mentioned. According to this provision rules on free movement of workers do not apply to employment in public service. Thus, any national rules on nationality requirement need to be compatible with Community law.

The notion "employment in public service" has been defined by the European Court of Justice. In short, this exception covers posts which are connected to direct or indirect exercise of powers and safeguarding interests of public authorities. Within these limits Member

119 *Journal of Laws [Dziennik Ustaw]* 1989, no. 30, item 158 with subsequent amendments.
120 Consolidated text: *Journal of Laws [Dziennik Ustaw]* 2003, no. 9, item 108 with subsequent amendments.
121 Consolidated text: *Journal of Laws [Dziennik Ustaw]* 2006, no. 97, item 674. (Journal of Laws 2007, No. 247, item 1821).
122 *Journal of Laws [Dziennik Ustaw]* 2005, no. 164, item 1365.
123 *Journal of Laws [Dziennik Ustaw]* 2007, No. 176, item 1243
124 *Journal of Laws [Dziennik Ustaw]* 2005, no. 169, item 1417.
125 *Journal of Laws [Dziennik Ustaw]* 2006, No. 104, item 708. Articles 7 and 48 of the Act introduce the requirement to possess "exclusively" Polish citizenship with regard to Head of the Office and his deputy as well as other officers.
126 *Journal of Laws [Dziennik Ustaw]* 2007, No. 13, item 82.
127 *Journal of Laws [Dziennik Ustaw]* 2007, No. 89, item 589.

States are free to introduce nationality requirement. In other words, certain posts can be reserved only to own nationals.

There are numerous provisions of Polish law that introduce the condition to possess Polish nationality. In the light of previous remarks it should be stated that Polish provisions introducing nationality requirement do not as such breach rules of Community law. It seems, however, that in certain cases Polish regulations go beyond what is allowed by supranational legal order.

Against this background it should be stated that fully compatible with Community law are these provisions of national law which introduce citizenship requirement with reference to military forces and law enforcement agencies. The following institutions should be indicated as an example: Army, the Police, Prison Guard, Border Guard, Customs Officers, as well as Internal Security Agency and Central Anti-Corruption Office.[128]

There are also no doubts with regard to nationality requirement concerning employment of judges, public prosecutors, court executive officers, court appointed curators, notaries. They should have Polish citizenship. Necessity to be a Polish citizen is also understandable as far as diplomatic and consular missions are concerned.

The Act on amendment of some acts because of Poland's membership in the European Union of 24 August 2007[129] changed the provisions of Teacher's Charter. Currently nationals of EU Member States, EFTA States which are parties to EEA agreement and nationals of Suisse Confederation can be employed as teachers on equal footing with Polish nationals.

The posts of public administration which are connected with exercise of powers and safeguarding public interests fall within the scope of exception to free movement rules. The list of such posts in Act on employees of government office and act on self-government offices is relatively long. This category of employees is not a uniform group. Particular employees have different legal status and various duties.

Polish law provides nationality requirements as far as many administrative posts are concerned, both with relevance to state and self government bodies. The Act on Civil Service of 24 August 2006 is of particular importance. It governs the situation of employees of the State administrative agencies, voivodships and other offices which are subordinated to ministers and other central administrative agencies. Posts in these offices are in principle reserved to Polish national, since Act on Civil Service introduces a nationality requirement. This act falls within the scope of art. 39(4) EC Treaty, because it is connected with exercise of power and safeguarding interests of the state.

It seems, however, that nationality requirement as provided by art. 2 point 1 of the Act on civil service which concerns the Principal Inspectorate of Trade Inspection, the Office for Registration of Medical Products and Office for Forest Seed Production (*Biuro Nasiennictwa Lesnego*) goes beyond what is allowed under Community law. Article 2 point 2 of the Act on civil service which concerns citizenship of poviat and frontier veterinarians seems to be incompatible with Community law as well.

Another example of non-conformity of national rules with Community law is the new Act on State Labour Inspection of 13 April 2007. It is quite surprising that art. 39 of this law requires the possession of Polish citizenship to become a state labour inspector. Such posts are connected with supervising working conditions (health and safety regulations included), but not safeguarding general interest of state or public authorities. Therefore it should be

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128 Articles 7 and 48 of the Act of 9 June 2006 introduce the requirement to possess "exclusively" Polish citizenship with regard to Head of the Office and his deputy as well as other officers.

129 *Journal of Laws [Dziennik Ustaw]* 2007, No. 176, item 1238.

concluded that this law is in breach of Community free movement rules as discriminatory against nationals of other Member States.

It should be also enhanced that in previous years many provisions concerning nationality requirement were amended or abolished. (e.g. with regard to teachers, high schools personnel, medical staff, security agencies). Also with regard to captains of sea-going vessels there is no nationality requirement. Thus, in this respect Polish law is compatible with ECJ judgments of 30 September 2003 in cases C-405/01 *Anave* and C-47/02 *Anker*.

1.2. Language requirement

There are no special regulations concerning language requirements as far as employment in public sector is concerned. Thus, the same rules as those applicable to private sector are relevant, i.e. a candidate needs to prove the knowledge of Polish language.

With relevance to activities which can be pursued in the public sector (and private as well) the following legal acts should be mentioned:[130]

- Rozporządzenie Ministra Zdrowia z dnia 23 lipca 2007 r. w sprawie zakresu znajomości języka polskiego w mowie i piśmie koniecznego do wykonywania zawodu lekarza lub lekarza dentysty na terenie Rzeczypospolitej Polskiej[131] (Regulation of Minister of Health of 23 July 2007 on the extent of the oral and written knowlegde of Polish language necessary to carry out profession of a doctor or dentist within the territory of the Republic of Poland;
- Rozporządzenie Ministra Zdrowia z dnia 23 maja 2007 r. zmieniające rozporządzenie w sprawie szczegolowego zakresu znajomości języka polskiego koniecznego do wykonywania zawodu pielęgniarki, położnej przez obywateli państw członkowskich Unii Europejskiej[132] (Regulation of Minister of Health of 23 May 2007 amending the regulation on the extent of the knowlegde of Polish language necessary to carry out profession of a nurse, midwife by nationals of EU Member States);
- Rozporządzenie Ministra Rolnictwa i Rozwoju Wsi z dnia 25 sierpnia 2004 r. w sprawie zakresu znajomości języka polskiego przez lekarzy weterynarii będących obywatelami państw członkowskich Unii Europejskiej[133] (Regulation of Minister for Agriculture and development of Rural Areas of 25 August 2004 on the extent of knowledge of Polish language by veterinary surgeons who are nationals of EU Member States);
- Rozporządzenie Ministra Zdrowia z dnia 17 maja 2002 r. w sprawie szczegółowego zakresu znajomości języka polskiego koniecznego do wykonywania zawodu pielęgniarki, położnej przez obywateli państw członkowskich Unii Europejskiej[134] (Regulation of Minister of Health of 17 May 2003 on the extent of the knowlegde of Polish language necessary to carry out profession of a nurse, midwife by nationals of EU Member States).

Another interesting regulation was introduced by the Act of 20 April 2004 on promotion of employment and institutions of labour market. Chapter 17 of the Act (art. 91 – 100) regulates the legal status of employees of employment public services (EURES network included).

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130 It should be enhanced that there are rules concerning knowledge of Polish language by medical staff.

131 *Journal of Laws [Dziennik Ustaw]* 2007, no. 145, item 1018.

132 *Journal of Laws [Dziennik Ustaw]* 2007, no. 99 item 673.

133 *Journal of Laws [Dziennik Ustaw]* 2004, no. 205 item 2100.

134 *Journal of Laws [Dziennik Ustaw]* 2002, no. 67 item 625.

Articles 98 and 99 which refer to various categories of employees stipulate the requirement that a candidate should "have Polish citizenship or prove such knowledge of Polish language that is sufficient to carry out his/her duties". Thus, knowledge of language (but not nationality) is a condition to be employed in employment offices.

The Act does not regulate how to prove the sufficient knowledge of language. It seems that interview with candidate would be adequate. It should be underlined that this provision of Law on promotion of employment refers both to EU and third country nationals. The described regulation is an exception under Polish legal system, there are no other rules of this kind.

1.3. Recruitment procedure

In 2007 a regulation on recruitment procedure to civil service was enacted. The proceeding is envisaged by the regulation of Prime Minister of 24 January 2007.[135] However, as already stated, civil service is in principle open to Polish nationals only.[136] Therefore the regulation is of no practical importance for EU nationals. It is important to note that this recruitment procedure applies only to "civil service" within the meaning of Act of 24 August 2006. It does not apply to the entire "public service" within the meaning of art. 60 of the Constitution of Poland. There is no general reservation of posts in public service for Polish nationals. As already stated (point 1.1. above) statutes concerning particular categories of employees provide (or not provide) nationality requirement.

In each case a recruitment procedure for posts which can be occupied by EU nationals would be the same as procedure concerning Polish candidates. The type of job to be performed or sector of activity would be decisive to establish particular requirements. For example with regard to medical professions the requirement to speak/write fluent Polish would be necessary. Another example may be found in Act on Higher Education. Universities and other high schools are entitled to precise the requirements which are imposed on candidates.

As a rule foreign candidates would have to fulfill all the conditions which are imposed by the employer. The conditions and requirements need to be the same to Polish and other nationals. Certainly this remark concerns only these posts which are not covered by nationality factor.

There is no reported practice with regard to the proof of sufficient knowledge of language for EU national.

1.4. Recognition of professional experience for access to the public sector

Professional experience may be treated as one of the conditions imposed on candidates to employment in public service. In such a situation previous employment (length of service) in particular institution or branch of activities may be taken into account as a necessary prerequisite or an advantage for a candidate.

In Poland there were no reported judicial decisions or other cases with relevance to this situation. After all, the necessity to know Polish language is itself a very serious practical obstacle to take up an employment in Poland. It seems obvious, however, that periods of

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135 *Journal of Laws [Dziennik Ustaw]* 2007, No. 13, item 82.

136 For the analysis of compatibility of this Act with Community law see above point 1.1. "Nationality requirement".

previous employment both in Poland and other Member States should be treated in the same way.

2. EQUALITY OF TREATMENT

The exception to free movement of workers as envisaged by art. 39 (4) EC Treaty concerns only the access to public service. This provision may not be invoked to differentiate working conditions between Polish nationals and EU nationals, provided that the latter are admitted to particular job.

Article 11[2] of the Labour Code states that employees shall enjoy equal rights for performance of the same duties.[137] This applies in particular to equal treatment of men and women in employment. This is a universal provision which applies to all employees working in all kinds of offices or undertakings. Thus, there is a legal obligation to treat in the same way all employees working in public sector, regardless of their citizenship.

Under Polish law equality of treatment covers all working conditions, e.g. remuneration, promotion, dismissal, vocational training etc. This rule would fully apply to EU nationals employed in Polish public sector. There are no reported judicial decisions relating to this issue. It seems that in some circumstances there could be different treatment with regard to promotion of a particular employee. It may happen that in certain administrative offices jobs of lower rank would be open to EU nationals, but higher post would satisfy the criteria of exercising power and safeguarding public interests. In such a situation it would be justified to require a possession of Polish nationality as a precondition for promotion. Again, this is a theoretical remark and the situation described may be indicated as being in conformity with Community law.

2.1. Recognition of professional experience for the purpose of determining the professional advantages

Professional experience is a justified criterion to obtain certain advantages. Length of service is under Polish law common indicator of such an experience. In public offices a length of service may be a prerequisite for a promotion to a higher post or raise of a salary. According to the Labour Code it also determines length of paid leave. Under Polish law previous employment should be taken into account to calculate a number of free days.

In Polish law there are no provisions which directly refer to employment in public service of other Member States. However, under general principle of equal treatment employment in other Member States should be taken into account to determine employee benefits. There is no reported practice or judicial decisions on this issue.

Recent Legal Literature

A. Drabek, Pracownicy publicznych służb zatrudnienia (Employees of public employment services), *Praca i Zabezpieczenie Społeczne* [Labour and Social Security] nr 2/2007

A. Leja, *Nawiązanie stosunku pracy z pracownikiem korpusu służby cywilnej* (Concluding employment relationship with an officer of civil service), "Studia z zakresu prawa pracy i polityki spolecznej", [Studies on Labour Law and Social Policy], Krakow 2007.

[137] There is also a prohibition of discrimination because of other criteria, see above chapter III.

D. Makowski, Nowa ustawa o Państwowej Inspekcji Pracy (New Act on State Labour Inspection), *Praca i Zabezpieczenie Społeczne* [Labour and Social Security], no 6/2007.

J. Skoczyński,, Nowa ustawa o Państwowej Inspekcji Pracy (New Act on State Labour Inspection), *Monitor Prawa Pracy* (Monitor of Labour Law) no 8/2007.

J. Szpila, *Status prawny funkcjonariuszy Centralnego Biura Antykorupcyjnego* (Legal status of officers of Central Anti-corruption Office), "Studia z zakresu prawa pracy i polityki spolecznej", [Studies on Labour Law and Social Policy], Krakow 2007.

CHAPTER V
Members of the Family

Texts in force

- Ustawa z 13 czerwca 2003 o cudzoziemcach[138] – the Act of 13 June 2003 on Aliens;
- Ustawa z 22 kwietnia 2005 o zmianie ustawy o cudzoziemcach i ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw[139] – Act of 22 April 2005 on amendment of the Act on aliens and the Act on granting the protection to aliens within territory of Poland and other acts;
- Ustawa z 14 lipca 2006 o wjeździe na terytorium Rzeczypospolitej Polskiej, pobycie oraz wyjeździe z tego terytorium obywateli panstw członkowskich Unii Europejskiej[140] – Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members;
- Rozporzadzenie Ministra Spraw Wewnetrznych i Administracji z dnia 24 sierpnia 2006 r. w sprawie wniosków i dokumentów w sprawach prawa pobytu na terytorium Rzeczypospolitej Polskiej obywateli panstw członkowskich Unii Europejskiej oraz członków ich rodzin[141] – the Regulation issued by the Minister of Internal Affairs and Administration of 24 August 2006 on applications and documents and referring to right to residence within the territory of the Republic of Poland of the nationals of EU Member States and members of their families;
- Rozporzadzenie Ministra Spraw Wewnetrznych i Administracji z dnia 24 sierpnia 2006 r. w sprawie wniosków i dokumentów w sprawach prawa stałego pobytu na terytorium Rzeczypospolitej Polskiej obywateli panstw członkowskich Unii Europejskiej oraz członków ich rodzin[142] – the Regulation issued by the Minister of Internal Affairs and Administration of 24 August 2006 on applications and documents and referring to right to permanent residence within the territory of the Republic of Poland of the nationals of EU Member States and members of their families;
- Rozporzadzenie Ministra Spraw Wewnetrznych i Administracji z dnia 24 sierpnia 2006 r. w sprawie wniosków i dokumentów w sprawach prawa stałego pobytu na terytorium Rzeczypospolitej Polskiej obywateli panstw członkowskich Unii Europejskiej oraz członków ich rodzin[143] – the Regulation issued by the Minister of Internal Affairs and Administration of 24 August 2006 on applications and documents and referring to right to permanent residence within the territory of the Republic of Poland of the nationals of EU Member States and members of their families;
- Rozporzadzenie Ministra Spraw Wewnetrznych i Administracji z dnia 31 sierpnia 2006 r. w sprawie opłat za wydanie lub wymiane zaswiadczenia o zarejestrowaniu pobytu obywatela panstwa członkowskiego Unii Europejskiej oraz karty pobytu członka rodziny obywatela Unii Europejskiej[144] – the Regulation issued by the Minister of Internal Affairs and Administration of 31 August 2006 on fees for issuance or exchange of

138 *Journal of Laws [Dziennik Ustaw]*. 2003, no. 128, item 1175.
139 *Journal of Laws [Dziennik Ustaw]*. 2005, no.94, item 778.
140 *Journal of Laws [Dziennik Ustaw]*. 2006, no.144, item 1043.
141 *Journal of Laws [Dziennik Ustaw]* 2006, no. 154, item 1105.
142 *Journal of Laws [Dziennik Ustaw]* 2006, no. 154, item 1106.
143 *Journal of Laws [Dziennik Ustaw]* 2006, no. 154, item 1106.
144 *Journal of Laws [Dziennik Ustaw]* 2006, no. 160, item 1133.

the certificate on registration on the EU national's residence or the residence card of a member of his/her family;

- Rozporzadzenie Ministra Spraw Wewnetrznych i Administracji z dnia 31 sierpnia 2006 r. w sprawie opłat za wydanie lub wydanie zaswiadczenia o potwierdzajacego prawo stałego pobytu lub karty stałego pobytu członka rodziny obywatela Unii Europejskiej[145] – the Regulation issued by the Minister of Internal Affairs and Administration of 31 August 2006 on fees for issuance or exchange of the certificate confirming the permanent residence of the EU national's or the permanent residence card of a member of his/her family;
- Rozporzadzenie Ministra Zdrowia z dnia 18 stycznia 2007 r. w sprawie wykazu chorób, które uzasadniają podjęcie decyzji o wydaleniu z terytorium Rzeczypospolitej Polskiej obywatela UE lub czlonka rodziny niebedacego obywatelem UE z powodu zagrozenia dla zdrowia publicznego[146] – the Regulation of 18 January 2007 issued by the Ministry of Health on the list of deseases which justify taking the decision on expulsion from the territory of the Republic of Poland an EU national or family member who is not an EU national because of threat to public health;
- Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 8 sierpnia 2007 r. zmieniające rozporządzenie w sprawie wniosków i dokumentów w sprawach prawa pobytu na terytorium Rzeczypospolitej Polskiej obywateli Unii Europejskiej i członków ich rodzin[147] – the Regulation issued by the Minister of Internal Affairs and Administration of 8 August 2007 on amendment of the Regulation issued by the Minister of Internal Affairs and Administration of 24 August 2006 on applications and documents and referring to right to residence within the territory of the Republic of Poland of the nationals of EU Member States and members of their families;
- Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 8 sierpnia 2007 r. zmieniające rozporządzenie w sprawie wniosków i dokumentów w sprawach prawa stałęgo pobytu na terytorium Rzeczypospolitej Polskiej obywateli Unii Europejskiej i członków ich rodzin[148] – the Regulation issued by the Minister of Internal Affairs and Administration of 8 August 2007 on amendment of the Regulation issued by the Minister of Internal Affairs and Administration of 24 August 2006 on applications and documents and referring to right to permanent residence within the territory of the Republic of Poland of the nationals of EU Member States and members of their families.
- Kodeks postepowania administracyjnego[149] – The Code of Administrative Procedure.

GENERAL REMARKS

The main legal act which concerns the situation of EU family members is the Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members. The main body of rules concerning legal status of family members was enacted already in 2006. However, this Act was amended in 2007[150] and to certain extent it affects the situation of family members of EU

145 *Journal of Laws [Dziennik Ustaw]* 2006, no. 160, item 1134.
146 *Journal of Laws [Dziennik Ustaw]* 2007, no 18, item 112.
147 *Journal of Laws [Dziennik Ustaw]* 2007, no 172, item 1214.
148 *Journal of Laws [Dziennik Ustaw]* 2007, no 172, item 1215.
149 *Journal of Laws [Dziennik Ustaw]* 2000, no. 98, item 1171.
150 *Journal of Laws [Dziennik Ustaw]* 2007, No. 120, item 818.

nationals. In this respect the Act on Aliens of 13 June 2003 should be mentioned, since it may affect the situation of third country nationals entering and residing in Poland. However, art. 3 of this act expressly states that it does not apply (with some exceptions) to EU nationals, EFTA nationals and nationals of Suisse Confederation, as well as their family members. Some provisions of this act may also be relevant to the situation of those family members of an EU national who possess the nationality of a third country.

Thus, the Act of 14 July 2006 and implementing regulations govern the situation of members of family of EU nationals. It should be stated that in practice rules on family members have importance for those family members who are third country nationals. It should also be taken into account that situation of this category of persons is strictly connected (and to a large extent depends) with the legal status of EU national. Those family members who themselves have Member State citizenship enjoy their own rights under rules on free movement of persons.

Article 2 point 4 of the Act of 14 July 2006 defines the notion "family member" of an EU national. This provision was amended in 2007. The definition "family member" was clarified. According to explanatory memorandum the aim of the amendment was to introduce full compatibility with the Directive 2004/38. Under current regulation "family member" means an alien who is or who is not an EU citizen:

- spouse of an EU national,
- direct descendant of an EU national or his/her spouse, who is in age till 21 or who is a dependant of an EU national or his/her spouse,
- direct ascendant of an EU national or his/her spouse who is a dependant of an EU national or his/her spouse.

Residence rights

Under amended art. 9 point 2 of an Act of 14 July 2006 a family member who is a third country national can enter Polish territory if he/she posses a valid travel document and visa unless the provisions of the Act provide otherwise. Art. 9 point 3 expressly states that the requirement to posses visa does not apply to citizens of these states who are covered by the EC Regulation of Council No. 539/2001. It also does not apply to family members who are not an EU national and has a document issued by another Member State which is an equivalent to residence card or who has a card of permanent residence. Thus, the current regulation fully implements art. 5 point 2 of the Directive 2004/38. It refers to the documents indicated by art. 10 of the Directive.

Article 10 of the Act of 14 July 2006 was amended in 2007, too. This provision refers to issuing visas to third country nationals. A family member who is a third country national should receive a residence visa. The aim of the visa is the reunion with an EU national or residing with him/her. This amendment is connected with the amendments of the Act on aliens[151]. In general, the aim of the changes was to introduce rules concerning free movement within Schengen area.

The visa is denied when a particular person is enlisted as an "undesirable" (Art. 10 point 2). According to amended art. 10 point 3 a visa is granted (or denied) by consul or commander or Border Guard unit. Visa should be issued immediately after lodging a motion. All possible facilities as provided by law should be applied. In case of negative decision[152] it is

[151] This issue is regulated by art. 25 and following of the Act on Aliens.

[152] Rules of Code of Administrative Procedure apply.

possible to lodge an appeal to the Ministry of Foreign Affairs or General Commander of Border Guard. The changes introduced in 2007 implemented articles 5 point 2 and art. 31 of the Directive 2004/38.

It should be stated that a previous legal residence of a third country national is not a condition *sine qua non* to obtain visa. As already stated, all possible facilities as provided by national law should be applied. In this respect art. 33 of Law on Aliens should be mentioned. In exceptional situation an alien (who is a third country national) can obtain a residence visa even when he/she does not fulfill all necessary conditions. One of the possibilities as provided by this provision is "an exceptional personal situation which requires the presence of an alien within the territory of Republic of Poland".

In the light of the abovementioned provisions national authorities are obliged to take into account all the factors which may justify the issuing of a visa. As a rule, the application for a visa is submitted in a Polish embassy or consulate or when entering Poland's territory. It is possible to apply for an extension of residence permit (or change of legal status) while in Poland. However, as a rule a legal residence is required. It seems to be in line with C-109/01, *Akrich* judgment. There are no provisions which would directly apply to a situation when a family member who is third country national resided illegally in another Member State and then moved to Poland.

Residence rights of family members go in line with rights of EU nationals. Thus, to reside up to 3 months it is not necessary to fulfill other residence requirements, but possession of a valid travel document is required.

Right to residence for a period exceeding 3 months for family members who are third country nationals is subject to the conditions imposed also on EU nationals (see chapter I). The legal basis for these rights of family members is art. 18 of the Act of 16 July 2006. This provision was amended in 2007. The personal scope of application was clarified. Currently there is an express reference to "a spouse or a dependent child who accompany or join them" (i.e. accompany or join EU nationals). The amended provision fully introduces articles 7 item 1 c) and art. 7 item 2 of the Directive 2004/38.

Family members should apply for the "Union citizen's card" which is issued by Voivod (art. 20 of the Act). The cost of the procedure amounts 30 PLN. A person concerned should immediately receive a certificate confirming the submission of the request. The residence card of a member of a Union citizen's family shall be issued not later than within 6 months.

Family members who are nationals of the third countries shall retain the right of residence in case of:

- death of a Union citizen if he/she accompanied him/her in the territory of Poland for a period longer than one year preceding the date of death of the Union citizen;
- divorce, annulment of marriage to an EU national if: the marriage lasted for at least 3 years prior to commencing the divorce or annulment proceedings, including one year of residence of a Union citizen in the territory of the Republic of Poland, or by agreement between the spouses or by court order, as a former spouse of the Union citizen he/she has custody of a Union citizen's children, or this is warranted by particularly difficult circumstances, such as having been a victim of domestic violence while the marriage or registered partnership existed, or by agreement between the spouses or by court order, when the former spouse has the right of access to a minor child, provided that the court has ruled that such access must be in the Republic of Poland, and for as long as it is required.

This provision was not amended in 2007.

There is a proceeding relating to abuse of rights by concluding a marriage of convenience. The relevant authority which conducts the proceedings is competent to establish whether the marriage to a Union citizen is a marriage of convenience. It can take into account following facts (art. 25):

- one of the spouses has accepted a financial benefit in return for the consent for contracting a marriage, unless it results from a custom established in a given state or a social group;
- the spouses do not fulfill the legal responsibilities arising from the marriage;
- matrimonial cohabitation is not maintained;
- the spouses have never met before their marriage;
- the spouses do not speak a language understood by both of them;
- the spouses are inconsistent about their respective personal details and about other important circumstances concerning them;
- one or both of the spouses had contracted a marriage of convenience in the past.

This provision was not changed in 2007 either.

Right to permanent residence

An EU national shall obtain right of permanent residence after five years of continuous residence in Poland (art. 42).[153] The same applies to a family member who is a third country national (art. 43-44). Articles 42-44 were amended in 2007 in order to clarify their scope of application. The phrase "if he or she fulfilled all the conditions of residence described in chapter 3 of the Act" was deleted. Thus, for both EU nationals and their family members the residence lasting 5 years is the only prerequisite to obtain the right to permanent residence. According to explanatory memorandum the amendments reflect the interpretation of art. 16 item 1 and 2 of the Directive 2004/38 as presented by the European Commission.

Under art. 45 of the Act there are some exceptional cases when an EU national obtains a right to permanent residence before the elapse of five years period (e.g. reaching retirement age or accident at work). In such situations according to art. 46 the right to permanent residence is granted also to his/her family members, regardless of their nationality (third country nationals included).

Under art. 42 as a rule the right to permanent residence is acquired after 5 years of continuous residence within the territory of Poland. As stated above, this provision has been amended. Similar amendment was introduced into art. 43 and art. 44 which concern rights of family members. The right to permanent residence is retained in case of death of an EU national provided that:

- an employee or self-employed person resided within the territory of Republic of Poland at least for two years before the death, or
- the death of the employee or self-employed person was caused by accident at work or occupational disease.

A family member who has the right to permanent residence shall be provided on his/her request with a permanent residence card of a family member of a Union citizen. The application should be submitted in person to the voivod competent for the place of residence of a

[153] See chapter I.

person concerned before the term of validity of residence card of a family member of Union citizen expires. The application for the issuance of a document certifying the right of permanent residence card should be accompanied by photographs and a valid travel document shall be presented. The costs are 30 PLN (around 8 Euros). The card confirms his/her right to permanent residence in Poland and entitles (together with valid travel document) to cross Polish border without visa.

According to art. 55 of the Act of 14 July 2006 the card for family member is valid 10 years. The person concerned should apply to the voivod competent for the place of residence for replacement of documents on case of change of data included, damage or other circumstances that make establishment of a holder identity difficult or the validity of period of documents expires. In case of annulment of the document certifying the right for permanent residence card of the Union citizen's family member or death of the family member the documents should be returned immediately to the authority that issues the card.

It should be added that new the Regulation of 18 January 2007 issued by the Ministry of Health on the list of deceased, which justifies taking the decision on expulsion from the territory of the Republic of Poland an EU national or family member who is not an EU national because of threat to public health,[154] fully applies to family members of a citizen of a Member State.[155]

2. ACCESS TO WORK

Texts in force

- Ustawa z 20 kwietnia 2004 o promocji zatrudnienia i instytucjach rynku pracy – Act of 20 April 2004 on promoting employment and institutions of the labour market;[156]
- Rozporzadzenie Ministra Pracy i Polityki Społecznej z dnia 10 stycznia 2007 r. uchylające rozporządzenie w sprawie zakresu ograniczeń w sferze wykonywania pracy przez cudzoziemców na terytorium Rzeczypospolitej Polskiej[157] – The Regulation of the Minister of Labour and Social Policy of 10 January 2007 repealing the Regulation on the scope of restrictions on the undertaking of work by foreigners within the territory of the Republic of Poland.

As described in Chapter II, under art. 87 of the Act of 20 April 2004 on promoting employment and the institutions of labour market there are numerous categories of aliens who are entitled to take in Poland employment without a permit. Article 87 point 8 indicates in this respect:
- nationals of EU Member States,
- nationals of those EEA states which do not belong to the European Union,
- nationals of those states which concluded the agreements on free movement of persons with European Communities and their Member States.

Besides, article 87 point 8 d) refers to family members of the abovementioned categories of persons. This provision covers also descendants of a spouse of an EU national till the age of

154 *Journal of Laws [Dziennik Ustaw]* 2007, no 18, item 112.
155 This act was described in chapter I.
156 *Journal of Laws [Dziennik Ustaw]* 2004, no. 99, item. 1001 with further amendments.
157 *Journal of Laws [Dziennik Ustaw]* 2007, no 7, item 54.

21 or who are dependants, as well as ascendants of EU national or his/her spouse who are dependants.

It should also be recalled that the Regulation of the Minister of Labour and Social Policy of 10 January 2007 repealing the Regulation on the scope of restrictions on the undertaking of work by foreigners within the territory of the Republic of Poland abolished all transitional measures with regard to access to national labour market as envisaged by the accession treaty.[158]

Therefore, it should be concluded that family members of EU nationals are entitled to take up employment in Poland without any restrictions or additional formalities. They enjoy full access to national labour market in the same way that EU nationals do.

3. ACCESS TO EDUCATION AND STUDY GRANTS

Texts in force

- Ustawa z 7 wrzesnia 1991 o systemie oswiaty – the Act of 7 September 1991 on the system of education;
- Ustawa z 27 lipca 2005 – prawo o szkolnictwie wyzszym[159] – the Act of 27 July 2005 on higher education;
- Rozporzadzenie Ministra Edukacji Narodowej z 4 pazdziernika 2001 w sprawie przyjmowania osób nie bedacych obywatelami polskimi do publicznych przedszkoli, szkół, zakładów kształcenia nauczycieli placówek[160] – the Regulation of 4 October 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;
- Rozporzadzenie Ministra Edukacji Narodowej z 6 kwietnia 2006 w sprawie nostryfikacji swiadectw szkolnych I swiadectw maturalnych uzyskanych za granica[161] – the Regulation of the Minister of Education and Science on the Nostrification of School Certificates and Maturity Certificates Obtained Abroad of 6 April 2006.

According to the Act of 7 September 1991 EU nationals and their family members are entitled to attend public schools on the same basis as Polish citizens. This issue is regulated by art. 94a of the abovementioned Act, which was amended in 2007.[162] The amendment did not introduce substantial changes in this matter, it rather clarified the scope of provisions in question.

The right to education may be exercised in all kinds of public schools. Article 94a point 2 refers in this respect to migrant workers and self-employed persons who are nationals of EU Member States, nationals of these EFTA states which are party to EEA Agreement and nationals of Suisse Confederation. In addition, under art. 94a point 11 educational rights are granted to all citizens of abovementioned countries (i.e. not only employees or self-employed persons) and their family members who have the right to permanent residence. According to art. 94 a point 2a, the definition of "family member of an EU national" as stated in Act of 14 July 2006 on the entry into, residence in and exit from the Republic of

158 See chapter II.
159 *Journal of Laws [Dziennik Ustaw]* 2005, no. 164 item 1365.
160 *Journal of Laws [Dziennik Ustaw]* 2001, no. 131, item 1458.
161 *Journal of Laws [Dziennik Ustaw]* 2006, no. 63, item 443.
162 *Journal of Laws [Dziennik Ustaw]* 2007, no. 176, item 1238.

Poland of nationals of the European Union Member States and their family members is relevant as far as educational rights are concerned.

It should be mentioned that two latter provisions of Act on the system of education were amended in 2007. Thus, their personal scope was clarified. The current wording is also compatible with the wording of an Act of 14 July 2006.

The Act of 27 July 2005 on higher education refers to the situation of aliens who take up studies in Poland. Chapter 4 (art. 41-44) refers to international cooperation of high schools, but it contains also provisions on education rights of aliens. In this respect art. 43 of the Act is of primary importance. This provision was twice amended in 2007.[163] The changes concern mainly the wording used in this provision. The aim was to make it compatible with the Act on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members.

According to art. 43 point 1 of the Act, aliens can take up and follow studies, doctoral studies as well as participate in scientific research and other activities. Under art. 43 point 2 the same rules that these concerning Polish nationals apply to certain categories of foreigners: migrant workers who are nationals of EU Member States, nationals of EFTA states which are parties to EEA agreement and nationals of Suisse Confederation and their family members when they reside in Poland.

Article 43 point 5 refers to nationals of above mentioned states (and their families) who are not economically active ad who possess financial resources to cover cost of studies. They can take up studies, doctoral studies and other forms of training. However, such persons are not entitled to:

- social grants (i.e. means tested allowance for persons whose income in the family is below certain level),
- special grants for handicapped persons,
- housing allowance,
- food allowance,
- other allowances.

Art. 43 point 6 of the Act on higher education expressly refers to the definition of "family member" as stated in Act on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members.

5. OTHER ISSUES CONCERNING EQUAL TREATMENT (SOCIAL AND TAX ADVANTAGES)

Family members of EU nationals, even when they are third country nationals, are treated as their relatives who possess citizenship of an EU Member State. Thus, the information stated in Chapter III (4) remains relevant. It may be recalled that in 2007 the personal scope of some legal acts which concern social benefits was clarified. As a rule current definitions of "family member" refer to wording used in Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members.

[163] *Journal of Laws [Dziennik Ustaw]* 2007, No. 120, item 818 and *Journal of Laws [Dziennik Ustaw]* 2007, No. 176, item 1238.

Recent legal literature

L. Adamska, *Swiadczenia rodzinne w UE* (Family benefits in the EU), "Polityka Spoleczna" 7/2007

A. M. Świątkowski, *Swoboda przemieszczania się w Europie a ochrona rodziny* (Free movement in Europe and family protection), "Monitor Prawa Pracy" (Monitor of Labour Law), no. 6/2007.

Izabela Wróbel, *Status prawny obywatela państwa trzeciego w Unii Europejskiej*, [The legal status of third country national in the European Union], Wolters Kluwer, Warszawa 2007.

Chapter VI
Relevance/Influence/Follow-up of Recent Court of Justice Judgments

1. As a preliminary remark it can be observed that Polish courts accepted in practice supranational character of the Community law and the necessity to take into account its provisions. It happens more and more often that national courts indicate EC directives and rulings of the ECJ in justifications of their judgments. Polish courts take into account obligation to establish direct effect of Community law and interpret national law in conformity with Community rules. The latter takes place much more often. Another aspect of influence of Community is the fact that ECJ rulings are indicated in some explanatory memorandums of drafts of new legal acts. Certainly such memorandums indicate also relevant instruments of Community law which require implementation.

However, there is very limited case law concerning coordination rules or social advantages for migrant EU nationals. Probably it is caused by the fact that there is no massive migration to Poland and the phenomenon of free movement of workers is still relatively new issue. It can be said that in 2006 (reported in 2007) Polish Supreme Court delivered a judgment based on regulation 1408/71 which concerned a calculation of an old – age pension for a Polish national who had been employed in Germany[164]. There is also a preliminary question asked by Regional Court in Koszalin in case *Nerkowska v. ZUS* (Social Security Institution), which concerns non-contributory benefit due to incapacity to work. This preliminary question is similar to the problem settled by the ECJ in case *Tas-Hagen.*[165]

Therefore, the analysis of importance and potential impact of particular judgments of ECJ have rather theoretical dimension. The compatibility of Polish regulations with ECJ rulings may be analysed.

2. The cases C-212/05 *Hartmann* and C-213/05 *Geven* concern similar problem and can be analysed together. Both of them relate to the question of residence clauses with respect to entitlement to child – raising benefits. According to *Hartmann*, Article 7(2) of Regulation No 1612/68 precludes the spouse of a migrant worker carrying on an occupation in one Member State, who does not work and is resident in another Member State, from being refused a social advantage with the characteristics of German child-raising allowance on the ground that he did not have his permanent or ordinary residence in the former State. On the other hand, Article 7 (2) of Regulation 1612/68 does not preclude the exclusion, by the national legislation of a Member State, of a national of another Member State who resides in that State and is in minor employment (between 3 and 14 hours a week) in the former State from receiving a social advantage with the characteristics of German child-raising allowance on the ground that he does not have his permanent or ordinary residence in the former State. In the latter judgment ECJ accepted that the German legislator granted a child-raising allowance to persons who have a sufficiently close connection with German society, without reserving that allowance exclusively to persons who reside in Germany.

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164 Judgment of 24 October 2006, II UK 98/06, "Judicial Decisions of Supreme Court. Chamber for Labour, Social Security and Public Affairs", No 21-22/2007 item 332.

165 Presented in chapter III, point 4.

Under Polish law the similar benefits (child raising allowance) is provided by the Act of 28 November 2008 on family benefits.[166] Under art. 1 of the Act applies to Polish nationals and those foreigners who are covered by provisions on co-ordination of social security systems. Under art. 1 point 3 the benefits are provided for those aliens (EU nationals included) who reside in Poland during the period of receiving benefit, unless provided otherwise by rules on co-ordination.

Thus, it can be stated that with regard to child raising benefits the Act requires the residence within the territory of Poland. The prerequisite of residence in Poland needs to be fulfilled. There are no other provisions concerning frontier workers and their families. It seems it may be incompatible with Community rules, because there are no provisions on evaluating potential connection of a beneficiary with Polish society. Instead, residence in Poland is required.

It may be added that entitlement to a bonus to a family benefit[167] for EU national was a subject of a ruling of 13 April 2005 No. OW 183/04 of the Supreme Administrative Court (*Naczelny Sąd Administracyjny*) in Warsaw. The Court confirmed the right to family benefit for German national who resided in Poland with dependent child. The Court expressly stated that there was no ground to apply coordination rules. The residence of an EU national in Poland combined with equal treatment principle was decisive for entitlement to a benefit in question.

3. Case C-287/05 *Hendrix* refers to benefits for disabled young people. The ruling concerned a situation when a beneficiary with slight mental disability entitled to a non-contributory pension (so called "Wajong benefit"), who moved from the Netherlands to Belgium, and therefore lost entitlement to the benefit in question. Mr. Hendrix was in the Netherlands employed in an adapted work. He retained his job after moving to Belgium.

In Poland benefit of this kind is provided by Act of 27 June 2003 on social pension.[168] Social pension (*renta socjalna*) is a non-contributory benefit for persons who became incapable to work before reaching maturity or graduating studies. No prior employment is required. The characteristic of Polish "renta socjalna" is in principle the same as "Wajong benefit". For Polish and EU/EEA nationals there is a requirement of residence in Poland to be eligible for the benefit. According to the point 38 of the *Hendrix* judgment residence requirement to reside in Poland seems to be compatible with Community law.

Should the beneficiary carry out an economic activity, "renta socjalna" can be suspended (art. 10 of the Act of 27 June 2003). This benefit should be regarded as social advantage within the meaning of art. 7(2) of the Regulation 1612/68. After moving to another country an employee who receives at the same time social pension should be regarded as a migrant worker within art. 39 EC. It seems that the reasoning of the ECJ is relevant to Polish law (especially points 57 and 58 of the judgment). Thus, when deciding on the entitlement to social pension in case of residence in another country the economic and social links of beneficiary should be analysed. It should be enhanced, however, that the issue of "economic and social links with the state of origin" has been yet not analysed by Polish courts.

It may be added that residence requirement was analysed in another context by Voivodship Administrative Court in Warsaw. Judgment of 20 November 2006 (No. I SA/Wa 1569/06) concerned an application for financial support to cover a part of the cost of mainte-

166 There are some kinds of benefits which are connected with birth or raising the child. See chapter III point 4.

167 It is another benefit provided by the Act of 28 November 2003 on family benefits.

168 See chapter III point 4.

nance for foster family. It is a non-contributory benefit, which is regulated by Act of 12 March 2004 on social assistance.[169] The plaintiff (Polish national) moved to Italy and therefore the prolongation of the benefit was denied. The Court upheld the decision. It said that the benefit in question is excluded from co-ordination rules on the basis of art. 4 item 4 of the Regulation 1408/71. Therefore, requirement to reside in Poland is justified and compatible with Community law. Regarding the facts this judgment should be regarded as correct. However, the Court did not refer to problem of "economic and social links with Poland". It may be expected that this issue will emerge in the future (e.g. transfer of residence of beneficiary not to Italy, but to neighbouring Member State).

4. The ruling C-291/05 *Eind* concerns the right of residence for third country family member of EU national who comes back to the state of origin, even when he does not carry out an economic activity in this state. The ECJ rightly pointed out that in such circumstances there is no internal situation (point 37), therefore rules on free movement apply. Since the plaintiff was no longer economically active, art. 10 of regulation 1612/68 should be applied by analogy. ECJ concluded that when a worker returns to the Member State of which he is a national, after being gainfully employed in another Member State, a third-country national who is a member of his family has a right under Article 10(1)(a) of Regulation No 1612/68, which applies by analogy, to reside in the Member State of which the worker is a national, even where that worker does not carry on any effective and genuine economic activities. The fact that a third-country national who is a member of a Community worker's family did not, before residing in the Member State where the worker was employed, have a right under national law to reside in the Member State of which the worker is a national has no bearing on the determination of that national's right to reside in the latter State.

So, the ruling provides for a possibility for an EU national to claim in his state of origin the right of residence for a family member under art. 10 of regulation 1612/68. It seems that under Polish law Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members would be applicable by analogy to such situation. This act refers to EU nationals moving to Poland and rights of their relatives. However, since the rules on free movement of EU nationals should be interpreted broadly, it seems it would be possible to apply Act of 14 July 2006 to establish rights of a Polish national who took advantage of free movement rules and enjoys status of a "migrant worker" under art. 39 EC Treaty.

5. The ruling C-208/05 *ITC* concerns the refusal to pay by German State Employment Agency a compensation to a private sector recruitment agency in respect of a staff recruitment voucher. The refusal was justified by the fact that the job found by ITC for the person seeking employment was not covered by compulsory social security contributions in Germany.

In Poland Act of 20 April 2004 on promoting employment and institutions of the labour market concerns i.a. private recruitment agencies. Under chapter 6 (art. 18-19) of this Act it is possible to establish such institution (chapter 6). However, there are no rules on cooperation with state authorities. There is also no system of vouchers or other forms of compensation for a private agency which found a job for an unemployed person. Therefore *ITC* ruling has no relevance for Polish legal system.

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169 See chapter III point 4.

6. The judgment C-1/05 *Jia* concerned a German national who resided with her third country spouse in Sweden. The mother of the spouse (also third country national) came to Sweden on basis of tourist visa and applied for a residence permit. The problem is whether Community law, in the light of the judgment in *Akrich*, requires Member States to make the grant of a residence permit to a national of a non-Member State, who is a member of the family of a Community national who has exercised his right of free movement, subject to the condition that that family member has previously been lawfully resident in another Member State.

The ECJ underlined peculiar facts of *Akrich* judgment and concluded that reasoning in this ruling is no relevant to present case. Therefore Community law does not require Member States to make the grant of a residence permit to nationals of a non-Member State, who are members of the family of a Community national who has exercised his or her right of free movement, subject to the condition that those family members have previously been residing lawfully in another Member State.

It should be stated that Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members refers generally to right of residence of family members of EU nationals. There is no requirement of previous lawful residence in another Member State. There is also no definition of "dependency" of a family member. Thus, all appropriate means to prove the situation of being dependant can be invoked. Polish law seems to be compatible with the *Jia* ruling.

7. The ruling C-97/05 *Gattoussi* refers to a Tunisian national who married a German national and settled in this country. He was granted a residence permit valid for three years. Then he received a work permit of indefinite duration. On being informed by Mr. Gattoussi's wife that she had been living apart from her husband, the competent authority curtailed the period of validity of Mr Gattoussi's residence permit to the date on which that decision was notified, and required Mr. Gattoussi to leave Germany without delay, failing which he would be deported to Tunisia. The grounds for that decision were, first, that the original justification for granting Mr Gattoussi a residence permit was now lacking in so far as he was no longer living with his wife and, secondly, that a work permit of indefinite duration does not give rise under German law to any right – independent of and prevailing over the terms of the residence permit – to continue in employment and to remain for a longer period of time in the country.

Mr. Gattousi challenged this decision and invoked art. 64 of the Euro-Mediterranean Agreement. The ECJ stated that this provision is directly effective. Then ECJ underlined that by curtailing the right to remain, the host Member State has restricted the right accorded to a national of a non-member country to engage in employment, even though the person had been granted that right through the issue of a work permit. Therefore, if the host Member State has previously granted the migrant worker specific rights in relation to employment which are more extensive than the rights of residence conferred on him by that State, it cannot then reopen the question of that worker's situation on grounds unrelated to the protection of a legitimate national interest such as public policy, public security or public health. ECJ concluded that on a proper construction of Article 64(1) of the Euro-Mediterranean Agreement, that provision may have effects on the right of a Tunisian national to remain in the territory of a Member State in the case where that person has been duly permitted by that Member State to work there for a period extending beyond the period of validity of his permission to remain (point 43).

Under Polish law Act on aliens of 13 June 2003 is relevant. This law refers to the situation of third country nationals who marry Polish nationals. Under art. 53 point 1) item 6 the residence permit for defined time should be granted to a spouse of Polish citizen.[170] It should be also enhanced that there are no express provisions concerning the situation of Tunisian nationals who reside in Poland. Therefore it seems that a Tunisian national in a situation comparable to Mr Gattoussi could rely on Euro-Mediterranean Agreement to challenge the curtailing the permission for residence after divorce. Any decision or judgment would have to take into account direct effect of art. 64(1) of the agreement and its supremacy towards Polish law. I

It should be stressed, however, that there are not many nationals of Mediterranean States living in Poland. Therefore the problem seems to be of little practical importance.

[170] The right to settle can be granted to such a spouse of Polish national who has been married for 3 years and during preceding 3 years resided in Poland at least 2 years (art. 64 of the Act on Aliens).

Chapter VII
Policies, Texts and/or Practices of a General Nature with Repercussions on Free Movement of Workers

The basic rule on the access of third country nationals to employment in Poland is provided by the Act of 20 April 2004 on promoting employment and institutions of the labour market. Under art. 87 of the Act an alien can take up an employment within the territory of the Republic of Poland, when he/she has the permission issued by the competent voivod.[171] Apart of this regulation there are no coherent migration rules relating to access of third country nationals to employment in Poland. Since there is a lack of employees in some sectors of industry (e.g. construction sector), there was a discussion whether some amendments should be introduced in favour of some Asian countries (e.g. China or India). Discussion related to posting of workers by employers from these countries, and not an employment of individual foreign workers by Polish employers. However, no changes on this issue took place within the reported period.

On the other hand, in 2007 some amendments were introduced in favour of nationals of the countries who are Poland's neighbours and are not EU Members States: Russia, Byelorussia and Ukraine. Under Regulation of Minister of Labour and Social Policy of 5 July 2007[172] citizens of these countries can take up an employment for a period not exceeding 3 months within 6 months without a necessity to obtain a work permit.

Another legal act which should be mentioned in this respect is the Act of 7 September 2007 on the Charter of a Polish National (Ustawa z 7 września 2007 r. o Karcie Polaka).[173] The new law concerns persons who live within a territory of ex-Soviet Union, who has Polish origin and who lost Polish citizenship due to events connected with World War II and post – war period.

Persons who fulfill relevant criteria can apply for a document "Karta Polaka" (Charter of Polish National). Such a document can be issued by a consul to a person who declares affiliation to the Polish nation. It is required to:

- possess at least basic knowledge of Polish language, as well as to know and cultivate Polish customs and tradition,
- declare in writing the affiliation to the Polish nation,
- prove that at least one of the parents or grandparents, or two great-grandparents were of Polish nationality or to prove at least 3 years period of activities connected with promotion of Polish language or culture, or an activity in favour of Polish minority.

The personal scope of application of the Act of 7 September 2007 is limited. Only citizens of following countries can apply for a "Charter of Polish National":

- Armenia,
- Azerbeidzjan,
- Byelorussia,
- Estonia,
- Georgia,

171 Certainly this rule does not apply to EU nationals who do need to fulfil any formalities– see Chapter II.

172 *Journal of Laws [Dziennik Ustaw]* 2007, no. 120, item 824.

173 *Journal of Laws [Dziennik Ustaw]* 2007, no. 180, item 1280. This act took effect on 29 March 2008.

- Kazakstan,
- Kirgisia,
- Lithuania,
- Latvia,
- Moldova,
- Russia,
- Tadzyskistan,
- Tourkmenistan,
- Ukraine,
- Uzbekistan.

The proceeding to obtain a "Charter of Polish National" is free of charge. A person who received a "Charter of Polish National" is entitled to:
- take up an employment without permission,
- take up self-employed activities,
- take up studies, doctoral studies and other form of education, as well as participating in scientific research,
- take up primary and secondary education,
- receive health care services in case of emergency,
- enjoy 37% discount in public transportation,
- have free access to public museums.

It should be noted that obtaining a "Charter of Polish National" does not imply receiving Polish citizenship. This document does not entitle to cross national border and enjoy free movement rights. It does not grant right to enter and does not grant right to permanent residence, either. The visa is required, but the fee is refundable. As a rule "Charter of Polish National" is issued for 10 years. It seems that a right to take up an employment or self-employment under the same rules that concern Polish citizens is of primary importance.

A holder of a "Charter of Polish National" is still a citizen of third country.[174] He/she is entitled to take up an employment without permission. Therefore the problem of EU preference principle arises (i.e. that EU labour is preferred over non-EU labour). Under an accession treaty a priority should be granted to EU nationals within a transitional period. As already stated (see Chapter II), all restrictions concerning employment of EU nationals in Poland were abolished in 2007. Poland does not apply any transitional measures, so there is no legal obligation to grant preferential treatment to EU nationals in comparison to third – country workers. Instead, holders of "Charter of Polish National" and EU nationals enjoy the same rights with regard to employment. Besides, holders of "Charter of Polish National" do not enjoy better position than Polish citizens. Therefore, it seems that provisions of the Act of 7 September 2007 are in conformity with the EU preference principle.

[174] Unless he/she is a citizen of Estonia, Latvia or Lithuania. However, citizens of these countries already enjoy free movement rights in Poland and can take up an employment without permission.

Chapter VIII
EU Enlargement

Texts in force

- Ustawa z 20 kwietnia 2004 o promocji zatrudnienia i instytucjach rynku pracy – Act of 20 April 2004 on promoting employment and institutions of the labour market[175]
- Rozporzadzenie Ministra Pracy i Polityki Społecznej z dnia 10 stycznia 2007 r. Uchylające rozporządzenie w sprawie zakresu ograniczeń w sferze wykonywania pracy przez cudzoziemców na terytorium Rzeczypospolitej Polskiej[176] – The Regulation of the Minister of Labour and Social Policy of 10 January 2007 repealing the Regulation on the scope of restrictions on the undertaking of work by foreigners within the territory of the Republic of Poland

As stated in chapter II, this decision concerns also citizens of Bulgaria and Romania. Therefore, the issue of transitional measures is from Polish perspective irrelevant. Instead, all the remarks contained in Chapter II are adequate as far as a situation of nationals of new Member States is concerned.

175 *Journal of Laws [Dziennik Ustaw]* 2004, no. 99, item. 1001 with further amendments.
176 *Journal of Laws [Dziennik Ustaw]* 2007, no 7, item 54.

Chapter IX
Statistics

As already stated in this report, in January 2007 Poland abolished all the restriction on the access to the national labour market. As a result no formalities are required from EU nationals who take up employment in Poland. Therefore there are no current statistics on the number of EU nationals who are employed in Poland in 2007.[177] The only available source is the information on residence in Poland, i.e. the data on the number of EU, EEA and Suisse nationals who register their stay for the period exceeding 3 months (see table 1 below).

Table No. 1. Foreigners who applied for registration of an EU national in Poland in 2007 (according to nationality)[178]

Nationality	Number of persons
AUSTRIA	262
BELGIUM	168
BULGARIA	1,315
CYPRUS	4
CZECH REPUBLIC	213
DENMARK	197
ESTONIA	17
FINLAND	95
FRANCE	902
GREECE	69
SPAIN	353
IRELAND	79
ICELAND	7
LITHUANIA	271
LUXEMBOURG	3
LATVIA	74
MALTA	2
THE NETHERLANDS	378
GERMANY	7,373
NORWAY	151
PORTUGAL	157
ROMANIA	327
SLOVAKIA	175
SLOVENIA	34
SWISS CONFEDERATION	65
SWEDEN	315
HUNGARY	93
UNITED KINGDOM	865
ITALY	723
In total:	**14687**

177 According to the information obtained at the Ministry of Labour and Social Policy.

178 Data provided by the Office for Foreigners.

According to information obtained at Ministry of Labour and Social Policy it can be evaluated that the main reason to reside in Poland is to carry out professional activity. However, as stated above, there are no current statistics which provide more specific information, e.g. on length of employment or sector of activity.

For the sake of comparison the data on work permissions in previous years has been included as well (see table 2 below).

Table 2. Number of work permissions for nationals of EU, EEA and Suisse confederation in years 2004-2006[179]

Country	**Work permissions**		
	2004[180]	**2005**	**2006**
Austria	178	95	34
Belgium	128	44	20
Cyprus	4	Not required	Not required
Czech Rep.	114	Not required	Not required
Denmark	164	94	48
Estonia	4	Not required	Not required
Finland	37	33	9
France	655	358	294
Greece	23	9	7
Spain	87	68	22
Ireland	46	Not required	Not required
Iceland	0	0	0
Lithuania	31[9]	Not required	Not required
Luxembourg	2	2	0
Latvia	6	Not required	Not required
Malta	0	Not required	Not required
Netherlands	231	112	61
Germany	970	518	281
Norway	41	12	5
Portugal	55	25	15
Slovakia	32	Not required	Not required
Slovenia	12	Not required	Not required
Swiss Conf.	26	22	14
Sweden	110	Not required	Not required
Hungary	27	Not required	Not required
United Kingdom	293	Not required	Not required
Italy	383	221	0 (do1.08.2006r.)
In total:	**3,659**	**1,613**	**810**

179 According to the Ministry for Labour and Social Policy

180 With reference to the following countries the requirement to obtain a work permit was in force only till 30 April, 2004: Cyprus, Czech Republic, Estonia, Hungary, Ireland, Lithuania, Latvia, Malta, Slovakia, Slovenia, Sweden, the United Kingdom.

Chapter X
Miscellaneous

Some electronic sources of information and addresses of the institutions

- www.europa.eu.int/eures – EURES
- www.ukie.gov.pl – Office of the European Integration
- www.mpips.gov.pl – Ministry of Labour and Social Policy
- www.mswia.gov.pl – Ministry for Internal Affairs
- www.migration-news.uw.edu.pl – Bulletin devoted to migration issues by University of Warsaw
- www.csm.org.pl – Center for International Affairs
- www.polacy.gov.pl – a new website devoted to migration issues, especially situation of Polish nationals in the EU Member States.
- www.udsc.gov.pl – Office for Foreigners

Principal conferences on free movement of workers in 2007

- Conference on Migration, organized by International Migration, Integration and Social Cohesion IMISCOE/European Network of Excellence and Centre of Migration Studies of the Warsaw University, Warsaw, 23 April 2007.
- "New tendencies in free movement of persons and freedom to provide services in the European Union", organized by the Chair of European Law of the Jagiellonian University, Grodek nad Dunajcem, 28-29 May 2007.
- "Economic Migration in the European Union – Problems and Challenges", organized by Ministry of Foreign Affairs and Ministry of Labour and Social Policy, Warsaw, 24 September 2007.
- "Migration – an added value?", organized by Catholic University of Lublin in cooperation with Ivan Franco State University in Lvov (Ukraine), Lublin, 20-21 October 2007.
- "Intention Action Programme for Benefit of Polish Economic Migration to Ireland", organized by Association of Offices for Citizen's Advise (Zwiazek Biur Porad Obywatelskich), Warsaw, 31 October 2007.