

**REPORT
on the Free Movement of Workers
in Poland in 2011-2012**

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Introduction

There have been no significant changes in Polish legislation during the reporting period. The Act on entry that implements Directive 2004/38 has not been changed at all and there are no pending drafts amending the Act. Such a stable situation is based on two major factors. First of all, Polish law generally conforms with EU regulations on free movement rights. Secondly, the scale of migration to Poland from EU countries is not significant. Polish nationals still far more frequently decide to migrate to other EU countries (mainly to so called 15 EU Member States) than EU nationals decide to come to Poland. Therefore the issue of free movement right for EU workers and members of their families is not at high political agenda in Poland.

The number of potential beneficiaries of those provisions is very low.

Also during Polish presidency in EU in the second half of year 2011 the issue of migrant workers and members of their families was not a priority. In the final report on Polish Presidency that was finally approved, there is only one minor remark concerning this issue, i.e. that during the meeting of EPSCO in October 2011, the benefits of labour migration were discussed in the context of shortage of labour forces in certain Member States. However, nothing else except such general remarks are introduced in the report.¹

The most important achievements and developments that are worth mentioning are mainly focused on the status of third country nationals who do not benefit from the status of family members of migrating EU nationals.

As was mentioned in the last Report, last year the document ‘Migration Policy for Poland’ was introduced by governmental officials and experts appointed by the former Minister of Administration and Internal Affairs. The aim of the document has been to make a comprehensive analysis of the situation of third country nationals, other than family members of EU migrating citizens and to define further actions to be done to on the one hand solve the problem of illegal immigrants but on the other to introduce such legislative initiatives that would make Poland an attractive country for this group of foreigners.

Surely one of the form of execution of aims of the ‘Migration Policy of Poland’ has been introduction of the abolition procedure in Poland.

As of January 1, 2012 new provisions have enabled foreigners to legalise their stay in Poland.² Only those foreigners who stayed illegally in Poland as of January 1, 2012 and continuously at least since December 20, 2007 or since January 1, 2010 and who prior to that date were granted a final decision on refusal to award the refugee status along with the expulsion decision or for whom on 1 January 2010 next proceedings for the award of the refugee status were carried out could apply for abolition. The application could have been submitted since January 1, 2012 till July 2, 2012.

Overall 8801 applications were submitted, mainly by Vietnamese, Ukrainian and Pakistan citizens.

1 The Report Polish Presidency of the Council of the European Union 1 July-31 December 2011 was finally adopted by the Polish government on 17 April 2012, www.pl2011.eu.

2 On basis of the Act of 28 July 2011 on legalisation of stay of some foreigners in the territory of the Republic of Poland and on some amendments to the Act on granting protection to foreigners in the territory of the Republic of Poland and to the Act on Foreigners, *Journal of Laws* of 2011, no. 191, item 1133 (ustawa z dnia 28 lipca 2011 r. o zlegalizowaniu pobytu niektórych cudzoziemców na terytorium Rzeczypospolitej Polskiej oraz o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej i ustawy o cudzoziemcach; <http://www.udsc.gov.pl/files/prawo/ustawy/D2011133.pdf>).

Another important legislative initiative focused on third country nationals which implemented EU directive 2009/52 has been the Act on consequences of employing third country nationals staying illegally in Poland.³ The act directly excludes from its scope EU citizens and members of their families. The act prohibits to employ illegal foreigners and introduces penal and administrative sanctions for Polish employers who do not obey with its rules.

Lastly, the Act of foreigners and the Act on promotion of employment and labour institutions have been amended also in order to implement following EU directives covering the situation of third countries nationals (and not EU nationals or their family members): 2008/115 and 2009/50.

³ *Journal of Laws* of 2012, item 769.

Chapter I

The Worker: Entry, residence, departure and remedies

Main texts in force:

- Act on entry into, residence in and exit from the Republic of Poland of nationals of the European Union Members and their family members of July 14, 2006 that implements Directive 2004/38,
- Act on Higher Education of July 27, 2005,
- Act on promotion of employment and labour institutions of April 20, 2004,
- Act on evidence of people of September 24, 2010.

1. TRANSPOSITION OF PROVISIONS SPECIFIC FOR WORKERS

The Act of July, 14 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 (*ustawa o wjazdzie na terytorium Rzeczypospolitej Polskiej, pobycie oraz wyjeździe z tego terytorium obywateli państw członkowskich Unii Europejskiej i członków ich rodzin*, hereinafter: ‘the Act on entry’)⁴ implements provision of Directive 2004/38 into Polish legal order.

There have been no changes in any provisions of the Act as from the last Report, therefore all remarks done in last Report remain binding. As regards implementation of specific provisions of Directive 2004/38 specific remarks are as follows:

Art. 7, para 1a and art. 8.3.a of the Directive

According to Article 16.1.1 of the Act on entry, employees and self-employed are entitled to stay in Poland for a period longer than 3 months. However, they are obliged to register their stay.

In order to register and lawfully reside an applicant – economically active EU citizen shall proof that he/she is employer or self-employed person. According to the Regulation of Minister of Administration and Internal Affairs of August 24, 2006 on applications and documents on the right of stay at the territory of Poland of EU citizens and members of their families (*rozporządzenie Ministra Administracji i Spraw Wewnętrznych w sprawie wniosków i dokumentów w sprawach pobytu na terytorium Rzeczypospolitej obywateli Unii Europejskiej i członków ich rodzin*),⁵ employers and self-employed persons shall submit written declarations of employer or entitled entity either confirming the fact of being employed or eagerness to employ the applicant or in case of self-employed a declaration of being registered into the National Court Register or declaration of having a certificate of entry into the records of economic activity. The requirements listed in the Regulation were amended on December 7, 2012 with the effective date as of January 1, 2012.⁶ According to previous provisions, it was not enough for self-employed applicants to present only a declaration of being registered into certain certificates or registers – a certified copy from these registers were mandatory to be presented. Current provisions surely facilitate the registration

4 *Journal of Laws* of 2006, no. 144, item 1043.

5 *Journal of Laws* of 2006, no. 154, item 1105.

6 *Journal of Laws* of 2011, no. 282, item 1655.

procedure. However, these amendments have been not a consequence of any obligation to facilitate registration procedure for EU citizens, but they result from the amendment of internal provisions on such certificates.

The request, submitted in person to register stay, shall be done not later than on the day following day after the expiry of 3 months from the date of entry to the territory of Poland.

Applications that shall be filled by EU applicants require to list certain information that are not required by the Directive 2004/38 such as: names of parents, PESEL number (if applicable), height, special marks, colour of eyes.

Art. 7.3.a-d of the Directive 2004/38

Art. 17 of the Act on entry implements art. 7.3 a-d of the Directive. Art. 17 has not been amended as from the date of entering into force this Act.

According to this provision, an EU citizen who is no longer employed or does not undertake self-employment anymore shall keep the rights of employees and self-employed persons in following cases:

- where 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.

If the period of employment or other gainful activity in their own name and on their own behalf in Poland preceding unemployment referred to in point 2 above is less than one year, EU citizens shall retain the right to reside granted to an employee or self-employed person for a period of 6 months from the date of the registration in Poviat Employment Office.

Art. 14.4 a-b of the Directive 2004/38

As regards the expulsion from the territory of Poland of employed EU citizens or those EU citizens that have entered territory of Poland in order to seek employment, the Act on entry concerns only cases where an expulsion decision is taken when an individual behaviour constitutes a threat for defence policy or national security, as well as for public safety, public order or public health (Part V of the Act on entry). The Act on entry does not contain provisions specifically implementing Art. 14 (4a-b) of the Directive 2004/38.

In the Act on entry there is no direct reference to the situation of job-seekers. They shall be treated as non-economically active citizens who shall have a sufficient financial resources in order not to become a burden for Polish state.

However, as the provisions of expulsion contain only situations when EU citizen or member of his/her family constitutes a threat of for interests of Polish society such as security or defence than the interpretation leads to a conclusion that in cases listed in Art. 14.4 a-b of the Directive, in the light of pro-European interpretation of national law, it shall be not possible to expel beneficiaries of the Directive 2004/38 from the territory of Poland when no such threat has been proved.

Additionally, Art. 70 of the Act on entry lists circumstances that shall be mandatory taken into consideration when issuing decision on expulsion. These circumstances are as

following: previous period of residence at the territory of the Republic of Poland, age and state of health, family and economic situation, social and cultural integration with the country of stay and links with the country of origin.

The execution of expulsion procedures are extremely rare in case of EU citizens. According to the director of the regional Office for Foreigners in Malopolska, it is extremely difficult to expel EU citizens or members of their families due to substantive scope of protection granted them by Directive 2004/38. Only very serious cases of threat for fundamental social interests of Polish society may form grounds for such a decision. Therefore as a result of above, in 2011 only 6 decisions on expulsion were issued against EU citizens (out of 1134 in total) – 1 for Greek and 5 for Romanian citizens. An even lower scale of refusals takes place as regards refusal to enter territory of Poland – the commander of Border Guard issued in 2011 only one such decision against a German citizen (out of 21 657 in total in 2011).

Art. 24.2. of the Directive 2004/38

Students and EU job-seekers are excluded from the general rule of equal treatment as regards access to social assistance. Maintenance aid during studies for economically inactive EU citizens and members of their families are excluded according to Article 43 para 5 of the Act of July 27, 2005 on Higher Education (*Ustawa o szkolnictwie wyższym*).⁷ According to this Article, EU citizens and members of their families (as well as citizens of Switzerland and European Economic Area Member states), who are not economically active, but posses sufficient resources for maintenance during studies, shall have a right to study at the territory of Poland on the same rules as are applicable to Polish citizens. However, the scope of equal treatment is limited. Such non-economically active individuals cannot benefit from social assistance – i.e. maintenance aid for students, special maintenance aid for disabled and aid payment.

Art. 43, para 5 of the Act has been changed since the last reporting period.⁸ As from October 1, 2011, non-economically active individuals cannot benefit from 3 kinds of social benefits, as mentioned above. Before the amendment, they also could not benefit from accommodation and meals grant. In the explanation to the amendment there is no reasoning of making such an amendment. However, as in the Act still such social benefits for students as accommodation and meals grant are available, taking into account the general rule on equal treatment of EU students in comparison with Polish students, such an amendment leads to a conclusion that non-economically active citizens shall have a right to be granted these two kinds of social support.

2. SITUATION OF JOB-SEEKERS

There are no special provisions concerning job-seekers in the Act on entry. Job-seekers are covered by general rules according to which, periods of stay of EU citizen or members of his family up to 3 months are not subjected to any requirements other than requirement to posses valid identity card or passport (and in case of third country national visa where necessary).

⁷ *Journal of Laws* of 2005, no. 164, item 1365.

⁸ *Journal of Laws* of 2011, no. 84, item 455.

As regards Art. 14.4.b of the Directive 2004/38, it has to be emphasized that Act on entry does not contain any provisions that directly relates to this provision. Conditions to be expelled from the territory of Poland are collectively described in Chapter 5 of the Act on entry. EU citizens may receive an expulsion decision in the case when their territory constitutes a threat for defense policy or national security as well as for public safety, public order or public health. The state of play in this regard has not changed since lat Report.

The status of job-seeker according to Act of April 2004, 20 on promotion employment and labour institutions (*ustawa o promocji zatrudnienia i instytucjach rynku pracy*),⁹ does not entitle to receive any financial benefits. Only those who qualify for the status of unemployed, i.e. those who have worked out a certain period (generally period of 365 days within the last preceding 18 months) and are eager to take up further employment shall be qualified to receive unemployment benefit. Job-seeker, who has not fulfilled this requirement, after registering in the relevant Poviat Office, shall be entitled to non-financial forms of support, such as in general assistance to find a job or to attend various workshops and vocational trainings that aim at raising his qualifications in order to find a job. No financial assistance can be granted. Therefore only those having a status of unemployed and seeking for a job may receive financial assistance. A job-seeker may be deprived a status of job-seeker for a period of 120 days if inter alia he/she does not confirm within period of 90 days the eagerness to look for a job. Additional cases which causes lost of job-seeker status are as follows: a job-seeker has not attended meeting organized by Poviat Employment Office and has not informed the Office about justified reasons of the absence; he/she has not taken up or resign from taking part in individual plan of activation, trainings, etc.

As regards the definition of unemployed and job-seeker, there is an important difference. Definition of job-seeker covers also family members of EU citizens, whereas definition of unemployed does not cover family members of EU citizens.

In obtaining status of unemployed and job-seeker, there are no discriminatory rules between Polish citizens and EU citizens. If both categories of individuals fulfil requirements that are applicable to either unemployed or job-seeker, then all these categories of applicants shall be granted relevant status, irrespective of nationality. Additionally as regards employment agencies which shall provide support for inter alia job-seekers in the form of job brokerage, personnel consultancy and occupational guidance, art. 19c of the Act of promotion clearly states that they shall not discriminate persons for whom they seek employment or other paid work on ground of sex, age, disability, race, religion, ethnic origin, nationality, sexual orientation, political views, religious persuasion or trade union membership.

Art. 74 para. 4 of the Act on promotion of employment and labour institutions only regulates situations in which in situation when a given applicant has been granted the right for unemployment benefit in Poland and then decides to seek for employment abroad, than he shall retain the right to have unemployment benefits for the time he seeks employment, but only when he moves to EU or EEA Member States or a state which has entered into an international agreement with EU and its Member States according to which its nationals are entitled to execute free movement rights. In such situations, regulation on coordination of social security benefits shall be applicable.

No reference to the *Antonissen* case can be found neither in the law nor in the administrative guidelines.

All these matters are also analysed in a thematic report on job-seekers.

⁹ *Journal of Laws* of 2008, no. 69, item 415.

3. OTHER ISSUES OF CONCERN

The new Act of September 24, 2010 on evidence of people (ustawa o ewidencji ludności) will enter into force on January 1, 2013.¹⁰ The Act that entered into force on December 31, 2011 postponed the date of entering the Act on evidence by 1 year – from 1 January 2012 till 1 January 2013.

The Act on evidence directly states in Art 74 that the obligation to register (within the meaning of ‘obowiązek meldunkowy’) will be deleted. Currently, according to still being in force Act on evidence of people and registration documents of April 10, 1974 (ustawa o ewidencji ludności I dowodach osobistych), there is an obligation for EU citizens and members of their families to register their stay.¹¹ According to the Act, EU citizens shall register their stay if the period of stay in Poland exceeds 3 days and they do not stay in a hotel, hospital or university premises. Additionally EU citizens and members of their families are obliged, in case of stay for a period exceeding 3 months to register for a temporary stay (and it shall not be identified or understood as the register of stay within the meaning of obligations listed in the Directive 2004/38). If EU citizen or members of his family obtain the right of permanent stay in Poland, than there is an obligation to register within the meaning of ‘obowiązek meldunkowy’ for an undefined period. In order to register, the applicant must present the legal title to the flat (accommodation) he will stay in. The legal title shall not be restricted to the ownership title. All other forms such as rental, gratitude lending are acceptable.

Therefore the obligation to register (in the meaning of ‘obowiązek meldunkowy’) according to the Act on evidence may be treated as questionable under EU law as more cumbersome than obligations listed in the Directive 2004/38. Therefore the fact that this obligation will be repealed as from 1 January 2013 shall be assessed very positively.

However, there are no reported cases of declaring above provisions as incompatible with EU law by beneficiaries – i.e. EU citizens and members of their families.

Also in this part of Report it is worth to show the scale of migration to Poland of EU citizens in 2011. As can be seen, the level of migration is not significant and the level of migration remains quite stable while comparing year to year.

NATIONALITY	Applications for registration of stay	Applications for registration of permanent stay
	6 483	1062
Including		
most popular:		
GERMANY	1821 (28,2%)	335 (32,9%)
ITALY	572 (8,8%)	103 (12,3%)
FRANCE	545 (8,4%)	69 (7,2%)
GREAT BRITAIN	469 (7,2%)	83 (8,7%)

10 *Journal of Laws* of 2010, no. 217, item 1427.

11 *Journal of Laws* of 2006, no. 139, item 993.

In 2011, only 89 applications for registration of stay were submitted by family members of EU citizens and only 3 for registration of permanent stay (2 from Ukraine citizens and 1 from Russia citizen).

In comparison, below there is a list of the most popular third country nationals who applied in 2011 for a stay for a temporary period in Poland:

NATIONALITY	Applications	Permits
	33263	29653
Including		
most popular		
UKRAINE	9 114	8165
CHINA	2987	2727
VIETNAM	2413	1915
BELARUS	2011	1832
RUSSIA	1492	1323

Opening of labour markets for Polish citizens in Germany and Austria:

Germany and Austria opened their labour markets for Polish citizens in May 2011, however, there are still no reliable data as to the level of migration to those countries after May 2011. There are predictions that around 50 000 Polish citizens decided to migrate to Germany and the level of registered Polish citizens in this country has risen by 27%. However, still many of Polish citizens still work illegally, without any registration as regards tax or social security benefits.

The Polish Ministry of Labour and Social Policy as from accession to EU every year publishes the analysis of the scale of free movement of Polish workers as well as scale of workers coming from EU and EEA countries to Poland. However, this year no such report has been published so far. Therefore the last report was issued on May 2011 and it contained only predictions as to the scale of migration to Germany and Austria¹².

4. FREE MOVEMENT OF ROMA WORKERS

The situation of Roma population not only in Poland, but also globally in the EU was one of the important issues for Polish Presidency in EU. The meeting of the VIth European Platform on the inclusion of Roma population in Poland was held in November 2011r.

There is the special Governmental Programme on Roma society in Poland. The Programme has been launched in 2003 and every year there is a new edition of the Programme. The Programme is to be continued until 2013 with a possibility to be further prolonged, if necessary. Taking into account still difficult situation of Roma workers, surely, the Programme will not expire in 2013.

There is also a joint Committee of Government and National and Ethnic Minorities where there is a special subcommittee devoted solely to Roma issues and which regularly meets (on monthly basis) to discuss the most important issues concerning Roma population in Poland.

12 The Analysis of free movement rights – Monitoring przepływu pracowników między Polską a państwami Europejskiego Obszaru Gospodarczego, May 2011, www.mpips.gov.pl.

The Roma community is regarded in Poland as one of national and ethnic minorities according to the Act of January 6, 2005 on National and Ethnic Minorities and Regional Language (ustawa o mniejszościach narodowych I etnicznych oraz o językach regionalnych)¹³. On basis of the Act, Poland shall give them full legal protection and assistance. Additionally, according to Art. 35.2 of the Constitution, national and ethnic minorities shall have the right to establish educational and cultural institutions, institutions designed to protect religious identity, as well as to participate in the resolution of matters connected with their cultural identity.

There are several spheres of life where Polish government would like to support Roma population, but the priority is given to education. Moreover the Programme includes tasks aiming at combating unemployment, guaranteeing security, supporting culture and disseminating of knowledge about the Roma community in Poland. Every year more than 10 million PLN (circa 2,5 million EUR) is devoted to the Programme. It is the Minister of Administration and Internal Affairs who is responsible for allocating funds for programmes devoted to Roma population. Funds are allocated on basis of competition of applications. They are assessed by territorial representative of central government – voivods who send their opinion to Minister who finally decides about allocation of funds.

Additionally there is a special action within Human Capital Programme (that is funded by EU funds) solely devoted to Roma issue. These priorities of the Human Capital Programme are connected with identification of main problems of the Roma community in Poland (which are probably also similar in other Member States) such as: a very low level of education, poor material situation, very high unemployment rate, lack in social integration with Polish citizens, health problems. The subcommittee that has been mentioned above, during every meeting analyzes the scope of use of funds available under this EU Programme to support Roma people in Poland.

According to statistics, between 75% up to even 95% in some parts of Poland the Roma population lives in Poland in such poverty that they make use of the social assistance benefits.

According to the national census that was done in 2011, Roma affiliation was declared by overall 16 000 respondents. 12 000 respondents declared such an affiliation upon first question, and additional 4 000 after explanations by the interviewers.

However, the problem of Roma population with special emphasis on the need to support them is not considered by Polish population as an important issue. There are media news concerning Roma people but rather only in a context of some acts of discrimination by Polish citizens or in a context of criminal incidents with participation of Roma representatives.

¹³ *Journal of Laws* of 2005, no 17, item 141.

Chapter II

Members of the Family

Main texts in force:

- Act on entry of July 14, 2006
- Act on civil acts of September 29, 1986
- Act on aliens of June 13, 2003.

1. THE DEFINITION OF FAMILY MEMBERS AND THE ISSUE OF REVERSE DISCRIMINATION

Art. 2 para 4 letters a-c of the Act on entry contains the definition of family members of EU citizens. According to this provision, for the purpose of the Act on entry following group of beneficiaries shall be qualified as family members:

- a) spouse,
- b) direct descendants of EU citizen or his spouse who are under the age of 21 or are dependants of EU citizen or his spouse,
- c) direct ascendants of EU citizen or his spouse who are dependants of EU citizen or his spouse.

Therefore the Act on entry implements Art. 2.2 of the Directive 2004/38.

There is no recognition of registered partnerships either between same or different sex, therefore consequently no registered partnerships are recognized in the Act on entry.

The Act on entry itself does not contain any provision that implements Art. 3.2 of the Directive on facilitation measures for other members of family, that are outside the scope of definition of family members.

However, the provision of Art. 3.2 of the Directive 2004/38 may be applied by reference to Art. 53 a of the Act of June 13, 2003 on aliens (*ustawa o cudzoziemcach*)¹⁴. According to this provision, a temporary right to stay shall be granted to those aliens who are eager to accompany either Polish or EU citizen because of family ties that are between them.

There are still problems in granting certificate for marriage abroad in case of same-sex partnerships/marriages. Act on civil status provides that such a certificate may be granted only if the marriage abroad will be entered in compliance with Polish law. Therefore no certificate will be granted if the applicant declares in the application form (which is mandatory to be filled in) that he would like to enter into same sex partnerships abroad.

According to Art. 71 of the Act on civil status, a certificate may be granted if an applicant fulfills requirements to enter into marriage under Polish law. Therefore if the applicant states that he would like to enter into registered partnership abroad with same sex partner, no certificate will be granted. Such a provision in the opinion of rapporteur unjustifiably restricts the possibility for Polish citizens to make use of provisions of other EU legislations in the sphere of family law.

¹⁴ *Journal of Laws* of 2003, no. 128, item 1175.

Reverse discrimination

The issue of reverse discrimination is not directly tackled in the Act on entry. However, it does not mean that the problem has not been noticed by Polish authorities. Even before Poland joined EU, the Polish Constitutional Tribunal analysed the problem of reverse discrimination in the light of principles of equality that are one of main principles in Polish constitution.

In the judgment of Constitutional Tribunal on bio-fuels, that was announced on April 21, 2004, the Tribunal stated that the scope of the freedom enjoyed by the legislator in enacting regulations concerning restrictions on economic freedom, its delimitation and the interpretation of the notion of ‘important public reasons’, as contained in Article 22 of the Constitution, must be assessed in the light of Poland’s participation in the European Common Market. This has particular consequences in relation to the constitutional assessment of reverse discrimination – understood as enacting restrictions on economic freedom which apply only to nationals, since their application to other EU citizens is prohibited by EU law. Whilst discrimination against national entities is irrelevant in the light of Community law, it is the constitutional duty of national authorities to protect against such discrimination¹⁵. Therefore, although the issue of reverse discrimination is irrelevant from the perspective of EU law and even if the Act on entry does not contain provisions that prohibit the application of reverse discrimination, it does not mean that the possibility to apply the reverse discrimination is acceptable under Polish law.

Moreover, the problem of reverse discrimination was additionally analysed in the light of the Act on entry by the Supreme Administrative Court in judgment of November 24, 2008 in the light of provisions on expulsion as stated in the Act of aliens¹⁶ and in the Act on entry. The problem of expulsion of family members of Polish citizens was discussed. As the Court analysed, the Act on entry directly states that it is applicable only to situations when there is a transnational factor. Art. 3 of the Directive 2004/38 stipulates that the Directive shall apply to all EU citizens who move to or reside in a Member State other than that of which they are a national, and to their family members as defined in point 2 of Article 2 who accompany or join them. Therefore in case when there is no situation of moving or residing in other Member State than that of which the beneficiary is a national, then the Act on entry may not be applicable and the wholly internal rules are applicable – therefore provisions of the Act on aliens shall apply. According to the Court such a situation shall not relief the relevant national court to make a comparison between wholly internal provisions and EU provisions in order to assess whether the only differentiating factor is based on the use of free movement rights and whether in consequence an individual is treated in a worse manner solely because he has not made use of free movement rights.

There is a general obligation put on courts to combat against differing the situation of individuals who are in the same factual and legal position while the only factor that distinguishes them is the fact of (not) making use of free movement rights. Therefore whenever the court comes to a conclusion that such a situation takes place, irrespective of fact that the wholly internal rules treat in a less convenient way the applicant in comparison with EU rules that cannot be applicable in a given situation, then the court shall not apply rules that are less favourable.

15 Constitutional Tribunal judgment of April 21, 2004, file no. K 33/2003.

16 File no. II OSK 1344/07.

In the analysed case, the factual position of the applicant was so peculiar that it was impossible to apply Act on entry even if the requirement of transnational factor would be fulfilled. But the Court clearly stated that assuming the factual position would be comparable, than without any doubts the position of the applicant under the Act of entry and the Act on aliens as regards expulsion possibilities is far more different. Under Art. 67 of the Act on entry the decision on expulsion concerning Union citizens or their family members without Union citizenship, who enjoy the right of permanent residence, may be taken in the case when their residence on the territory of the Republic of Poland constitutes a serious threat for defence policy or national security, as well as for public safety or public order. Additionally the Act on entry requires in the proceedings related to expulsion of EU citizen or his/her family member without Union citizenship, following factors to be taken into account:

- 1) how long the individual concerned has resided on the territory of the Republic of Poland;
- 2) his/her age and state of health;
- 3) family and economic situation;
- 4) social and cultural integration into the Republic of Poland; and
- 5) the extent of his/her links with the country of origin.

According to Art. 89 para 1 of the Act on aliens, no obligatory factors are needed to be assessed and the decision on expulsion may be taken when the individual constitutes not a serious but ‘normal’ threat for public security or defence. Surely regulation of Art. 67 of the Act on entry in comparison with Art. 89 of the Act of aliens is more favourable for beneficiaries of Art. 67 of the Act on entry.

In such a situation, according to the Supreme Administrative Court and according to the Constitutional Tribunal, the relevant national court shall not permit to make differentiation between foreigners and nationals when their factual and legal position are exactly the same and the only difference is the case of making use of free movement rights.¹⁷

2. ENTRY AND RESIDENCE RIGHTS

Entry and residence rights of family members of EU citizens, irrespective their nationality are regulated mainly in the Act on entry. No further amendments in comparison to last year Report have been implemented.

The provisions of the Act on entry regarding requirements to entry into territory of Poland for family members of EU citizens are compatible with Directive 2004/38.

Entry

Family members who are EU citizens, may enter the territory of Poland on presence a valid travel document or other valid documents confirming their identity and citizenship. As regards non EU family members, they may enter the territory of Poland on presence a valid travel document and visa, unless respective provisions do not state otherwise. The obligation to have visa does not apply to a national against whom the visa obligation was lifted partially or in whole, according to Regulation 539/2001 or in cases when such an individual does

¹⁷ See E. Łętowska, ‘O regulacyjnej swobodzie państwa - w związku z kontrolą konstytucyjności ustawy o biopaliwach’, in: *Jus et Lex, Księga jubileuszowa Profesora Andrzeja Kabata*, Olsztyn 2004.

posses valid document that is equivalent to residence card or permanent residence card or valid residence card issued on basis of Act on aliens.

Art. 7a of the Act on entry enables EU citizens and members of their families, irrespective of their nationality, in cases where it is impossible to present valid travel document or identity card, to prove their identities by other ways than showing official documents only if it is possible to confirm in other ways their identity and nationality without any doubts.

According to Art. 10 of the Act on entry, non EU citizen shall be granted Schengen or domestic visa in order to enable such a person to join or stay with EU citizen in Poland. The refusal to grant such a visa is only admissible if their data are included in the special list of not welcomed individuals according to the Act on aliens and if their stay may possess a threat to the defense or security of Poland and public order or health. Art. 11 of the Act on entry state reasons when EU citizen and members of their families are refused to enter to Poland – except for reasons that are grounds for refusal of visa, also the fact of not having relevant identity documents and visa in case of third country nationals may cause such a decision. However, if the applicant may in this last situation, i.e. despite not having identity documents, prove without doubts that he/she is entitled to make use of free movement rights, he shall be entitled to enter Poland.

Moreover, according to art. 11 a of the Act the decision on refusal of both granting visa and entry to Poland shall be preceded thorough examination if personal conducts of applicants may pose a threat for public safety, public policy or public health in the light of the proportionality test. Only if an individual behaviour represents genuine, present and sufficiently serious threat affecting interests of society such a negative decision may be issued.

Residence

Family members (both EU and non EU) may reside in the territory of Poland for a period up to 3 months without the need to meet any requirements other than having a valid identity cards, passports and visas where applicable.

However, until January 1, 2013 they have together with EU citizens, the obligation to register their stay within the meaning of ‘obowiązek meldunkowy’, not later than on the 4th day upon arrival to Poland according to Act on evidence and registration documents.

As regards residence rights for a period longer than 3 months for family members irrespective of their nationality, they have a right to accompany EU citizen, who is either an employee, self-employed person in Poland or is covered by the general health insurance or is entitled to health insurance and is in possession of enough funds to provide for them and himself enough funds in order not to ask for social insurance benefits. The same right to accompany EU citizen by his/her family members does apply to family members of EU citizen who is no longer employed or does not undertake self-employment as a result of temporarily inability to work as the result of an illness or accident or in case of involuntary unemployment in accordance with the unemployment register kept by the Poviat Employment Office (when the period of engagement in gainful activity has amounted to less than one year, the Union citizen shall retain then the right to reside for period of 6 months from the date of registration in the Office). Lastly, the right to accompany by his family members applies to EU citizen who has decided to finish engagement in gainful activity in order to embark on educational or vocational training.

As regards EU citizen who studies or undergoes vocational training in Poland and is covered by general health insurance or is a person entitled to health insurance scheme or is in

possession of enough funds for himself and for them in order not to make use of social insurance benefits, he may be accompanied solely by the spouse and dependent children accompanying him/her in Poland.

Moreover, members of family are entitled to retain the rights of residence in case of divorce, annulment of marriage or death or exit from the territory of Poland of EU citizen according to the same conditions as defined in Directive 2004/38 (Art. 13).

Additionally, according to Art. 19 a of the Act on entry there is a right to stay in Poland for studying children and their parents who have custody over them. The amendment to the Act that introduced in 2011 the new Art. 19a is a consequence of *Ibrahim* and *Teixeira* case law (as was directly stated in the explanation to the amendment by the Polish legislator).

If the residence in the territory of Poland is longer than 3 months, than a family member who is not EU citizen shall be obliged to apply for residence card of EU family member. The right of permanent residence is certified by a document certifying the permanent residence right in case of EU citizen. In case of non EU citizen, he/she is obliged to apply for residence card.

Application for abovementioned cards is now free of charge.

Family members of EU citizens are entitled to be granted a right to permanent stay after five years of continuous and legal stay in Poland. If, according to the Act on entry (which provisions fully implement relevant provisions of Directive 2004/38), the EU citizens shall be granted a right to permanent stay before the general requested period of 5 years of legal stay in Poland, also consequently, their family members who reside with them in Poland shall acquire such a right.

It was possible to be granted a right to permanent stay for both EU citizens and members of their families before the elapse of 5 years of execution of the Act on entry provided that the applicant was staying legally in Poland for the given period.

Moreover, there is a possibility for family members to be granted a right to permanent stay, if such applicants retained the right to stay in case of divorce, annulment of marriage with EU citizen or his death and during this time of stay have fulfilled all obligations for legal stay. Art. 44 of the Act on entry directly refers to this case (as regulated in Art. 19 of the Act on entry).

3. IMPLICATIONS OF THE *METOCK* JUDGMENT

The Act on entry as regards family members of EU citizen does not demand any requirement to have previous lawful residence in Poland. Therefore, the Polish Act implements Art. 3 para 1 and Art. 2 point 2 of the Directive 2004/38 correctly. According to Art. 9 para 1 and 2 of the Act, Union citizen may enter the territory of Poland on the grounds of a valid travel document or other valid documents confirming their identity and citizenship. Family member who is not Union citizen may enter the territory of the Republic of Poland on the grounds of a valid travel document and visa (except for cases where visa is not required). Art. 10 para 1 of the Act on entry states that a family member who is not a Union citizen shall be issued an entry visa for stay or to join a national of the Member State. The Act on entry does not require from a family member to previously lawfully reside in another Member State before entering Poland.

4. ABUSE OF RIGHTS, I.E. MARRIAGES OF CONVENIENCE AND FRAUD

The Act on entry contains comprehensive regulations on sham marriages (marriages of convenience). Art. 25 of the Act has not changed since the last Report. This provision indicates which factors shall be taken into account while assessing if a marriage has been a marriage of convenience. These factors are as follows:

1. one of the spouses 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;
2. the spouses do not fulfil the legal responsibilities arising from the marriage;
3. matrimonial cohabitation is not maintained;
4. the spouses have never met before their marriage;
5. the spouses do not speak a language understood by both;
6. the spouses are inconsistent about their respective personal details and about other important circumstances concerning them;
7. one or both of the spouses had contracted a marriage of convenience in the past

Following consequences shall be applicable when declaring a marriage as marriage for convenience:

1. refusal of granting residence card or a document certifying right for permanent residence for a non EU family member,
2. cancellation of residence card for the family member of Union citizen

It shall be mentioned that the Polish Penal Code penalises cases of marriages of convenience. A person who, in order to gain personal or property benefits, facilitates or enables third person stay in Poland unlawfully, is liable to penalty of imprisonment between 3 months to 5 years. This provision may also contain cases of marriage of convenience. Additionally such a person shall be liable for attestation of untruth which is punishable on conviction of fine, restriction of liberty or imprisonment between 3 month to 5 years.

5. ACCESS TO WORK

Family members of EU citizen according to Act on promotion employment and labour institutions shall be treated in the same way as regards access to work in Poland as EU citizens. Although Art. 87 of the Act has been changed since the last Report, it has not been changed in respect to family members of EU citizens.

They are not obliged to receive work permit in order to take up employment in Poland. The definition of family member contained in Art. 87 of the Act on employment is compatible with definition contained in Directive 2004/38.

Therefore family members, irrespective of their nationality, benefit from privileged status in comparison with other third country nationals. In general as regards access to work they shall have the same status as Polish citizens. However, in the light of analysed judgment of Constitutional Tribunal and the Supreme Administrative Court, if the case of reverse discrimination takes place, than national courts shall defer from making such a differentiation that is detrimental to those applicants whose EU family members have not made use of free movement rights.

6. THE SITUATION OF FAMILY MEMBERS OF JOB-SEEKERS

No provisions of job-seekers and members of their families are directly defined in the Act on entry.

However, the Act on promotion of employment and labour institutions defines the legal status of both EU citizens and members of their families that are job-seekers.

Art. 2.1.22 of the Act defines the notion of ‘job-seeker’. It covers, unlike the definition of unemployed, also family members of EU citizens.

The support for job-seekers does not cover material support for neither Polish nor EU citizens and members of their families. If someone possesses the status of job-seeker than he is entitled to be granted following benefits: right to help to find a job, right to attend specialized trainings or seminars, workshops and vocational trainings.

Chapter III

Access to Employment

Most important texts in force:

- Labour Code of June 26, 1974,
- Act of April 20, 2004 on promotion of employment and labour institutions,
- Act of November 21, 2008 on civil service,
- Act of November 21, 2008 on self-government employees,
- Charter on Teacher of January 26, 1982,
- Act of March 18, 2008 on the rules governing recognition of the professional qualifications obtained in EU Member States,
- Act of July 27, 2005 on higher education.

1. ACCESS TO EMPLOYMENT IN THE PRIVATE SECTOR

1.1. Equal treatment in access to employment (e.g. assistance of employment agencies).

The Act on promotion of employment and labour institutions regulates rules and conditions of taking up employment in Poland. It applies to both Polish citizens and EU citizens and members of their families.

The Act as regards rights of EU citizens and members of their families has not changed since the last Report. Only amendments to the Act concerning foreigners – third country nationals have been introduced as a consequence of implementation of directives 2009/52, 2008/115 and 2009/50.

EU citizens can make full use of all institutions provided in the Act on promotion to find a job, together with having support from employment agencies. There is a prohibition to discriminate on basis of nationality and moreover on grounds of sex, age, disability, race, ethnic origin, sexual orientation, political views, trade union membership or religion persuasion. In addition to activities offered by employment agencies, EU citizens may also take part in various trainings, including vocational trainings that aim at facilitation of finding a job in Poland. Such assistance is generally for free and in cases where it shall be paid, amount of payments are the same regardless if they apply to Polish or EU citizens.

These provisions prohibiting discrimination complement antidiscrimination provisions that are listed in the Labour Code. Therefore the rule of equal treatment for EU citizens and members of their families shall apply not only when they have been employed in Poland, but also on an earlier stage – i.e. when they are looking for a job and take part in various activities that aim at facilitation to find a job by them.

EU nationals do not need work permit in order to take up employment in Poland. As from 17 January 2007 this rule applies to all EU citizens (earlier, Poland made use of reciprocal measures), including citizens from Bulgaria and Romania. The same rule applies to member of their families.

1.2. Language requirements

As regards employment in private sector in some professions knowledge of Polish language is required.

According to Art 30.1.2 of the Banking Act of August 29, 1997 (Ustawa Prawo Bankowe),¹⁸ there is a language requirement as regards members of management board. In order to establish a bank in Poland, at least two members of management board shall prove their knowledge of Polish language. However, it is possible that Komisja Nadzoru Finansowego (the Polish Financial Supervision Authority – the supervisory institution) in the form of decision issued at request of the founders, will depart from the requirement concerning proven knowledge of Polish language provided it is not necessary for prudential supervision, taking into account in a particular level of permissible risk or the scope of the activity of bank. The same rule applies to appointment of two members of management board, including president during the normal activities of functioning bank (i.e. not at the time of founding a bank).

Very similar rules apply to members of management board of national insurance institutions according to Act on insurance activity of May 22, 2003 (Ustawa o działalności ubezpieczeniowej),¹⁹ also including the possibility to depart from such an obligation. Also it is the Polish Financial Supervision Authority that makes final decisions in this respect.

Only exceptionally the Authority may exempt a foreigner from the requirement to prove knowledge of Polish language. This rule applies equally to banks and insurance institutions. There is no difference between conditions to apply such an exemption basing on the nationality of the candidate. Therefore irrespective if there is an EU or non-EU candidate, the decisive factors shall be the objective assessment on the risk exposure and not the origin of the potential candidate.

These two Acts do not define the way to prove sufficient knowledge of Polish language. However, the practice shows that the Authority does not treat this requirement in a very strict or formal way. In 2010 the acting President of the Management Board of one of Polish Banks, who is a EU citizen, was granted a conditional agreement to become the enjoying full rights President under condition to learn Polish language and to prove the knowledge of Polish language. In 2012 he was finally granted the final consent and became the President of the Management Board. The exam was done before the representatives of the Polish Financial Supervision Authority in the form of a conversation with the candidate. No written exam was applicable.

The issue of requirement to prove Polish language by EU citizen was analysed by the Supreme Administrative Court in 2006 on the basis of the Act of insurance activity. One of the insurance agencies tried to declare the obligation to prove knowledge of Polish language by Austrian citizen as incompatible with EU free movement rights. However, the Polish court ruled (in the opinion of rapporteur in a correct way) that posing such a requirement is fully compatible with EU law in the light of Art. 3 of the Regulation 1612/68 according to which it is acceptable and compatible with EU law to apply requirements as regards linguistic knowledge required by reason of the nature of the post to be filled.²⁰

There is no direct requirement for foreign teachers to have a knowledge of Polish language. However, taking into account provisions of the Act of October 7, 1999 on Polish language (Ustawa o języku polskim),²¹ the teacher other than foreign language teacher shall have the sufficient knowledge of Polish language in order to be able to communicate with

¹⁸ *Journal of Laws* of 1997, no. 140, item 939.

¹⁹ *Journal of Laws* of 2003, no. 124, item 1151.

²⁰ File no. II GSK 62/06.

²¹ *Journal of Laws* of 1999, no. 90, item 999.

students. Art. 9 of the Act states that the Polish language is a working language in all educational entities either public or private.

Moreover, Article 11a of the Act on Polish language provides for a possibility to certify the knowledge of Polish language before a state exam commission. Such a possibility is opened to foreigners or Polish citizens permanently residing outside territory of Poland. On basis of this provision, Minister of Education and Sport has issued on October 15, 2003 the Regulation on exams on Polish language as a foreign language (*Rozporządzenie w sprawie egzaminów z języka polskiego jako obcego*).²² However, in order to be compatible with EU law this Art. 11 a shall not be understood as stating the only way of proving knowledge of Polish language for categories of individuals listed in the Act. In 2011 525 applicants took the exam – mainly from Ukraine (98) and United States (67).²³

No change has been introduced as from the last Report as regards medical sector – midwives and nurses are not obliged to present any certificate of language knowledge. They shall only prove that their knowledge of Polish language is enough to communicate with patients and to understand written text as well as ability to write in Polish.²⁴ The regulation on midwives and nurses applies only to EU/EEA and Swiss Confederation citizens.

Also there is the same regulation as last year concerning level of knowledge of Polish language for doctors.²⁵ According to the regulation, third country nationals are obliged to pass a special language exam that is organized by the Polish Medical Council. No such obligation is applicable to EU citizens. They can prove sufficient knowledge (not only a fluent knowledge) in all possible ways (even in a form of conversation with an employer).

As regards pharmacists there is an obligation to pass language exam before Polish Pharmacy Council. However, this requirement applies to foreigners. The definition of a foreigner is explained in the Act on Pharmacy Councils and it excluded EU nationals.²⁶ Therefore EU nationals may prove knowledge of Polish language in every possible way, just like doctors.

As regards barber-surgeon, the Act of July, 20 1950 on barber-surgeon (*Ustawa z dnia 20 lipca 1950 o felczerach*)²⁷ in Art. 1.3 states that for EU citizens it is enough to make a statement confirming knowledge of Polish language. Exams are only required for third country nationals.

22 *Journal of Laws* of 2003, no. 191, item 1871.

23 Information gathered by the Minister of Higher Education and Science.

24 The regulation of Ministry of Health of April, 30 2004 on the level of knowledge of Polish language necessary to carry out a profession of a nurse, midwife by nationals of EU Member States, EEA Member States and Swiss Confederation (*Rozporządzenie Ministra Zdrowia w sprawie szczególnego zakresu znajomości języka polskiego, koniecznego do wykonywania zawodu pielęgniarki, położnej przez obywateli państw członkowskich Unii Europejskiej, państw członkowskich Europejskiego Porozumienia o Wolnym Handlu (EFTA)- stron umowy o Europejskim Obszarze Gospodarczym lub Konfederacji Szwajcarskiej*), *Journal of Laws* of 2004, no. 104, item 1102.

25 Regulation of Minister of Health of June 23, 2009 on the extent of the oral and written knowledge of Polish language necessary to carry out a profession of a doctor or dentist within the territory of the Republic of Poland (*Rozporządzenie Ministra Zdrowia w sprawie zakresu znajomości języka polskiego w mowie i piśmie koniecznego do wykonywania zawodu lekarza lub lekarza dentysty na terenie Rzeczypospolitej Polskiej*), *Journal of Laws* of 2009, no. 108, item 908.

26 The Act of April 19, 1991 on Pharmacy Councils (*Ustawa o izbach aptekarskich*), *Journal of Laws* of 2008, no. 136, item 856; Regulation of Minister of Health of March 23, 2011 on the level of knowledge of Polish language necessary to carry out profession of pharmacists and on exams of Polish language (*Rozporządzenie Ministra Zdrowia w sprawie zakresu znajomości języka polskiego koniecznego do wykonywania zawodu farmaceuty na terenie Rzeczypospolitej Polskiej oraz egzaminu z języka polskiego*), *Journal of Laws* of 2011, no. 75, item 406.

27 *Journal of Laws* of 2004, no 53, item 531.

The same rules applies to veterinary doctors – ways of proving by EU citizens knowledge of Polish language are not listed, therefore all possible ways are acceptable.²⁸

There are also several statutory provisions that regulates certain professions that do not require having Polish citizenship. Instead, requirement to know Polish language is necessary. Such an obligation refers inter alia to certified auditors and patent counsels.²⁹

According to Act on Polish language, in general in relations with consumers as well as in case of employment matters, the Polish language shall be used. However, labour contract may be prepared and signed in foreign language, on application of a foreign employee (but not employer), if such an employee has been previously informed about the possibility to prepare such a contract in Polish.

2. ACCESS TO EMPLOYMENT IN THE PUBLIC SECTOR

Please see the Commission Staff Document and the reports by Prof Ziller and lay emphasis on developments which are not covered by these reports

The general right to access on equal footing to employment the public sector is guaranteed by Polish constitution solely to Polish nationals (art. 60). However, it does not mean than in Poland it is not possible for foreigners to be employed in public sector (see point 2.1 below). The constitution has not been changed in this respect after Poland's accession to EU in 2004. In general, EU citizens when they have access to public sector, must be treated without any discrimination on grounds of nationality in comparison with Polish citizens. However, very often they have one additional requirement – they shall prove sufficient knowledge of Polish language. The Labour Code of June 26, 1974 (ustawa Kodeks pracy)³⁰ is the main act that regulates rights and duties of all employees in Poland, irrespective of their nationality. Therefore when employed in Poland, EU citizens shall benefit from all provisions that are contained in the Code. Moreover the Labour Code contains an ample of provisions that additionally aim to protect inter alia EU citizens as foreigners in comparison with Polish citizens. Art. 18^{3a} para 1 of the Labour Code prohibits any discrimination on grounds of inter alia nationality as regards not only working conditions but also as regards access to employment. Indirect discrimination is also prohibited according to 18^{3a} para 4.

Nothing has changed in the position of teachers in Poland. The analysis of regulations concerning teachers (other than academic teachers) leads to a conclusion that there is inconsequence between provisions of the Teacher's Chart (that forms a *lex specialis* to Labour Code) and the Act of the education system.³¹ It shall be mentioned that these acts apply generally to teachers irrespective of the sector they work for – i.e. they apply to both public and private sectors (with some exceptions as regards private sector). In the Teacher' Charter, there is a direct provision that directly excludes the requirement to possess Polish nationality

28 The Regulation of Minister of Agriculture and Rural Development of August 25, 2004 on the level of the knowledge of Polish language necessary to carry out a profession of veterinary doctor (Rozporządzenie Ministra Rolnictwa i Rozwoju Wsi w sprawie zakresu znajomości języka polskiego koniecznego do wykonywania zawodu weterynarza.), *Journal of Laws* of 2004, no. 205, item 2100.

29 The Act of May 7, 2009 on certified auditors and their self-governing bodies, entities entitled to control financial reports and public supervision (Ustawa o biegłych rewidentach i ich samorządzie, podmiotach uprawnionych do badania sprawozdań finansowych oraz o nadzorze publicznym), *Journal of Laws* of 2009, no. 77, item 649 and the Act on patent counsels of April 11, 2001 (Ustawa o biegłych rewidentach), *Journal of Laws* of 2001, no. 49, item 509.

30 *Journal of Laws* of 1998, no. 21, item 94.

31 *Journal of Laws* of 2004, no. 256, item 2572.

for EU citizens (however no reference is made to members of their family), unlike other foreigners. It leads to conclusion that both Polish citizens and EU citizens shall have equal access to posts of teachers in Poland. However there is still in force the Regulation of October 30, 1992 of Minister of Education on principles and conditions on hiring teachers who are not Polish citizens in public schools and entities (*rozporządzenie Ministra Edukacji Narodowej w sprawie zasad i warunków zatrudniania w szkołach i placówkach publicznych nauczycieli niebędących obywatelami polskimi*).³² According to the Regulation, there is a possibility to engage foreign teachers (without exception to EU citizens) if there is an organizational need of a given school, especially as regards foreign languages teachers (para. 2). Employment of such a teacher shall be previously accepted by the entity that supervises a school or kindergarten.

Therefore the Regulation states the principle of the preference for Polish citizens over EU citizens in employment in education system of Poland. However, such a principle is incompatible with the Teacher's Chart, which directly excludes EU citizens from the prohibition to become a teacher in Poland. Taking into account the precedence of the European law over national law, the interpretation of these two provisions shall lead to a conclusion that there is rather Union principle preference as regards access to teachers posts in Poland.

No cases of infringement of such a principle has been reported in Poland.

There is a clear provision in the Act on higher education that there is no requirement as regards nationality of academic teachers. Polish nationals and EU nationals shall have a right to be employed by higher schools or universities without any differences. No previous consent by relevant university bodies is required. Moreover, Art. 109 para 4 of the Act clearly states that foreign academic teachers shall be treated in the same way as Polish researches in the sphere of all social security benefits and other conditions of work.

As regards access to certain medical posts, such as doctors, midwives, nurses, veterinary doctors, they shall, irrespective if they apply to public or private entity, be treated on an equal footing as Polish applicants. However, they shall prove knowledge of Polish language.

The same remark shall be done to certified auditors and patent counselors.

2.1. Nationality condition for access to positions in the public sector

The situation in this sphere has not changed as from the last year Report. There are several acts that regulate the rules, including prohibitions to apply for posts in public sectors. The most important are: the Act on civil service (*ustawa o służbie cywilnej*) and the Act on self-government authorities' employees (*ustawa o pracownikach samorządowych*).³³ These two acts contain identical prerequisites as regards access for EU nationals and other foreigners to public posts.

The Act on civil service entitles EU citizens to apply for posts that are not directly connected with exercising directly or indirectly public powers or that are connected with protection of fundamental states interests (art. 5 of the Act). Until the amendment of the Act in 2008 that entered into force in 2009, there were no possibility to apply for any posts in civil service for foreigners. Now, the possibility in certain cases to apply for such posts is opened to both EU citizens and third country nationals who on basis of international agreements or EU law have a right to take up employment in Poland. This provision is compatible with

32 *Journal of Laws* of 1992, no. 85, item 432.

33 *Journal of Laws* of 2008, no. 227, item 1505 and *Journal of Laws* if 2008, no. 223, item 1458.

provisions of the Act of promotion of employment and labour institutions which in Art. 87 para. 1 point 9 states that such third country nationals shall have a right to be employed in Poland without the necessity to obtain work permit.

They must additionally prove knowledge of Polish language according to special rules that are defined in the relevant Regulation. It is the General Director of the Civil Service Office after being granted approval from the President of the Civil Service who decides which posts fulfill abovementioned requirements.

Identical conditions for eligibility to apply for posts in regional (self-government) authorities as in case of posts in civil service are applicable. They are listed in the Act on regional authorities employees (Art. 6 para. 1 point 1 in connection with Art. 11 para. 3 of the Act).³⁴

It shall be emphasized that these two acts were entirely changed in 2008 and entered into force in March 2009. Therefore for almost 5 years from the date of accession, the Polish rules on access to certain posts in public sector were entirely incompatible with EU law, as it generally excluded the possibility to apply for any of such posts, irrespective of the level of competences for non-Polish applicants.

Analysis of the practice in administration sector leads to conclusion that the access to public posts in civil service is, however, fictitious. There is an official updated list of accessible posts for both Polish and foreign nationals in civil service (on the website of the Civil Service, www.dsc.kprm.gov.pl). Currently (as of July 2012) on 214 announcements only 12 are accessible for foreign nationals, including EU citizens. As regards the access to self-governing authorities, there is no general list of accessible posts, every single regional office has its own website where it publishes the current work offers. Therefore in practice it is not possible to analyse the practical application of Art. 11 of the Act on self-governing authorities.

However, the analysis of the Report of the President of the Civil Service for 2011 leads to a conclusion that the problem with access for foreigners to public posts has been noticed. In the Report, the President informed the Prime Minister that there have been trainings for general directors of certain civil service offices as well as formal explanations addressed to them in which the President clarified the idea of access to civil service as well as the necessity to assess the possibility to open the posts for foreigners. According to the Report, the increase in offers for foreigners may be seen every year. In 2010 there were 88 announcements applicable for not only Polish nationals, but also EU citizens, whereas in 2011 – 129. Circa 85-90% of requests addressed to the President by general directors to open certain posts for foreigners are positively considered.³⁵ However, there is very small, almost none interest in application to such posts by foreigners – in 2011 for 129 offers opened by foreigners, only 2 applications were submitted.

According to the rapporteur there are 3 major reasons of such a situation. First of all, the general context of migration issues in Poland shall be taken into account. Poland is not an attractive destination for EU citizens as a rather poor country in comparison with especially EU 15. Secondly, there are very strict language requirements for access to public posts which surely discourage them from applying for such posts. And thirdly, the remuneration in public service is not competitive in comparison with possible remuneration in private sector.

³⁵ The annual report of the President of Civil Service on the condition of civil service and execution of tasks of the service in 2011 prepared in March 2012. It was accepted by the Prime Minister on 12 July 2012.

These rules of access to public posts apply equally to EU citizens and members of their families, irrespective of their nationality, what makes these regulations (at least formally, since practice is rather different, as has been pointed out above) compatible with art. 23 of the Directive 2004/38 which entitles members of family to take up employment in Member State of residence of EU citizens.

Moreover, in the Act of September 16, 1982 of public authorities employees (ustawa o pracownikach urzędów państwowych)³⁶ there is a nationality requirement, without any exceptions. According to Art. 3 of the Act, only Polish citizens have access to these posts. According to the Act, public authorities employees are employed in such institutions as Presidium of Sejm, Senat, President of Poland, the Supreme Court (but only in administration and not in jurisdiction posts), in the Bureau of Constitutional Tribunal, Ombudsman, Child Ombudsman, National Elections Bureau, etc. The act applies to all clerks employed in these offices, irrespective of the character of executed activities in the particular post. Such a strict regulation, without making any differentiation as to the scope of activities in the light of Art. 45(4) TFUE is questionable under EU law.

The requirement to possess Polish citizenship applies also to military forces and law enforcement agencies, such as Army, the Police, Prison Guard, Border Guard, Customs Officers, as well as Internal Security Agency and Central Anti-Corruption Office and Commune Guards. The requirement of possessing Polish nationality also applies to prosecutors and judges.³⁷

Still there is the requirement to possess Polish nationality for notaries, unlike legal counselors and advocates.

2.2. Language requirements

As regards groups of employees in the public medical sector, such as doctors, nurses, midwives no differences as regards requirement to prove knowledge of Polish language are applicable. Therefore all remarks contained in point 1.2 above shall be applicable.

However, as regards access to civil service and to self-government administration, still the same rules as mentioned in the last Report concerning knowledge of Polish language are still applicable. The apply without any distinction to both EU nationals and other foreigners (unlike for instance requirements that are applicable for doctors, pharmacist, etc.). The Regulation of the Prime Minister of April 23, 2009 lists documents which are enough to prove sufficient knowledge of Polish language by foreigners³⁸, which releases from the obligation to pass an exam before a state commission. These documents are as following:

1. Certificate of knowledge Polish language on intermediate level issued by the State Commission Proving Knowledge of Polish Language as Foreign Language or
2. Document proving completion of higher education in Polish language or
3. Maturity certificate awarded in Polish education system or
4. Certificate of certified translator issued by Minister of Justice

36 *Journal of Laws* of 2001, no. 86, item 214.

37 Unlike administrative employees of courts and prosecutors offices to which the Act on courts and prosecutors employees offices applies and in which there is no requirement to possess Polish nationality, *Journal of Laws* of 1998, no. 162, item 1125).

38 *Journal of Laws* of 1009, no. 64, item 539.

Therefore, according to the Regulation, any other certificate, especially the one granted outside Poland is insufficient to prove Polish language while applying for posts in civil service or self-government institutions. This provision, according rapporteur is too strict in the light of CJEU jurisprudence, with special emphasis on the proportionality principle.

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

In general, length of service (seniority) is an applicable indicator of professional experience. In public offices a length of service may be a prerequisite for a promotion to a higher post or raise of a salary. Additionally, the Labour Code determines the length of paid leave on basis of length of employment. This indicator shall also be taken into account while counting number of free days for the employee. These rules apply equally to employment in public and private sector.

As regards recognition for professional experience in the recruitment procedure, if there are certain requirements as to the length of such experience (such as for instance in case of employment in public employment agencies) in order to apply for certain posts, than in general periods of employment in other Member States shall be taken into account for counting these required periods of previous employment.

This rule is based on a general prohibition of direct and indirect discrimination that is included in the Labour Code. Moreover, the Act on promotion of employment and labour institutions applies to employment in public and private sector without any distinction. Art. 86 of the Act clearly states that periods of previous employment abroad (irrespective if the employer has been placed in EU Member State) shall be taken into account while granting certain employment grants that are conditional upon employment seniority. As Art. 86 does not make any differentiation as to beneficiaries, the subjective scope of the Act shall be taken into account. Therefore the rule enshrined in Art. 86 shall equally apply to Polish nationals working abroad and to EU nationals and members of their families working abroad. Art. 86 of the Act complements art. 11³ of the Labour Code which prohibits direct and indirect discrimination in employment. Refusal to recognize previous employment on basis of place of stay would surely fall under indirect discrimination prohibition.

There are specific regulations issued by Prime Minister or relevant ministers that regulate the necessity to prove a particular experience for particular posts. Moreover, there is also a general Regulation of Prime Minister of December 16, 2009 on the way to conduct qualification procedure in civil service (*Rozporządzenie Prezesa Rady Ministrów w sprawie przeprowadzania postępowania kwalifikacyjnego w służbie cywilnej*).³⁹ These rules shall apply without any difference for Polish and EU citizens (of course under condition that a particular post has been opened also for EU citizens).

Additionally, recognition of professional experience in civil service is regulated in the Regulation of Prime Minister of December 12, 2009 on description of civil service posts, required professional qualifications, level of civil service grades, multipliers for salary levels and particular rules on granting other benefits for civil service corpus, which has not changed in comparison with the last Report (*rozporządzenie Prezesa Rady Ministrów w sprawie określenia stanowisk urzędniczych, wymaganych kwalifikacji zawodowych, stopni służbowych urzędników służby cywilnej, mnożników do ustalania wynagrodzenia oraz szczegółowych zasad ustalania i wypłacania innych świadczeń przysługujących członkom korpusu służby*

³⁹ *Journal of Laws* of 2009, no. 218, item 1695.

cywilnej). Analysis of the Regulation leads to a conclusion that periods of work in comparable public (civil) services in other Member States shall be taken into account for the purpose of establishing employment rights.

As regards recognition of qualifications, the Act of March 18, 2008 on the rules governing the recognition of the professional qualifications obtained in EU Member States (ustawa o zasadach uznawania kwalifikacji zawodowych nabyczych w państwach członkowskich Unii Europejskiej) for the pursuit of the regulated professions implements provisions of Directive 2005/36⁴⁰. As a rule diplomas or certificates concerning qualifications to carry out regulated professions should be recognized in Poland on the same principles as regards diplomas and qualification obtained 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. This Act complies with EU law.

There are no reported judgments as to different treatment on basis of place of previous employment practice. However, there are single cases when Polish citizens returning from work abroad have problems with having their period of employment abroad recognized for the purpose of employees rights. The rapporteur in her legal practice has had such practical problems, which however, have been so far positively resolved at the stage of pre-judicial proceedings. It shall be mentioned that the scope of employment in public service by other than Polish national is marginal. According to the President of the Civil Service, in 2011 only 2 applications were filed by foreigners.

3. OTHER ASPECTS OF ACCESS TO EMPLOYMENT

All issues of the access to employment have been reported in point 2.3 above.

40 *Journal of Laws* of 2008, no. 63, item. 394.

Chapter IV

Equality of Treatment on the Basis of Nationality

Main texts in force:

- Labour Code of June 26, 1974,
- Act of April 20, 2004 on promotion of employment and labour institutions,
- Act of November 21, 2008 on civil service,
- Act of November 21, 2008 on self-government employees,
- Act of May 23, 1991 on Trade Unions,
- Act of March 4, 1994 on the company benefit fund,
- Act of July 26, 1991 on personal income tax

1. WORKING CONDITIONS – DIRECT AND INDIRECT DISCRIMINATION

Specific issue: Working conditions in the public sector.

There is a general obligation to treat EU nationals equally in comparison with Polish nationals as regards working conditions in both private and public sector. There are no reported cases as regards direct or indirect discrimination in public sector.

As a rule, professional experience gained in other Member States shall be taken into account for the purpose of additional financial benefits to basic salary.

Allowance for long term employment and jubilee prize shall be awarded to those public service or self-government employees who have a respective professional experience. The length of employment in other Member States shall be taken into account on a same basis as time of employment in Poland. This rule states that to periods of entitlement to certain allowances any previously completed periods of employment and other periods, if relevant regulations state that such periods of employment shall be qualified as periods of employment entitling for employee's rights, shall be included. The same rules are applicable to those workers who are employed in public sector other than civil service or self-governmental institutions.

No change has been done in the Regulation of Ministry of Education and Sport of October 30, 2001 on detailed rules of counting periods of employment and other periods that entitle teachers for jubilee award (w sprawie szczególnych zasad ustalania okresów pracy i innych okresów uprawniających nauczyciela do nagrody jubileuszowej oraz szczególnych zasad jej obliczania i wypłacania)⁴¹ that applies to teachers. According to this regulation, all finished periods of employment shall be taken into account while establishing the right and the level of such an award. Therefore also the length of service abroad in schools shall be taken into account for the purpose to qualify for a jubilee awards in education.

The right to associate in trade unions is established in Polish constitution. Art. 59 of Constitution lists the scope of rights of trade unions. Inter alia they, together with employers and their organizations, shall have a right to bargain, particularly for the purpose of resolving collective disputes and to conclude collective labour agreements and other agreements. The scope of freedom of association in trade unions may only be subject to such statutory limita-

⁴¹ Journal of Laws of 2001, no. 128, item 1418.

tions as are permissible in accordance with international agreements to which Poland is a party.

As regards equal treatment in trade union rights, the Act on Trade Unions of May 23, 1991⁴² (ustawa o związkach zawodowych) the rule of equal treatment is still fully applicable. It applies to both public and private sector. The right to create trade union and to become its member is not conditional upon nationality.

There have been no reported cases as regards cases of unequal treatment of Polish and EU citizens as regards recognition of profession experience for the purpose of determining working conditions in public sector or other cases of unequal treatment of EU citizens in comparison with Polish citizens.

2. SOCIAL AND TAX ADVANTAGES

2.1. General situation as laid down in Art. 7 (2) Regulation 1612/68 (492/2011).

The general prohibition of discrimination in employment is contained in the Code of Labour law. There are several anti-discrimination provisions and one of the most important is Art. 18^{3a} which states that employees shall be treated equally as regards entering, terminating of employment, terms of employment, rules of promotion and access to training in order to improve their qualifications.

According to Art. 18^{3c} of the Labour Code employees shall have the right to equal remuneration for the same work or work of the same value. Remuneration shall not be limited solely to basic salary, but also other employment-related benefits (not only financial).

Consequently, social and tax advantages within the meaning of art. 7.2 of Regulation 1612/68 (and respectively 492/2011) shall be also included within this meaning. The work of the same value shall be understood as work which requires comparable professional qualifications, certified by appropriate documents or practice and professional experience and similar level of responsibility and effort.

The problem, however, still remains, as was the case in the last report as regards residence clauses that are applicable to certain social advantages.

The most important benefits that may be qualified as social advantages shall be below mentioned:

Study grants that are, however, conditional for migrant workers and members of their families upon having a place of residence in Poland or having a right of permanent stay in Poland.

Family benefits⁴³ as well as social assistance benefits.⁴⁴ These provisions which make it possible for EU citizens to benefit from specific financial benefits, makes it conditional upon having a residence in Poland.⁴⁵

42 *Journal of Laws* of 2001, no. 79, item 854 .

43 *Journal of Laws* of 2003, no. 228, item 2255.

44 *Journal of Laws* of 2003, no. 135, item 1268.

45 See, however, the judgment of the Supreme Court of September 20, 2011, file no. I UK 59/11 in which the Supreme Court qualified the social rent as one of benefits listed in former regulation 1408/71 and claimed that in such a situation the requirement of having a place of residence is compatible with EU law. However, the Appeal Court claimed contrary, referring in its judgment to *Nerkowska* ruling. The Supreme Court has not interpreted Polish legislation in such a way as to take account, in particular, of the fact if the applicant in question has maintained all of his economic and social links to the Member State of origin.

Moreover the Act of March 4, 1994 on the company benefit fund (*ustawa o zakładowym funduszu świadczeń socjalnych*) is still applicable.⁴⁶ Employers that hire at least 20 employees (based on full-time posts) are obliged to create a company fund, which can be a source for financial benefits for employees (such as holiday allowances or financing of sport carts, etc). There shall be special rules (in the form of internal regulation) of distribution of money collected in the fund. The Act on the company benefit does not make any differentiation between beneficiaries as to their citizenship. It therefore applies to EU migrant workers on the same footing as to Polish workers. The only condition is that potential beneficiary shall be hired as employer. The Constitutional Tribunal declared that making above benefits conditional upon using them solely for holidays or other eligible activities which are only located in Poland is contrary to Polish Constitution.⁴⁷

The Act of October 26, 1995 on support of certain forms of housing (*ustawa o niektórych formach popierania budownictwa mieszkalnego*)⁴⁸ provides a possibility for individuals with a low income and those not possessing the legal right to any other housing, to apply for a lease of a flat. This Act addresses the requirement listed in Polish Constitution according to which (art. 75 para 1) public authorities shall pursue policies conducive to satisfying the housing needs of citizens, in particular combating homelessness, promoting the development of low-income housing and supporting activities aimed at acquisition of a home by each citizen. This constitutional provision only deals with Polish nationals.

The Act, however, makes no difference as to the nationality of possible applicant, provided that above conditions are to be met. No practice concerning EU citizens has been reported so far.

As regards tax advantages, the Act of July 26, 1991 on personal income tax (*ustawa o podatku dochodowym od osób fizycznych*)⁴⁹ is applicable. According to Article 3 of the Act the unlimited tax obligation is applicable to those taxpayers he/she has established at the territory of Poland centre of personal or economic interests ('centre of live interests') or he/she stays at the territory of Poland longer than 183 days during a fiscal year.

Individuals who do not have their place of residence in Poland are subjected to limited tax liability, which means that they are liable to pay taxes only on income gained at the territory of Poland. Other rules may be subject to international agreements on elimination of double taxation. Poland has entered in plenty of such international agreements. The list of countries with which it has international taxation agreements can be found on the website of Ministry of Finance.

Additionally there is a possibility for spouses to be subjected to common income tax. They shall be in a marital relationship and community of property for an entire fiscal year. However, such a possibility is not restricted to solely Polish nationals. Such a possibility applies also to cases where spouses:

- 1) who have place of residence for tax purposes in any Member State, EEA or Switzerland,
- 2) if one of spouse is subjected to unlimited income tax Poland and the other has a place of residence for tax purposes not in Poland but in another Member State, EEA or Switzerland

and provided in both abovementioned situations (1-2) that they have earned incomes subjected to tax at the territory of Poland that constitute at least 75% of the overall income of

46 *Journal of Laws* of 1996, no. 70, item 335.

47 Judgment of March 28, 2007, file no. K 40/04.

48 *Journal of Laws* of 1995, no. 133, item 654.

49 *Journal of Laws* of 1991, no. 80, item 350.

both spouses in the relevant fiscal year and they documented their place of residence for tax purposes by a certificate of residence.

Lastly it shall be added that according to Art. 67 of the Constitution, A citizen shall have the right to social security whenever incapacitated for work by reason of sickness or invalidism as well as having attained retirement age. The scope and forms of social security shall be specified by statute. A citizen who is involuntarily without work and has no other means of support, shall have the right to social security, the scope of which shall be specified by statute. Therefore direct reference is made only to Polish citizens.

2.1. Specific issue: the situation of job-seekers

No job-seekers allowances in the form of financial support are available neither to Polish citizens nor to foreigners, including EU citizens and members of their families. Job-seeker according to Polish legislation cannot be treated as a worker within the meaning of the Act on entry. According to the Act on promotion of employment and labour institutions only these job-seekers who worked out a certain period and afterwards they have lost the job and would like to find a new job again, may be entitled to unemployment benefits. This regulation applies irrespective if the applicant is of Polish or of another Member State nationality.

Therefore there are no such practical problems as were analysed in Ioannidis, Collins or Vatsouras cases. Also as regards Ioannidis there are no such provisions that make certain benefits applicable conditional upon completing secondary education in another Member States.

Rights of job-seekers, who cannot be qualified as unemployed, because they have not worked out a certain period are inter alia as follows: support of centres of information and planning careers, attending in various activation activities, making use of employment agencies which aim is to provide services of job brokerage, personnel consultancy and occupational guidance, participate in various workshops and vocational trainings organized by training institutions. Additionally, poviat employment offices may prepare for job-seekers individual action plan which aim at facilitation of finding employment for them. Those forms of support are available for job-seekers from other Member States on the same footing as for Polish citizens

See also the report on job-seekers.

Chapter V

Other Obstacles to Free Movement of Workers

No other obstacles to free movement rights than mentioned in previous parts of Reports shall been reported.

In reference to the remark made in last year's Report, there is a significant progress as regards the level of knowledge of foreign languages of officials who have direct relations with foreigners, including EU citizens and members of their families. In regional offices for foreigners, many of officials are able to communicate in English language. Moreover, the rapporteur has noticed than in the regional offices of foreign relations there are many information leaflets in different languages.

Chapter VI

Specific Issues

Main texts in force

- Act of November 28, 2003 on family benefits,
- Act of March 12, 2004 on social assistance,
- Act of November 9, 2000 on maritime safety,
- Act of November 18, 2001 on Maritime Code,
- Act of May 23, 1991 on work at maritime commercial vessels,
- Act on Higher Education July 27, 2005,
- School Education Act of November 19, 2004,
- Act of July 17, 1998 on students loans and credits,
- Act of October 13, 1998 on Social Security System,
- Labour Code of June 26, 1974.

1. FRONTIER WORKERS (OTHER THAN SOCIAL SECURITY ISSUES),

There are no separate provisions concerning frontier workers in Polish legislation. Additionally no additional formalities are required for frontier workers to stay in Poland. The same concerns members of their families.

Even if there are no direct provisions on frontier workers, some rules on granting financial benefits may influence the situation of this group of migrating EU workers and members of their families.

According to Act of November 28, 2003 on family benefits (*ustawa o świadczeniach rodzinnych*)⁵⁰ following financial support may be granted: family benefits and attachments to family benefits; custody benefits: nursing benefits and nursing allowances; commune benefits and one-off benefits for a newly born child. However, in order to be entitled to these benefits, applicants including EU citizens must reside in Poland during the period of receiving entitlement unless relevant provisions on coordination of social security or bilateral international agreement modifies this requirement. The right to obtain benefit shall not be excluded when the applicant temporary leaves Poland, while still having a center of his interests in Poland.

Additionally, Act of March 12, 2004 on social assistance (*ustawa o pomocy społecznej*) may also influence the situation of frontier workers.⁵¹ The act applies in cases where listed beneficiaries are in need and are unable to overcome this situation without external (i.e. state) support. The Act provides material and non-material benefits. According to Art. 7 of the Act, the social assistance shall be granted inter alia in cases of poverty, homelessness, unemployment, orphanhood, disability, long-term illness, alcoholism, violence in the family, fortuitous events, natural disaster, etc. The main criteria of applicability is income per capita.

The act applies to inter alia EU citizens and members of their families who have place of residence in Poland and who stay in Poland and have a right to stay or to permanent stay. The obligation to both have place of residence and factually stay in Poland applies equally to

50 *Journal of Laws* of 2003, no. 228, item 2255.

51 *Journal of Laws* of 2009, no. 175, item. 1362.

Polish citizens, foreigners and EU citizens and members of their families.⁵² The Regional Administrative Court in Warsaw in 2006 analysed one of benefits available under this Act – i.e. financial support for foster family and decided that as far as it cannot be treated as a family benefit within the Community meaning and it falls under the scope of social assistance as stated in Art. 4.4 of the Regulation 1409/71, than the requirement of residence in Poland is in line with EU law.⁵³ Moreover, the issue of the necessity to reside in Poland while taking benefits according to social assistance was analysed by the Autonomous Appeal Board (Samorządowe Kolegium Odwoławcze) that declared that a short period of absence in Poland for a known and defined period for the purpose to pursue education by the child and a foster parent who has custody over him, shall not deprive his foster family to be entitled to certain benefits on basis of this Act.⁵⁴

According to Art. 43. Para 2 point 4 of the Act on higher education, the right to enroll on and follow education or training courses as well as participate in research and development work pursuant to the rules applicable to Polish citizens applies to migrant workers who are EU nationals and members of their families if they reside in Poland. Therefore there is a residence requirement in this respect.

Finally the Act on income tax for individuals the unlimited tax obligation applies to those individuals (irrespective of nationality) who reside in Poland for a period of more than 183 days during a tax year.

The abovementioned acts have not changed substantially during the reporting period.

2. Sportsmen /Sportswomen

Generally no home grown players rule is applicable.

Football:

As regards football, the binding act is the Resolution of Polish Football Union Board number III/39 of July 14, 2006 on the status of the Polish football players and the change of the club membership (which has been amended on May 15, 2012).⁵⁵ Generally there is a possibility for each team to have unrestricted number of foreigners players (both EU and non-EU), also in cup and championship matches. Art. 63.8 of the Resolution requires that in each club there must be at least 8 confirmed and entitled to play football players that have Polish citizenship. Therefore nationality condition applies in this respect.

Handball:

As regards handball, the rules for the season 2011/2012 put restrictions as to the permissible number of foreign players – in the super league up to 3, in 1st league up to 2 However, these limits do not apply to EU and EEA players. Therefore they are treated as Polish players and no limitations apply to them.

Volleyball:

There are also limits of foreign players that may play during the match. Depending on the type of competition, between 3 till 5 players shall be of Polish citizenship.

52 Judgment of Voivode Administrative Court in Wroclaw of November 5, 2009, no. of files IV SA/Wr 283/09.

53 Judgment of November 20, 2006, file no. I SA/Wa 1569/06.

54 Decision of January 6, 2009, file no. 4314/22/08/09.

55 Resolution V/92 of May 15, 2012 of the Polish Football Union Board.

Basketball:

The new regulation of Polish Association of Basketball of May 8, 2012 has introduced limits of participation in certain basketball competitions of foreign players. During a match at any time there must be at least 2 players with Polish citizenship. Additionally in the game protocol there must be 6 players of Polish citizenship (in case of teams not taking part in European competitions) and 5 players of Polish citizenship (in case of teams taking part in European competitions). If the number of players in the game protocol is less than respectively 6 and 5 players, than the team must lose game by default.

Ice-hockey:

According to hockey regulations as of March 9, 2012, published on June 28, 2012, in one team during competitions there may be 3 foreign players, but the goalkeeper shall be counted as 2 players. Additionally there may participate in the game 3 foreign players treated as domestic ones, who are players who:

I.

- (1) have played during at least one season;
- (2) present document of relevant Voivod Authority confirming acceptance of complete application for granting Polish citizenship
- (3) at the moment of making application for citizenship in the season 2011/12 they have not finished 29 years and in forthcoming seasons – 28 years
- (4) host club will put an application for treatment such a player as domestic one not later than August 15 of each year

or

II. who have proved that at least one of their parents or grandparents or both great-grandparents were of Polish nationality or possessed Polish citizenship.

Rugby:

According to rugby (which is very unpopular sport in Poland) regulations for season 2011/12, in the competition protocol 3 foreigners may be submitted. Additionally, foreign players may participate in the final phase of competition if they have participated in at least 3 games in regular season (such a requirement does not apply to Polish citizens).

3. THE MARITIME SECTOR

As regards general rules that apply to maritime sector in Poland, there are 3 main acts: the Act of August 18, 2011 on maritime safety that entirely repealed previous act of the same title.⁵⁶ the Act of November 18, 2001 on Maritime Code (Ustawa Kodeks morski),⁵⁷ the Act of May 23, 1991 on work at maritime commercial vessels (Ustawa o pracy na morskich statkach handlowych).⁵⁸ According to the last Act, the act shall not be applicable if international agreement concerning rules of employment relations at vessels contain more favourable treatment for employers, however, if the act is more favourable for employees, the act shall prevail. According to the Act, a foreign employee is an employee who permanently resides

⁵⁶ *Journal of Laws* of 2001, no. 228, item 1368. It has implemented several EU directives that constitute so called 'Erika III' package as well as IMO and ILO agreements,

⁵⁷ *Journal of Laws* of 2009, no. 217, item 1689.

⁵⁸ *Journal of Laws* of 1991, no. 61, item 258.

outside Poland. Such an employee may be employed if he/she possesses a document issued by other state document certifying its identity and hitherto experience on vessels. The Act does not make any difference in ways of treatment between EU and non-EU citizens, including access to work, rules of taking into account hitherto experience.

The Maritime Code regulates the status of captain of a ship, as well as his rights and duties. This issue is regulated in Title III of the Code (art. 53 – 72).

There is no nationality requirement, therefore nationals of Member States are in a position to occupy such a post (in case of commercial vessels).

4. Researchers/Artists

EU researchers and artists have the same legal status as national ones. There are no cases of infringement of equal treatment rules. As regards artists, there are no separate provisions concerning rules on exercising their activities. Consequently Labour Code or Civil Code (when there is no employment contract) are fully applicable.

As regards researchers (within the meaning of academic teachers), the Act on Higher Education makes it entirely possible to hire a non-national (either EU citizen or third country national) at higher education institution. No previous permission from an employment authority is required.

Non-national, including EU citizen, shall be subjected to compulsory social security and health insurance, and shall be eligible for entitlements provided for in the Act on Higher Education on the same rules that apply to Polish nationals.

A direct obligation to treat non-nationals in the same way as regards entitlement to all employment benefits is put in Art. 109 para 4 of the Act.

As regards EU researchers that are enrolled at Polish universities as PhD students, they are also entitled to certain social benefits according to the Regulation of Minister of Science and Higher Education of July 19, 2011 on doctoral scholarships (*Rozporządzenie Ministra Nauki i Szkolnictwa Wyższego w sprawie warunków przyznawania stypendiów osobom, którym wszczęto przewód doktorski*).⁵⁹ In comparison with the last Report this Regulation has been entirely changed. Previous regulation of 2005 made it possible to apply also for postdoctoral scholarships. The new Regulation excludes such a possibility.

However, still the possibility to obtain such a scholarship is not limited to Polish nationals. Also EU citizens or other foreigners who fulfil requirements listed in the Regulation are entitled to such a financial benefit.

5. ACCESS TO STUDY GRANTS

The access to study grants is granted on non-discrimination basis according to the Act on Higher Education and in the Act of July 17, 1998 on students loans and credits (*Ustawa o pożyczkach i kredytach studenckich*).⁶⁰

The right to enrol and pursue higher studies, PhD studies and other forms of education as well the right to participate in development and research studies according to the same rules as apply to Polish citizens, shall apply also to: migrant workers who are EU and EEA or Swiss nationals as well as members of their families, if they both reside at the territory of

59 *Journal of Laws* of 2011, no 160, item 956.

60 *Journal of Laws* of 1998, no 108, item 685 with further amendments.

Poland⁶¹ and to EU and EEA and Swiss nationals (not being workers) and members of their families if they both have a right for permanent stay Poland.⁶²

A residence clause in case of migrant workers and members of their families is applicable.

Moreover, EU citizens and members of their families who are economically inactive, but who posses sufficient financial resources for maintenance during studies (and before period entitling to have a right for permanent stay) shall also have a right to study in Poland according to the same rules that apply to Polish citizens with, however, there is an important exception. These economically inactive citizens and members of their families are not entitled to receive following forms of financial support such as: maintenance grants, special grants for disabled persons and aid payments.

Art. 43 para 5 of the Act has been changed since the last reporting period.⁶³ As from October 1, 2011, non-economically active individuals cannot benefit from 3 kinds of social benefits, as mentioned above. Before the amendment, they also could not benefit from accommodation and meals grant. There currently they shall be entitled to accommodation and meals aid.

No university entrance fees are applicable for EU nationals and members of their family.

According to Act on students loans and credits, there is a possibility for individuals studying in Poland to be granted student loans and student credits that are co-financed by Polish budget (what results in decrease of the interest rate). Such loans and credits are granted by some commercial Polish banks. Such a support may be granted to all kinds of students (including PhD students), irrespective of the kind of the higher school (public or private) provided that such beneficiaries start their studies before age of 25. The general rule according to Art. 6.1. of the Act is that credits and loans are limited to Polish citizens.

The exception from possessing nationality requirement is stated in Art. 6.3, which has been entirely amended as from the last report. Until October 1, 2011 - migrant workers and members of their families that are EU citizens and reside in Poland as well as workers and their children that are EU citizens and are employed in Poland were able to be granted loans and credits.

The new Art. 6.3 is similar to the list contained in Art. 43 of the Act on Higher Education. For such loans may currently apply: migrant workers who are EU and EEA or Swiss nationals as well as members of their families, if they both reside at the territory of Poland and to EU and EEA and Swiss nationals (not being workers) and members of their families if they both have a right for permanent stay Poland

There is a possibility of partial or even entire remittance of credit is possible in case of difficult life situation (illness, accident) or permanent loss of eligibility to pay obligations (disability).

6. YOUNG WORKERS

The definition of young person is contained in Art. 190 of the Labour Code. According to this provision, a young person is a person of at least 6 years of age and less than 18 years of

61 Art. 43 para 2 point 4 AHE.

62 Art. 43 para 2 point 7 AHE.

63 *Journal of Laws* of 2011, no. 84, item 455.

age. It is in line with Art. 63 para 3 of the Constitution which states that the permanent employment of children under 16 years of age shall be prohibited.

It shall be prohibited to employ a person of less than 18 years of age. There will be a change of definition of young person that will enter into force on September 1, 2018. A young person will have a meaning of a person of at least 15 years of age but less than 18 years of age. Therefore there will be need to amend Constitution respectively.

There are no nationality and residence criteria. Consequently, special rules that apply to this category of workers aim at protecting their health, provide them with sufficient rest time and holiday as well as to enable them to continue education where applicable.

Only such young persons may be employed who have completed at least basic secondary school and who present a medical certificate stating that work of a given type does not present a hazard to their health. A young person without vocational qualifications may only be employed in order to receive vocational training.

There is also additional incentive for employers to engage into economic activity young workers, not only up to 18 years old but also older. According to Art. 6.4 of the Act of October 13, 1998 on Social Security System (*ustawa o systemie ubezpieczeń społecznych*)⁶⁴ pupils of gymnasiums and other schools as well as students up to 26 years old are exempted from obligation to pay pension and annuity contributions provided that they exercise their work on basis on not employment contract (since such a contract is not exempted from obligation to pay above mentioned contributions), but agency or mandatory agreement. This provision make hiring students very attractive to the employer. Such a right is not conditional upon nationality or residence requirement.

There is a general prohibition to employ young workers under 18 years of age on commercial vessels for other reasons than for vocational training.

⁶⁴ *Journal of Laws* of 1998, no. 137, item 887.

Chapter VII

Application of Transitional Measures

1. TRANSITIONAL MEASURES IMPOSED ON EU-8 MEMBER STATES BY EU-15 MEMBER STATES AND SITUATION IN MALTA AND CYPRUS

Poland opened its labour market for nationals of EU8 as from the day of their accession to the EU.

Reciprocal measures were applied until January 17, 2007 towards nationals of the EU15 Member States as long as they applied restrictions for Polish nationals. Therefore as from 17 January 2007 citizens from Austria, Belgium, Denmark, France the Netherlands, Lichtenstein, Luxembourg, Germany, Norway, Switzerland were entitled to take up employment without work permit. Therefore as from January 17, 2007 following foreigners may take up employment without work permit: EU nationals, EEA nationals, non EU and non EEA nationals, who may benefit from free movement rights on basis of international agreements concluded between countries of their origin and EU and EU Member States (as well as members of their families, irrespective of nationality). There were special regulations of the Minister of Economy and Labour and then of the Minister of Labour and Social Security that applied reciprocal measures to those nationals of Member States whose countries imposed restrictions as regards access for Polish citizens to their labour markets.⁶⁵

According to the judgment of Supreme Administrative Court of April 26, 2006, the principle contained in former Art. 39 EC Treaty should not have been applicable to nationals from these Member States to which Poland applied reciprocal measures restricting access to Polish labour market.⁶⁶

2. TRANSITIONAL MEASURES IMPOSED ON WORKERS FROM BULGARIA AND ROMANIA

No transitional measures have been imposed on workers from Bulgaria and Romania. The Polish labour market was opened to nationals from these Member States as from the day of accession to EU.

65 Respectively: Regulation of the Minister of Economy and Labour of 26 May 2004 on the scope of restrictions for foreigners to take up employment in Poland, *Journal of Laws* of 2004, no. 123, item 1293 and Regulation of the Minister of Labour and Social Security of the same name of 21 July 2006, that repealed previous Regulation, *Journal of Laws* of 2006, no. 141, item 1005. The Regulation has been repealed by regulation of 10 January 2007, that entered into force on 17 January 2007, *Journal of Laws* of 2007, no. 7, item 54.

66 File no, II GSK 62/06.

Chapter VIII

Miscellaneous

Main texts in force:

- Act of October 13, 1998 on Social Security System,
- Act of August 27, 2004 on health care benefits financed from the public sources,
- Act of June 23, 2003 on social pension,
- Act of November 28, 2003 in family benefits,
- Act of March 12, 2004 on social assistance,
- Act of April 20, 2004 on promotion of employment and labour institutions,
- Act of May 29, 1974 on provision for war and military invalids and their families,
- Act of May 31, 1996 on financial benefits for individuals deported to forced labour and imprisoned at labour camps by the Third Reich and USSR,
- Act of November 16, 2006 on financial benefits and rights for civil, blind war victims,
- Act of June 13, 2003 on aliens,
- Act of September 7, 2007 on the Charter of Polish National.

1. RELATIONSHIP BETWEEN REGULATION 1408/71-883/04 AND ART 45 TFEU AND REGULATION 1612/68

There are no specific provisions on relationship between provisions of Regulation 1408/71 (883/04) and Article 45 TFEU and Regulation 1612/68 (and Regulation 492/2011).

There is a very limited number of judgments either in civil or in administrative courts that deal with the relationship between these legal provisions. Additionally the analysis of few judgments leads to a conclusion that Polish courts do not entirely follow opinion of the CJEU in the Hendrix judgment, in which the Court clearly stated that however, implementation of legislation on social security schemes must not entail an infringement of the rights of a person in a situation such as that of the applicant in the main proceedings which goes beyond what is required to achieve the legitimate objective pursued by the national legislation. It is for the national court, which must, so far as possible, interpret the national legislation in conformity with Community law, to take account, in particular, of the fact that the worker in question has maintained all of his economic and social links to the Member State of origin.

In the judgment of the Supreme Court of September 20, 2011 the Supreme Court qualified the social rent as one of benefits listed in former regulation 1408/71 and claimed that in such a situation the requirement of having a place of residence in order to qualify for such a benefit is compatible with EU law.⁶⁷ However, the Appeal Court (the lower chamber) claimed contrary, referring in its judgment to Nerkowska ruling. The Supreme Court has not interpreted Polish legislation in such a way as to take account, in particular, of the fact if the applicant in question has maintained all of his economic and social links to the Member State of origin. This matter was entirely disregarded by the Court.

The rule is that the contributory benefits which are in general financed by contributions paid by employees and/or employers as a rule are covered by EU 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. Usu-

⁶⁷ File no. I UK 59/11.

ally such advantages are financed by public funds, without prior contributions of potential beneficiaries.

Social advantages that are described in Art. 7 para 2 of the Regulation 1612/68 (492/2011) covers variety of benefits of financial and non-financial dimension. Therefore the group of social advantages will be in most cases financed by public funds, without contributions of potential or future beneficiaries. However, to social advantages in the meaning of Art. 7 para 2 of the Regulation shall also be qualified such advantages as the possibility to recognize prior employment periods in order to gain additional benefits, certificates proving knowledge of Polish language awarded in different Member State than Poland, etc...

As regards financial benefits that could be analysed in the light of Art. 7 para 2 of the Regulation 1612/68 (492/2011), following acts are worth mentioning: the Act of June 23, 2003 on social pension⁶⁸ (*ustawa o rentie socjalnej*), Act of November 28, 2003 on family benefits (*Ustawa o świadczeniach rodzinnych*),⁶⁹ Act of March 12, 2004 on social assistance (*ustawa o pomocy społecznej*).⁷⁰ It shall be mentioned that as regards the Act on social assistance and the Act on social pension, there are rules entitling to receive non-contributory benefits (where no prior economic activity and paying contributions are obligatory). Both Polish and EU citizens (not restricted to workers) are entitled to receive such non-contributory benefits.

The Act on social pension provides financial assistance for individuals who have been completely unable to work before 18 or 25 and it applies not only to Polish citizens that reside at the territory of Poland, but also to residing at the territory of Poland EU/EEA and Swiss citizens and members of their families who have a right for stay or permanent stay. The Act provides also for funeral assistance in case of death of a person entitled to social pension. EU nationals and members of their families in order to be granted this kind of benefit shall have their place of residence at the territory of Poland and they have to posses right of residence or permanent residence.

Social pension is a non-contributory benefit for persons who became incapable to work before reaching maturity or graduating studies or doctoral studies.

Should the beneficiary carry out an economic activity, ‘renta socjalna’ can be suspended (art. 10 of the Act on social pension).

The Act on family benefits in Art. 2 provides for family benefits and attachments to family benefits, custody benefits; nursing benefits and nursing allowances; commune benefits and one-off benefits for a newly born child. These benefits may be granted to Polish citizens and EU citizens who are covered by social security coordination schemes and provided that these two groups of individuals reside at the territory of Poland, unless coordination system or relevant international agreements provides otherwise.

The Act on social assistance provides benefits for persons who are in need (as a consequence poverty, homelessness, long-term unemployed) and are unable to overcome the situation without external help. The right for such a help is granted inter alia to Polish citizens who reside at the territory of Poland and EU/EEA, Swiss citizens and their family members who reside at the territory of Poland and have a right to stay or permanent stay.

As regards benefit for incapacity to work as a war consequences, the Law of May 29, 1974 on provision for war and military invalids and their families (*Ustawa o zaopatrzeniu*

68 *Journal of Laws* of 2003, no. 135, item 1268.

69 *Journal of Laws* of 2006, no. 139, item 992.

70 *Journal of Laws* of 2004, no. 64, item 593.

inwalidów wojennych i wojskowych oraz ich rodzin)⁷¹ does not contain the requirement for the applicant to have a residence place in Poland (as a result of Nerkowska ruling).⁷² Additionally, in the Law of May 31, 1996 on financial benefits for individuals deported to forced labour and imprisoned at labour camps by the Third Reich and USSR (ustawa o świadczeniu pieniężnym przysługującym osobom deportowanym do pracy przymusowej oraz osadzonym w obozach pracy przez III Rzeszę i Związek Socjalistycznych Republik Radzieckich)⁷³ also residence clause has been deleted.

Still the Act of November 16, 2006 on financial benefits and rights for civil, blind war victims (Ustawa o świadczeniu pieniężnym i uprawnieniach przysługujących cywilnym niewidomym ofiarom działań wojennych) that applies to Polish citizens require to have a permanent residence at the territory of Poland.

2. RELATIONSHIP BETWEEN THE RULES OF DIRECTIVE 2004/38 AND REGULATION 1612/68 FOR FRONTIER WORKERS

The Act on entry does not have special provisions regarding frontier workers. Therefore they benefit from the same rights and are subjected to the same duties as regular workers according to the Act on entry. However, there are specific provisions concerning entitlement of financial and non-financial benefits which contain residence requirement and consequently may influence the situation of frontier workers – such as the Act on family benefits or the Act on social assistance and Act on higher education, act on loans and credits.

3. EXISTING POLICIES, LEGISLATION AND PRACTICES OF A GENERAL NATURE THAT HAVE A CLEAR IMPACT ON FREE MOVEMENT OF EU WORKERS

3.1. Integration measures

No special programmes for EU nationals are provided.

3.2. Immigration policies for third-country nationals and the Union preference principle

Immigration policies for third-country nationals

‘Migration policy for Poland’ is a governmental programme dedicated mainly to third country nationals and was announced in April 2011. One of the aims of the Policy is to enhance and help foreigners to integrate with Polish society. The general aim of the document is to define future steps to create Poland as friendly and worth coming country.

71 *Journal of Laws* of 2010, no. 101, item 648.

72 The residence requirement was included in Art. 5 of the Act. However, even when it was in force, the Polish Supreme Court on December 8, 2009 ruled that it is forbidden to suspend such benefits as listed in the Act as a consequence that the applicant does not have a permanent residence in Poland, but resides in EU Member State – file no. I BU 6/09.

73 *Journal of Laws* of 1996, no. 87, item 395.

In 2012 the abolition policy for third country nationals has been introduced. From January 1, 2012 new provisions have enabled foreigners to legalise their stay in Poland.⁷⁴ Only those foreigners who stayed illegally in Poland as of January 1, 2012 and continuously at least since December 20, 2007 or since January 1, 2010 and who prior to that date were granted a final decision on refusal to award the refugee status along with the expulsion decision or for whom on January 1, 2010 next proceedings for the award of the refugee status were carried out could apply for abolition. The application could have been submitted since January 1, 2012 till July 2, 2012 8801 applications were submitted, mainly by Vietnams, Ukraine and Pakistan citizens.

The positive decision concerning abolition results in issuing a residence permit for third country national valid for two years. Within this period, the foreigner will be able to start a job without a permit - under the employment contract.

A foreigner, who receives a refusal will be entitled to appeal to the Head of the Office for Foreigners.

A negative decision for third country national will be issued if:

- a) the foreigner does not meet the requirements for abolition;
- b) their data are in the Schengen Information System (SIS) or in the register of foreigners, and their stay in the territory of the Republic of Poland is undesirable;
- c) the foreigner gives false information in the application or submits false documents;
- d) it is justified by the national security or defence, or by the protection of public safety and order or the interests of the Republic of Poland;

The abolition programme has been widely disseminated in 2011 and 2012.

Union preference principle

There is no direct Union preference principle in Polish legislation. However, the analysis of the Act on promotion of employment and labour market leads to a conclusion that the priority in taking up employment shall be given to Polish nationals, EU nationals and members of their families and to those third country nationals, other than family members of EU who are released from the obligation to have a work permit.

A regional voivode relevant for place of residence or place of stay of future employer is entitled to issue an employment permit for foreign applicant. However, as a rule such a permit shall be given only if the starost confirms that basing on the records of unemployed and seeking work there is no other candidate that does not need to have a permit for work or there has been a recruitment procedure for a given employer that has not been finished successfully.

But one must be aware that in the Act on promotion in Art. 87 there is a wide list of foreigners that are released from obligation to obtain a work permit. This group covers inter alia foreigners, who have received a settlement permit or a residence permit for a long-term EC resident in the territory of Poland or have a refugee status, a tolerated residence permit or is subject to temporary protection in Poland, together with members of their families. Addi-

⁷⁴ On the basis of the Act of 28 July 2011 on legalisation of stay of some foreigners in the territory of the Republic of Poland and on some amendments to the Act on granting protection to foreigners in the territory of the Republic of Poland and to the Act on Foreigners, *Journal of Laws* of 2011, no. 191, item 1133.

([ustawa z dnia 28 lipca 2011 r. o zlegalizowaniu pobytu niektórych cudzoziemców na terytorium Rzeczypospolitej Polskiej oraz o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej i ustawy o cudzoziemcach](#)).

tional group is covered by individuals holding a Charter of Polish National according to Act of September 7, 2007 on the Charter of Polish National (Ustawa o Karcie Polaka).⁷⁵ In general the Act covers individuals 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.

Therefore there is not a clear Union preference principle, as the priority towards third country nationals shall be given to all groups of foreigners that are according to the Act on promotion released from obligation to obtain work permit.

3.3. Return of nationals to new EU Member States

In addition to information contained in the last Report which remains still in force, there are available just preliminary information about the outcomes of the national census of population and housing that was done by the Main Statistical Office in 2011. The last census was done in 2002. However, in July 2012 only the first report was published. More comprehensive analysis will be available until the end of 2012. The detailed schedule is available on the website of the Office.

According to the preliminary results of the census, as of 31 March 2011, there were 1 940 000 Polish citizens abroad for more than 3 months. In comparison to last census that was done in 2002, the amount is considerable higher. In 2002 there were 786 000 of migrating Polish citizens. Among these 1 940 000 more than two third were staying outside territory of Poland for more than 12 months. The most popular destinations for Polish citizens are as follows: Great Britain (30,2%), Germany (21,6%), United States (11,4%), Ireland (6,5%), the Netherlands (4,6%).⁷⁶

Surely this significant increase in number of migrating Polish citizens is caused by accession to EU.

There have been no figures and analysis on the scale of returning Polish citizens yet. There shall be available until the end of 2012.

There is still active the governmental programme called ‘Powroty’ (‘Returns’). The main part of the programme is the website <http://powroty.gov.pl> where Polish citizens who decided to turn back may find an ample of practical information concerning formalities that shall be fulfilled upon return, such as tax, social security, registration issues.

The authors of the programme very significantly emphasize that their aim is not to enhance Polish citizens to turn back to Poland.

4. NATIONAL ORGANIZATIONS OR NON-JUDICIAL BODIES TO WHICH COMPLAINTS FOR VIOLATION OF COMMUNITY LAW CAN BE LAUNCHED

The situation in this respect has not considerably changed since Report 2011.

There are no new institutions worth mentioning in comparison with Report 2010. Still following shall be mentioned:

- Rzecznik Praw Obywatelskich (Ombudsman) – www.rpo.gov.pl

75 Journal of Laws of 2007, no. 180, item. 1280

76 The preliminary results of the National Census of Population of 2011, March 2012, www.stat.gov.pl.

- Fundacja Uniwersyteckich Poradni Prawnych (Legal Clinics Foundation) – www.fupp.org.pl
- Poradnia Prawna dla Cudzoziemców (Legal Bureaux for Aliens) – www.law.law.diplomacy.pl
- Helsińska Fundacja Praw Człowieka (Helsinki Foundation for Human Rights) – www.hfhrpolwaw.pl
- Instytut Spraw Publicznych (Institute for Public Affairs) – www.isp.org.pl
- Związek Biur Porad Obywatelskich (Union of Citizens Advice Bureaux) – www.zbpo.org.pl
- Foundation of Polish Migration Forum (www.forummigracyjne.org)

Additionally in 2011 there was 4th edition of the programme ‘Lawyers for refugees’ in which certain institutions, including Helsinki Foundation for Human Rights and Legal Clinics of Jagiellonian and Warsaw University were engaged.

A very comprehensive scope of information may be obtained by all foreigners, including EU nationals in regional Foreigner Service Centers that are located in each of 16 provinces of Poland. The Polish government has introduced a special programme in order to qualify regional authorities for effective, helpful and friendly service of foreigners. Therefore in every office there are plenty of information brochures for foreigners and officials are able to communicate in foreign languages.

5. SEMINARS, REPORTS AND ARTICLES

There have been no significant seminars or publications on free movement issues in 2011. There were some practical seminars organized by chambers of commerce and Polish embassy in Germany on practical issues of opening labour market for Polish citizens in Germany. The most important seminar was organized by the Polish Embassy in Berlin on 20 January 2011 – *Free movement of workers in practice*.

Additionally on March 5, 2012, *Seminar of the Centre of Migration Research ‘Polish Migrants and Schooling: Perceptions of the English Education System and Migration Decisions’* took place.

Lastly on April 25, 2012 a seminar on *New migration from Poland to Germany – from perspective of migrants* took place.

Publications

Agnieszka Knade-Plaskacz in *European Court Review* published a comment on the CJEU judgment C-310/08 – ECR 2012/2.

Lesińska Magdalena, Ewa Matejko, Olga Wasilewska (eds), *Migrations from Eastern European countries to the European Union in the context of visa policy*. Stefan Batory Foundation, Warsaw 2012

Kindler Marta, *A Risky Business? Ukrainian Migrant Women in Warsaw's Domestic Work Sector*. Amsterdam University Press. Amsterdam 2012.

Dąbrowski Paweł, *Cudzoziemiec niepożądany w polskim prawie o cudzoziemcach*. Uniwersytet Warszawski, Warsaw, 2011.

Duszczysz Maciej, Polityka imigracyjna Unii Europejskiej - odpowiedź na ‘Kryzys migracyjny’ 2011 roku. *Wspólnoty Europejskie*, nr 4(209), Warsaw, 2011.

Janusz Balicki, *O polityce migracyjnej UE z perspektywy praw migrantów*, Warsaw 2012.