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Ukrainian citizens in the Polish social insurance system – legal and social status

Discourse on European integration in Ukraine

The situation of young people on the Ukrainian labor market



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Dear Reader,

given the scale of Ukrainian labour migration to Poland and the subsequent dependence of many areas of the Polish economy on Ukrainian immigrants as such, it is clear that care needs to be taken to keep this group of employees in Poland and here for widespread economic reasons. This situation is also becoming a test for Polish social security policy – both for the political decision-makers and institutions responsible for implementing this policy. One of the objectives of this test is to provide Ukrainians with a sense of social security in Poland. The search for an answer to the question as to whether and to what extent this sense of security is provided in Poland is interdisciplinary in nature – referring to knowledge *inter alia* from the fields of the Law, Economics and Sociology. The economic factor is obviously the main one stimulating immigration from Ukraine to Poland. However, this appears to be losing some of its importance given the opening up of the borders of wealthier countries to Ukrainians – in this context, it can be assumed that it will soon cease to be the dominant stimulus.

Studies on the relationship between migration and social security systems propose, *inter alia*, to analyse the area of benefits as a stimulating factor.¹ The available theoretical models show that generous systems can provide incentives for potential beneficiaries to move to a given country.² So are these factors also crucial in any analysis of the phenomenon of Ukrainian migration to Poland?

In view of the threat associated with the COVID-19 epidemic and the economic slowdown resulting from the government restrictions introduced, a number of questions arise over the future of Ukrainians on the Polish labour market, their daily living and social situation. These matters will certainly be raised in subsequent issues of our magazine.

In the meantime we would invite you to read a volume devoted to the presence of Ukrainian citizens within the Polish social security system. The present issue opens with my paper. Its aim being to introduce readers to the issue of the social security of Ukrainian employees taking advantage of legal employment, and thus the subsequent protection resulting from participation in the Polish social insurance system. The impact of the Polish-Ukrainian social security agreement on the numbers registered within the Polish social insurance system is clearly visible. This dependence is shown by the analytical results included in the paper. However, the deliberations broached exceed the mere insurance sphere and touch on a broader problem – the participation of Ukrainians within the Polish labour market itself. They lead to the conclusion that it is necessary to accelerate work on a government document laying down a concrete Polish migration doctrine. Clearly defined migration assumptions are the starting point for the development of relevant legal or economic solutions and an opportunity to rationalise individual

¹ P. Nannestad, *Immigration and Welfare States: A Survey of 15 years of research*, “European Journal of Political Economy” 2007, Vol. 23, No. 2, pp. 512–532.

² I. Jakubiak, P. Kaczmarczyk, *Czy imigranci zagrażają stabilności systemów emerytalnych? Doświadczenia globalne a przypadek polski*, “Polityka Społeczna” 2018, No. 11–12, p. 10.

areas of Polish migration policy, including a comprehensive notion of social security protection for foreigners.

The Polish-Ukrainian agreement on social security is a key element in deliberations on the social security of Ukrainians in Poland, therein explaining Andrzej Szybkie's detailed legal analysis in his text. The author emphasises that the Polish-Ukrainian agreement on social security plays a very important role in protecting benefit rights for both contracting parties: both for Polish employees going to Ukraine (and for members of their families) and for Ukrainians and their relatives employed in Poland. A. Szybkie also introduces the reader to the practical aspects of the implementation of the agreement, which is particularly valuable from the point of view of any future migration decisions by Ukrainian citizens. In turn Dorota Dzienisiuk's paper focuses on the rights of Ukrainians to social security benefits that are not directly related to their professional activity. The issue of the social security protection of Ukrainian citizens is deepened here by proposals to adopt a uniform and coherent concept of social security, one which should be convincingly communicated to both Polish society in general and the Ukrainian community in particular.

Sabina Kubiciel-Lodzińska presents the results of research carried out for the Opolskie Voivodship, presenting and analysing the problem of the lower remuneration paid to Ukrainian employees. The precarious nature of Ukrainian employment is also a problem of the Ukrainian labour market, herein described by Aleksandra Gayevaya and Ludmila Perevalova. Both authors discuss the results of a survey carried out under the EXCEPT project in 2016, relating to the employment of Ukrainian youth. Oleksii Polegkyi is the author of the final paper, one that intriguingly introduces the Polish reader to the issue of Ukraine's political aspirations for integration with the European Union; aspirations that have emerged in particular recently, especially given the events of the Revolution of Dignity 2013–2014 and Russian aggression in the Donbass and Crimea. It analyses those Ukrainian ideas about the European Union that constitute the basis for these very aspirations.

We also invite you to read the text by Danuta Kamińska-Hass, Marcin Krajewski, Katarzyna Mołas and Karolina Zagozdón dealing with the issue of sickness insurance benefits payment, and which was written in connection with the national seminar „Dilemmas in sickness insurance: sickness benefit”, organised on 13 June 2018 in Warsaw by the Warsaw-Łódź branch of the Polish Social Insurance Association [Polskie Stowarzyszenie Ubezpieczeń Społecznych, PSUS] and the Department of Law and Administration of the University of Warsaw. Whereas Cezary Gołędzinowski has prepared an account of, and conclusions drawn from, the national conference „Citizens of Ukraine in the Polish social insurance system. Legal, demographic, economic and social aspects,” held in 2018 at the headquarters of the Polish Social Insurance Institution [Zakład Ubezpieczeń Społecznych, ZUS].

On behalf of myself and the editorial team of the quarterly, I wish you a constructive read.

*Beata Samoraj-Charitonow, Ph.D.
Scientific editor*

Citizens of Ukraine in the Polish social insurance system

This paper is an attempt to introduce the reader to the dynamics of changes in the registration of Ukrainians for the Polish social insurance system and to link this phenomenon first of all with the signing of the Polish-Ukrainian social security agreement and its entry into force in 2014. The author seeks an answer to the question as to whether there is a relationship between the increase in the number of persons of Ukrainian origin registered for social insurance in recent years and the entry into force of the aforementioned international agreement.

Key words: aggregation of periods, international migration, Polish-Ukrainian agreement on social security, social insurance, Ukrainians on the Polish labour market

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Introduction

Immigration to Poland is a much more recent phenomenon than the labour emigration of Poles to Western countries. Polish literature on the migration and staying of foreigners in Poland pays relatively much attention to the analysis of such areas as migration policy,¹ the legal and economic aspects of international migration (including their presence on the Polish labour market),² discrimination of foreigners,³ problems of adaptation and integration of foreigners in Poland⁴ or the individual problems of national and ethnic groups.⁵ There is no doubt, however, that economic reasons are the main reasons for the immigration of foreigners to Poland, and that Ukrainians are the most numerous group of foreign job-seekers in Poland.

In recent years, the situation on the Polish labour market has changed. Until recently, Ukrainians were present only in a few selected areas of the labour market: agriculture, horticulture, construction or domestic services. Moreover, work in these sectors was not registered in the vast majority of cases. At present, the growing numbers of Ukrainians are turning to other industries, such as the food industry (shop staff, salesmen), catering (waiters, bartenders), trade (employment in supermarkets, including DIY and horticultural supermarkets), other services, with the work they undertake being legal. When working legally, they are registered for social insurance and the social insurance contributions paid guarantee them social protection. These trends will certainly evolve, especially after the end of the downtime in the labour market caused by the COVID-19 epidemic.

The aim of this paper is to show the most important aspects of access as selected of foreigners from Ukraine into the Polish social insurance system.

The main research hypothesis, which the author undertakes to prove in this text, is that since 2014 there has been a steady increase in the number of Ukrainian citizens registered for social insurance. The basic question to be asked concerns the reasons for this situation. Being aware of the complexity of the problem of migration decisions and of numerous factors that affect these decisions (including, of course, the economic situation of the sending and receiving countries, the labour market situation of both countries, segmentation of these markets, adaptation of education systems to any changing

1 *Współczesne migracje: dylematy Europy i Polski. Publikacja z okazji 15-lecia Ośrodka Badań nad Migracjami UW*, ed. M. Duszczek, M. Lesińska, Warszawa 2009.

2 B. Samoraj-Charitonow, *Pracownicy spoza Unii Europejskiej na polskim rynku pracy w okresie spowolnienia gospodarczego* [in:] *Polityka społeczna w kryzysie*, ed. M. Książkowski, C. Żołędowski, B. Rysz-Kowalczyk, Warszawa 2009; B. Samoraj-Charitonow, *Zatrudnić cudzoziemca legalnie. Zmiany prawne w 2009 r.*, "Monitor o Unii Europejskiej" September 2009.

3 W. Klaus, K. Wencel, *Dyskryminacja cudzoziemców w Polsce. Diagnoza sytuacji*, "ARE" 2008, No. 7; *Równość i dyskryminacja na polskim rynku pracy. Ustawodawstwo polskie w świetle dwóch dyrektyw Rady Unii Europejskiej*, "Prawo Europejskie w Praktyce" 2006, No. 5 (22)/May.

4 *Przystanek Polska. Analiza skuteczności programów integracji dla uchodźców w Polsce*, ed. J. Frelak, W. Klaus, J. Wiśniewski, Warszawa 2007.

5 S. Łodziński, *Równość i różnica. Mniejszości narodowe w porządku demokratycznym w Polsce po 1989 roku*, Warszawa 2005.

professional reality, the dynamics of labour market changes associated with the use of new technologies, access to social security systems – also to health care and social protection systems, but also the family situation, demographic and other factors), the author assumes that the number of Ukrainian citizens performing work in Poland has not changed significantly over recent years. On the other hand, the job structure has started to change (which is related to changes on the Polish labour market) with the process of leaving the shadow economy and of employment legalisation beginning. It is this last aspect that is reflected in the increase in the number of Ukrainian citizens registered for social insurance in recent years (especially after 2014). In the author's opinion, in view of the labour market changes, the upturn in the economy and the increased demand for the legal work of employees from beyond the eastern border, factors noticeable over the past few years and ones which have taken place in smoothly, it was the signing of the bilateral agreement on social security, which entered into force on 1 January 2014, that was a clear turning point, coinciding with a dynamic increase in applications to the social insurance system. Thus, according to another hypothesis, although the demand for the legal work of foreigners in Poland is not going to increase without a favourable situation on the labour market, the signing of the bilateral agreement (*i.e.*, aggregation of insurance periods and the perspective of receiving benefits from the system also for any period worked in Poland) is the key premise explaining the dynamic increase in the number of applications to social insurance after 2014.

The subject literature, the results of statistical analyses, materials from selected research projects relating to the work of Ukrainian citizens, which have been implemented in Poland in recent years,⁶ as well as legal acts have been employed in the analyses herein presented.⁷ The applied research methods can be defined as descriptive and comparative. Intensity and structure indicators have been also used as has a legal and dogmatic analysis, because in the author's opinion the legal position of foreigners (including Ukrainian citizens) in the Polish social insurance system should be distinguished by means of an analysis of the legal acts containing norms covering also the indicated group of foreigners. Therefore, account should be taken of the personal scope, *i.e.*, the catalogue of persons who are covered by social insurance, as well as the material scope, in order to determine what benefits are available under the social insurance system. Receiving a benefit from this system is closely related to the occurrence of a specific social risk and the fulfilment of conditions for acquiring the benefit.

6 For example, research carried out by the Institute of Social Policy at the Faculty of Political Science and International Studies of the University of Warsaw, research carried out by the Centre of Migration Research [Ośrodek Badań nad Migracjami] of the University of Warsaw or the Centre for International Relations [Centrum Stosunków Międzynarodowych].

7 *Ziemia obiecana? Warunki pracy cudzoziemców w Polsce*, ed. W. Klaus, Warszawa 2011; B. Samoraj-Charitonow, *Przedsiębiorczość kobiet na polskim rynku pracy na przykładzie cudzoziemek zatrudnionych nielegalnie w sektorze usług domowych*, 2007; *eadem*, *Rola instytucji rynku pracy w kształtowaniu pozycji cudzoziemców na rynku pracy w Polsce, przykład Ukrainek pracujących w Polsce jako pomoc domowa*, Warszawa 2005–2008; P. Sobiesiak-Penszko, *Niewidzialna siła robocza. Migranci w usługach opiekuńczych nad osobami starszymi*, Warszawa 2015; B. Samoraj-Charitonow, *Wybrane aspekty zatrudniania w Polsce cudzoziemek w szarej strefie*, 2015–2016.

The right to benefit from the Polish social insurance system

When considering the conditions for foreigners acquiring the right to benefits from pension insurance (old-age pensions, disability and survivor's pensions), as well as sickness and accident insurance (sickness allowances, maternity allowances, accident allowances), it is necessary to distinguish those legal acts which compose the social insurance system.

In Poland, Ukrainian citizens may benefit from the social insurance system if they are:

- subject to Polish social insurance legislation;
- covered by the European Union regulations on the coordination of social security systems, whereby every Ukrainian who stays in Poland and has employment here may not meet the condition of Polish citizenship if he/she is a citizen of any other Member State, or – not being a EU citizen – if he/she is a member of a citizen's family;
- covered by the provisions of the Polish-Ukrainian agreement on social security;
- registered for social insurance and have paid contributions in due course.

When considering the entitlement to benefits from the social insurance system to which the Ukrainian citizens are entitled, attention should be paid to the specific relationship between the materialisation of a given risk and participation in the social security system. Insurance participation is closely related to legal gainful employment – whether in the form of work based on an employment relationship, a civil law contract or some business activity (sole proprietorship).⁸

Benefits are payable on the conditions and in the amount specified under Polish legislation. They are paid from the Social Insurance Fund [Fundusz Ubezpieczeń Społecznych, FUS], which is managed by the Polish Insurance Institution [Zakład Ubezpieczeń Społecznych, ZUS] and are due both to the insured person and the survivors or survivors of any person eligible for cash benefits from pension insurance.⁹ The insured person¹⁰ is defined as a person who is subject to pension insurance,¹¹ as well as a person who has been subject to social insurance or pension provision before the date of entry into force of the Act, excluding social insurance for farmers. The second part of the definition refers to persons whose insurance situation before 1 January 1999 was governed by the laws listed in Art. 195(1)–(8) of the Act of 17 December 1998 on pensions from the Social Insurance Fund (hereinafter also referred to as: the Pension Act). A person who is only subject to sickness insurance may also be defined as the insured person.

Pursuant to the Act of 13 October 1998 on the social insurance system (Journal of Laws 1998 No. 137, item 887), the following are covered by compulsory pension insurance: employees (excluding public prosecutors), out-workers, members of agricultural

⁸ J. Jończyk, *Prawo zabezpieczenia społecznego*, Zakamycze 2006, p. 14.

⁹ Art. 2 of the Act on pensions from the Social Insurance Fund; see also: I. Jędrasik-Jankowska, K. Jankowska, *Prawo do emerytury (komentarz do ustaw z orzecznictwem)*, Warszawa 2011, p. 26 *et seq.*

¹⁰ G. Szpor, *System ubezpieczeń społecznych (zagadnienia podstawowe)*, Warszawa 2009, p. 147.

¹¹ Art. 4(1) of the Act on the social insurance system.

production cooperatives and cooperatives of agricultural circles, persons carrying out non-agricultural activity and persons cooperating with them, persons carrying out work under agency or mandate contracts or another contract for the provision of services, which, in accordance with the Civil Code, is covered by regulations on mandate contracts, and persons cooperating with them.¹²

The Act on the social insurance system also provides for the right to voluntary insurance for the spouses¹³ of employees who are sent to work in diplomatic missions, consular posts, permanent representations to the United Nations and other special missions abroad, institutes, information and cultural centres abroad; persons who, because of the care of a family member who meets the conditions for being granted a nursing allowance, are not subject to pension insurance; students and participants in doctoral studies if they are not covered by pension insurance under another title; alumni of clerical seminars, novices, postulants and juniors up to the age of 25; applicants who, under unpaid civil law contracts, undergo adaptation internships in the procedure for the recognition of qualifications to pursue a regulated profession or activity – within the meaning of the provisions on the recognition of professional qualifications acquired in the Member States of the European Union; Members of the European Parliament elected in the Republic of Poland.

When looking at the above range, it is necessary to distinguish those functions which constitute any title of insurance not attainable for those with citizenship other than Polish.

If a Ukrainian citizen is not insured, they may apply for pension benefits under the Act on pensions from FUS as a family member of the insured person. The term “family member” refers to survivors – *i.e.*, persons who are entitled to pension benefits after the death of the insured person or a person eligible for benefits. The term “survivors” is important here: it suggests under what circumstances a family member is entitled to benefits, *i.e.*, in the event of the death of an insured person or a person eligible for benefits, irrespective of being subject to such insurance, *i.e.*, having (or not) the status of an insured person. However, this is not entirely accurate. This is due to the fact that family members are also entitled to social insurance benefits if they are indicated as recipients of benefits by persons during a period of the deprivation of liberty or temporary detention.¹⁴

The term “family member” covers persons who are connected with the insured person (with the entitled person, beneficiary) through a relationship of kinship, affinity, marital status and closeness. The following may constitute entitled persons after whose death a family member acquires the right to benefits:

- a) persons meeting the conditions required to obtain benefits from social insurance, *i.e.*, insured persons or persons not subject to pension, sickness and accident insurance at the time of meeting the conditions, who do not exercise their rights, or

12 Art. 6 of the Act on the social insurance system, which contains an extensive catalogue of persons who are covered by compulsory pension insurance.

13 Art. 7 of the Act on the social insurance system.

14 Art. 2 of the Pension Act; see also: I. Jędrasik-Jankowska, K. Jankowska, *op. cit.*, p. 27.

- b) persons who have an established right to these benefits, *i.e.*, pensioners who have claimed a benefit and the pension authority has established their right to a pension by decision, however, they do not have to exercise their rights – they may confine themselves to establishing the right (*i.e.*, calculating the amount of the benefit) or not receive the benefit due to its withdrawal/suspension.

Recipients of pensions are also defined as entitled persons¹⁵.

Acquisition of rights by Ukrainian citizens to social insurance benefits

The rules for determining the rights to pension benefits payable from FUS in accordance with the applicable regulations are laid down in the Pension Act. The Act defines the conditions for acquiring the right to cash benefits from pension insurance, the rules for determining the amount of these benefits, as well as the methods and procedures of their granting and payment.

The specific types of long-term benefits from pension insurance, which are paid out exclusively from the Social Insurance Fund, include:¹⁶ old-age pension from the so-called “old” pension system for insured persons born before 1 January 1949 and for some insured persons born after 31 December 1948 and before 1 January 1969, who have fulfilled certain conditions;¹⁷ old-age pension instead of disability pension – after the pensioner has reached the retirement age of 60/65 years; mining pension – after the pensioner has reached the retirement age and has proved an appropriate period of mining work or the very period of underground mining work in the case of an old-age pension granted irrespective of age; disability pension – after a ZUS certifying doctor/medical board has issued a certificate of incapacity for work, after proving an appropriate period of insurance (contributory and non-contributory), with the exception of situations when the incapacity for work was caused by an accident on the way to or from work and after the incapacity for work has occurred within the required periods or no later than 18 months from their cessation; survivor’s pension – after the fulfilment of certain statutory conditions by members of the deceased’s family, *i.e.*, one’s own children, children of the second spouse and adopted children, children accepted for upbringing and maintenance before reaching the age of majority, grandchildren, siblings and other children, including within

¹⁵ *Ustawa o emeryturach i rentach z Funduszu Ubezpieczeń Społecznych (komentarz)*, ed. K. Antonów, Warszawa 2009, pp. 39–40.

¹⁶ I. Jędrasik-Jankowska, K. Jankowska, *op. cit.*, p. 31 *et seq.*

¹⁷ According to Art. 46–47 and 50 of the Pension Act, until the end of 2008 – reaching the retirement age and demonstrating an adequate period of insurance (contributory and non-contributory periods and, in the case of some categories of persons, periods of work in special conditions or of a special nature) or the period of insurance in case of the old-age pension granted for teachers regardless of age.

the foster family, spouses (widow and widower) and parents (here also stepfather, stepmother, adopter).¹⁸

In accordance with the legal status in Poland, it should be stated that the only legal criterion on which the possibility of taking advantage of these benefits by foreigners, including Ukrainian citizens, depends, is the criterion of being covered by social insurance and participating in the system (registration and fulfilment of the conditions specified by law, among which there is no *sine qua non* condition of holding Polish citizenship). Therefore, these are entitlements which cover to the same extent and scope both persons with Polish citizenship and foreigners (including foreigners of Ukrainian origin) – both within the rules of participation in the Polish social insurance system, acquiring the right to benefits, determining the amount of the benefit, overlapping of rights, and revocation of rights or indexation of benefits.

Polish-Ukrainian agreement on social security

Bilateral social security agreements concluded by Poland open up an additional way for foreigners to acquire the right to pension benefits paid from FUS. Thanks to the basic principles of coordination of social security systems contained therein, a foreigner is treated in the Polish pension system on an equal footing with a Polish citizen. This is due to the fact that the coordination of the systems is based on four main pillars, *i.e.*, principles of: equal treatment, application of a single legislation, aggregation of insurance periods and maintenance of acquired rights (export of benefits). According to the provisions of the bilateral social security agreements which are based on the above mentioned coordination principles, a citizen of another country who has not completed the required periods of insurance to acquire the right to a pension exclusively on the basis of the Polish social insurance system, but who can demonstrate periods completed in the countries with which Poland has concluded these agreements, is treated by the Polish pension system as if they had completed all the periods of insurance in Poland.

This legal protection allows for all periods of insurance completed in countries with which Poland has concluded social security agreements to be aggregated in order to acquire the right to a benefit. The same applies to the establishment of the right to an old-age, disability or survivor's pension. These benefits are guaranteed by the material scope of bilateral social security agreements. This means that the materialisation of risks and taking into account the insurance periods in both countries covered by the agreement allows foreigners to claim the right to a pension.

To sum up, in the event of the migration of foreign citizens to Poland, if their home countries have concluded social security agreements with Poland, the legal position of

¹⁸ I. Jędrasik-Jankowska, K. Jankowska, *op. cit.*, pp. 34–36.

the foreigner and the Polish citizen has been equalised with regard to participation in the social insurance system. Each state is obliged to establish benefits as if all events covered by these agreements took place on its own territory.

An agreement on social security between the Republic of Poland and Ukraine was signed on 18 May 2012 (Journal of Laws of 2013, item 1373) and entered into force on 1 January 2014. Its personal scope covers citizens of the contracting states and persons who are not citizens of those states (third-country citizens, refugees, stateless persons), who are or have been subject to the legislation of at least one contracting state and are in a situation with the so-called international element (*i.e.*, a situation concerning both contracting states). The agreement also applies to the survivors of the above mentioned persons claiming a survivor's pension. For the purposes of being covered by the Polish-Ukrainian agreement, it does not matter in which country the person concerned resides.

The material scope of the agreement on the Polish side covers the following money benefits from social insurance: old-age pensions, disability benefits due to general health condition, survivors' pensions, benefits due to accidents at work and occupational diseases, funeral grants and sickness and maternity benefits. However, the agreement on the Polish side does not apply to, *inter alia*, health benefits in kind, benefits from the pension scheme of uniformed services, salaries of retired judges and prosecutors, social assistance benefits, benefits for combatants, benefits for victims of war and its consequences (including pensions for war and military invalids), social pensions, pre-retirement benefits.

On the Ukrainian side, the Polish-Ukrainian agreement applies to the general state social insurance concerning: sickness (temporary incapacity for work), pregnancy and childbirth (maternity), accidents at work, occupational diseases or death due to these causes, unemployment, old-age and disability pensions, loss of the breadwinner, seniority, in accordance with the legislation on the general state pension insurance and funeral grant.

The agreement contains regulations preventing simultaneous social insurance coverage in two contracting states (double insurance). Its provisions indicate the state whose social insurance legislation is applicable to the person who performs work simultaneously in both contracting states.

The specific provisions of the Polish-Ukrainian agreement concerning old-age, disability pensions due to general health condition and survivors' pensions after the death of persons eligible for these benefits are based on standard coordination principles: equal treatment, aggregation of contribution periods, maintenance of rights during acquisition, maintenance of acquired rights and cooperation between the institutions of the contracting states.

Thus, in accordance with the principle of equal treatment, unless otherwise provided for in the agreement, persons covered thereby enjoy the same rights and are subject to the same obligations under the legislation of each contracting state as is the case for its nationals. This means that the Polish-Ukrainian agreement prohibits direct and indirect discrimination. Direct discrimination occurs when the laws of one state explicitly

limit access to benefits or their payment on the grounds of nationality or residence. And indirect discrimination occurs when the laws of one state provide for conditions for the acquisition of the right to benefits or for their payment that are difficult for non-nationals to meet, or when they provide for conditions that are apparently non-discriminatory but whose application has discriminatory effects. Another important principle resulting from the provisions of the Polish-Ukrainian agreement concerning pensions is the principle of the maintenance of rights during acquisition, on which the techniques of the recognition of events and circumstances and of taking into account foreign insurance periods are based. According to the Polish-Ukrainian agreement, if the facts and events which affect the acquisition of the right to a pension, as well as the suspension of payment of these benefits or their amount, have occurred in the territory of one state, they are taken into account as if they have also occurred in the territory of the other state.

The technique for the recognition of events and circumstances has been formulated explicitly in the Polish-Ukrainian agreement. For this reason, for example, the right to an old-age pension established by ZUS is suspended regardless of the amount of income received by the pensioner from continued employment without prior termination of the employment relationship, because the Polish-Ukrainian agreement requires the termination of the employment relationship established with the employer in Ukraine.

The most important instrument resulting from the agreement is the technique of taking into account foreign insurance periods, which is used in determining old-age pensions, disability pensions due to general health condition and survivors' pensions for persons entitled to these benefits. It consists in aggregation of foreign insurance periods completed in the other contracting state when determining the right to benefits and calculating their amount. Therefore, if, when determining the right to a Polish old-age pension, a disability pension due to general health condition and a survivor's pension, it turns out that the Polish period of insurance is too short to acquire such a right, the Polish competent institution will also take into account Ukrainian periods of insurance which do not overlap with Polish ones. If, on the other hand, the Ukrainian period of insurance is insufficient to acquire the right to a Ukrainian pension, the Ukrainian competent institution will take into account Polish periods of insurance that do not overlap with the Ukrainian periods.

In addition, the agreement provides for taking into account, in specific cases, insurance periods completed in a third country, *i.e.*, a country that is not a party to the agreement. It follows from the Polish-Ukrainian agreement that if after aggregating the Polish and Ukrainian periods of insurance a person does not acquire the right to a pension, the insurance institution of the contracting state takes into account the period of insurance completed in a third-party country with which both contracting states are bound by an international agreement providing for the aggregation of insurance periods. It should be noted that this concerns only the aggregation of periods from such third-party countries with which both contracting states have concluded international agreements providing for the aggregation of insurance periods. In this respect, the term "international agreements" includes, on the Polish side, not only bilateral international agreements in the

field of social insurance binding Poland, but also EU regulations on the coordination of social security systems.

Thus, when determining the right to a pension, the Polish institution determines in the first instance the periods of insurance to be taken into account which were completed in Poland, their type and size, as well as the order in which they are to be taken into account as determined by Polish legislation. Then, if the periods of insurance completed in Poland are not sufficient to acquire the right to a Polish benefit, the Polish institution shall aggregate, on the basis of the Polish-Ukrainian agreement, the periods of insurance completed in Ukraine, and if they are also insufficient when aggregated, it shall additionally take into account periods from third-party countries with which Poland and Ukraine are bound by agreements providing for aggregation of insurance periods.

If the entitlement to Polish benefits depends on the completion of periods of insurance in a particular profession (for example, miner, teacher) or employment (for example, work in special conditions or of a special nature), the Polish institution shall take into account, on the basis of the Polish-Ukrainian agreement, the Ukrainian periods of insurance completed in these forms of work. On the basis of the Polish-Ukrainian agreement, insurance periods completed in Ukraine are taken into account when determining the right to a Polish old-age pension, a disability pension due to the general health condition, even if their aggregation is possible upon meeting the condition of the occurrence of insurance risk while being insured or meeting the condition of the duration of insurance periods within a certain period of time.

In the case of a benefit depending on incapacity for work, the competent institution of each contracting state shall determine the degree of incapacity for work in accordance with the legislation it applies. This means that Polish competent institutions are not bound by the findings regarding any incapacity for work made by the Ukrainian insurance institution.

The rules for calculating the amount of an old-age pension, disability pension due to general health condition and the survivor's pension under both agreements are similar. Where insurance periods completed in both contracting states are aggregated for the purpose of determining the right to benefit, benefit calculation is also based on the aggregated insurance periods completed in both states. In order to calculate this benefit, the competent institution establishes the theoretical amount of the benefit which a person concerned could claim if all the periods of insurance had been completed under the legislation applied by that institution, and then the actual amount (the so-called *pro rata* benefit) on the basis of the theoretical amount. To this end, the theoretical amount is multiplied by the so-called proration factor, *i.e.*, the fraction reflecting the ratio between the period of insurance completed in one contracting state and the total duration of the periods completed in both states.

The competent institution calculates the *pro rata* benefit in this way not only if the right to a pension has been acquired only after taking into account foreign insurance periods completed in the other state, but also if the benefit calculated using the mechanism of

the aggregation of insurance periods is higher than the benefit determined for an “own” insurance period alone. If the period of insurance completed in one contracting state is sufficient to acquire the right to a pension, the competent institution:

- first of all, calculates the amount of the national benefit in respect of periods of insurance completed exclusively in the state whose institution determines the benefit;
- secondly, calculates the amount of the *pro rata* benefit, taking into account foreign periods of insurance completed in the other state;
- then compares the amount of the national benefit and the *pro rata* benefit in order to choose the more favourable option for the person concerned.

If, when determining the right to the above-mentioned benefits, the competent institution took into account the insurance period completed in a third country with which both contracting states have concluded an international agreement providing for the aggregation of insurance periods, these insurance periods are also taken into account when determining the amount of the *pro rata* benefit (in the theoretical amount of the benefit and in the denominator of the proration factor). It should be noted that the principle of taking into account foreign periods of insurance provided for in the agreement does not apply for the calculation of an old-age pension, whose amount does not depend on the duration of insurance periods.

In addition, it should be noted that, pursuant to the provisions of the Polish-Ukrainian agreement, where a Polish period of insurance is shorter than one year and based on that period there will be no eligibility for the Polish pension, the competent institution is not under any obligation to award such benefits. Similarly, if the Ukrainian period of insurance is shorter than one year and based on that period there will be no eligibility for the Ukrainian pension, the competent institution is not under any obligation to award such benefits.

On the other hand, if the Ukrainian insurance period being shorter than one year was taken into account when determining the right to the Polish pension, the Polish institution calculates the amount of the Polish pension in a proportional amount – reflecting the ratio between the duration of the Polish insurance period and the total duration of the Polish and Ukrainian insurance periods.

The agreement covers pensions in respect of accidents at work and occupational diseases. According to the agreement, these benefits are granted under Polish legislation if the insured person was subject to Polish legislation at the time of an accident at work or during the performance of official duties resulting in an occupational disease. The amount of these benefits is calculated on the basis of the national legislation of the contracting states only. The agreements do not modify the national legislation in this respect, but they contain regulations on the aggravation of an occupational disease in accordance with the legal provisions of the first contracting state during the performance of work in the territory of the second state, which may aggravate this disease. In such a case, the agreement provides that the institution of the first state continues to pay the benefit granted without taking into account the aggravation of the insured person's health

condition. And the institution of the second state grants a benefit equal to the difference between the amount of the benefit which is payable after the aggravation of the occupational disease and the amount of the benefit which would have been granted before its aggravation, in accordance with the legislation it applies.

Under the provisions of the Polish-Ukrainian agreement, benefits awarded before its entry into force may – at the request of the person concerned – be re-established in accordance with the agreement if the change results exclusively from its provisions. However, this cannot be done for the period before the date of entry into force of the agreement. The re-establishment of a pension from ZUS on the basis of the agreement at the request of the party concerned relates to:

- persons who are not Polish repatriates from Ukraine and who can demonstrate periods of insurance in Poland or in Ukraine (regardless of their place of residence) and to whom a previous benefit from ZUS or from a Ukrainian institution has been determined – in the absence of an agreement between those states – on the basis of periods of insurance completed in only one state, or who have been refused a pension due to too short a period of insurance completed in one state;
- Polish repatriates from Ukraine for whom, before the entry into force of the agreement, periods of employment in Ukraine were taken into account as Polish insurance periods, when determining the right to and the amount of the Polish pension.

The pension granted to Polish repatriates from Ukraine before the entry into force of the agreement is also re-established *ex officio* (after ZUS receives information that the repatriate has been granted the right to a Ukrainian pension).

The discussed Polish-Ukrainian agreement also provides for the transfer of benefits to beneficiaries residing in the other contracting state. This means that upon the request of a beneficiary residing in Ukraine, the Polish pension may be transferred to his/her bank account in Ukraine. And the Ukrainian pension may be transferred to Poland by the insurance institutions of these states to a person residing in Poland. On the Polish side, however, the principle of benefit transfer in both agreements does not apply to *e.g.*, benefits awarded under a special procedure or by way of exception.

The number of foreigners in social insurance

In recent years, there has been a constant increase in the number of foreigners registered for the Polish social insurance system. This situation is illustrated by the data presented in Table 1.

The data presented in Table 1 clearly show that the number of foreigners registered for social insurance has systematically increased for several years. However, it is amongst citizens of Ukraine that the highest growth dynamics can be observed. This situation is illustrated by Graph 1.

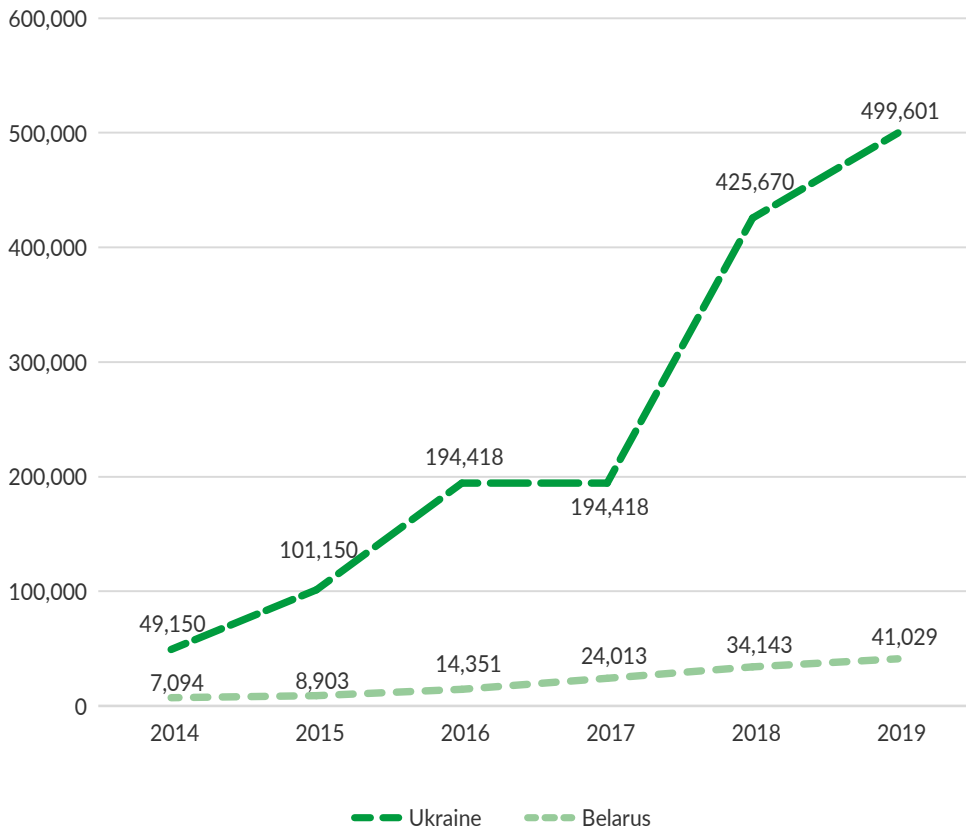
Table 1. Number of foreigners registered for pension insurance by country of citizenship – as of the end of the year (selected nationalities)

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018*
Total	65,041	69,813	78,608	88,423	93,012	101,083	124,349	184,188	293,188	440,255	569,724
Citizenship of EU countries	16,350	17,138	19,048	20,591	22,242	24,656	27,349	29,421	31,694	34,116	35,581
Citizenship of non-EU countries, of which:	48,691	52,675	59,560	67,832	70,770	76,427	97,000	154,767	261,494	406,139	533,535
Ukrainian	16,237	18,602	21,777	27,659	29,713	32,989	49,150	101,150	194,418	316,474	425,670
Belarusian	4,184	4,320	4,927	5,512	6,035	6,387	7,094	8,903	14,351	24,013	32,632
Vietnamese	3,004	3,481	3,951	4,451	4,655	5,267	6,041	6,146	6,528	7,592	8,101
Moldovan	789	643	817	967	994	1,217	1,767	2,628	5,024	6,510	7,337
Russian	3,018	3,201	3,448	3,558	3,661	3,832	4,178	4,692	5,691	6,654	7,255

* As of 30 September 2018.

Source: ZUS data 2018

Graph 1. Number of foreigners registered for pension insurance by country of citizenship – as of the end of each year (selected nationalities)

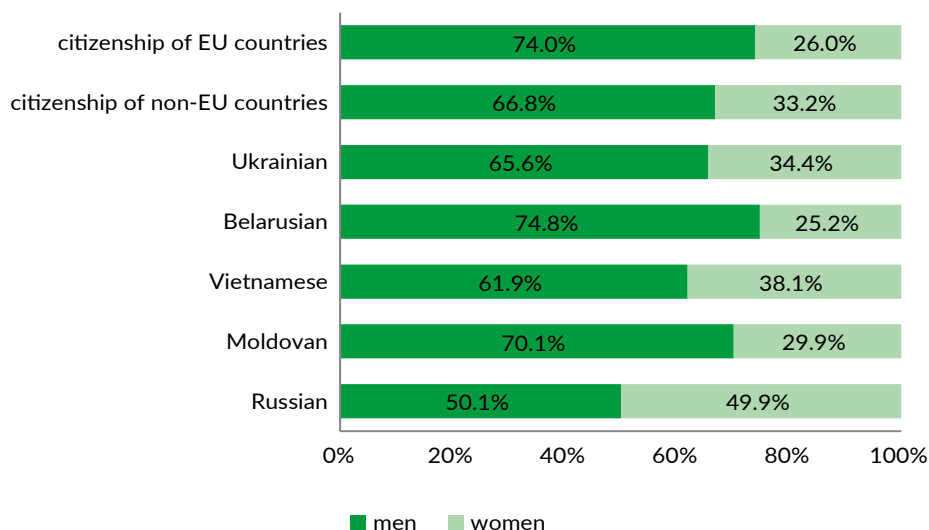


Source: ZUS data

In 2019 (as of 30 September), 665,602 foreigners, including 499,601 Ukrainian citizens, were registered for social insurance. This means that in relation to 2014 (changes in regulations on access to the labour market and entry into force of the Polish-Ukrainian bilateral agreement on social security) this is a 10-fold increase. It should be emphasised that this increase concerns the last six years (2014–2019). Within a few dozen years no such dynamic growth has been recorded in relation to any other nationality. However, the question arises whether these are newcomers from Ukraine or whether we are dealing with the legalisation of the long-term economic migration to Poland, which has so far been maintained in the shadow economy (builders, carers, people working in horticulture and agriculture). It seems that these are mostly new immigrants, however, though an answer to this question requires in-depth empirical research.

In the case of most nationalities, the majority of immigrants are men (about 2/3 of the total population). Only in the case of those of Russian nationality is this number more or less an even divide. This situation is illustrated by Graph 2.

Graph 2. Foreigners in the Polish social insurance system by gender
(as of 30 September 2018)



Source: ZUS data

It is worth noting, however, that the number of women from Ukraine exceeds 1/3 and constitutes almost 35% of the total population of Ukrainians working in Poland. However, it should be borne in mind that the considerations apply to persons registered for social insurance, *i.e.*, working legally. At present, employers very often register for social insurance persons employed in transport or construction services due to the high risk of accidents at work (construction) or the control of employment legality (transport, especially international). On the other hand, care services and house cleaning remain in the shadow economy, and this sector is dominated by women from Ukraine. As of 30 September 2019, only five people were registered in this sector¹⁹ for pension insurance, all of whom were Ukrainian nationals. According to an analysis of unofficial job placement services, the market for care services and house cleaning is still largely dominated by Ukrainians, hence it can be assumed that the actual gender distribution of people working in Poland and coming from Ukraine is closer to an equal balance (half women, half men).

If one looks at the distribution of foreigners registered for pension insurance in Poland, in each of the analysed periods by voivodship, the highest number of persons (as of 30 September 2018) were registered in voivodships: Masovian (93,574), Lower Silesian (43,924), Greater Poland (42,831) and Silesian (35,129). These voivodships have dominated for many years in their reception of foreigners and no changes have been observed here (of course, except for the increase in numbers). This is shown in Table 2.

¹⁹ Section of the Polish Classification of Activities [Polska Klasyfikacja Działalności, PKD]: *Households as employers of domestic personnel, goods- and service-producing activities of private households for own use.*

Table 2. Number of foreigners registered for pension insurance by voivodship – place of residence of the insured person – as of the end of each year

Voivodship	2015	2016	2017	2018*
Total	184,188	293,188	440,255	569,116
Lower Silesian	14,588	21,980	34,873	43,924
Kuyavian-Pomeranian	4,576	6,195	10,346	13,340
Lublin	3,630	5,238	6,575	10,192
Lubusz	3,952	7,081	10,825	13,878
Łódź	7,406	11,202	17,123	22,475
Lesser Poland	10,497	15,748	21,847	27,687
Masovian	43,200	55,571	77,493	93,574
Opole	3,501	5,471	8,566	10,141
Podkarpackie	2,805	3,853	5,496	6,947
Podlaskie	3,195	3,890	5,673	7,176
Pomeranian	6,522	11,786	17,174	23,916
Silesian	8,997	16,549	26,527	35,129
Świętokrzyskie	1,779	2,374	3,065	3,957
Warmian-Masurian	2,073	3,523	5,668	6,881
Greater Poland	11,472	20,689	32,542	42,831
West Pomeranian	5,210	9,186	13,760	18,314
Undetermined	50,785	92,852	142,702	188,754

* In 2018 as of the end of September.

Source: ZUS data

It is also worth noting that a large number of foreigners taking up employment in Poland and registered for pension insurance are people employed on the basis of the most “safe” and “social” form of employment, which is the employment contract according to the Labour Code. In the case of persons of EU Member States nationalities, this group constitutes as much as $\frac{3}{4}$ of all employees registered for pension insurance. Similar figures apply to foreigners from: Vietnam (77.2%), Russia (74.8%) or Belarus (69.7%). Among people of Ukrainian and Moldovan nationality, these proportions are not yet as favourable. Only half of Ukrainians are employed on the basis of employment contracts and the remaining part on the basis of civil law contracts, while fewer than 40% of Moldovans work on the basis of the Labour Code, and the remaining part – almost 60% – on the basis of civil law contracts. This situation is illustrated in Table 3.

Table 3. Structure of foreigners registered for pension insurance by country of citizenship and selected insurance titles (as of 30 September 2018)

Citizenship	Employees	Persons running business outside the agriculture	Persons performing work on the basis of civil law mandatory or agency contracts	Unemployed
Russian	74.8%	9.1%	14.9%	1.2%
Moldovan	39.3%	0.7%	59.9%	0.1%
Vietnamese	77.2%	12.8%	9.9%	0.1%
Belarusian	69.7%	3.9%	26.0%	0.4%
Ukrainian	51.8%	0.9%	47.1%	0.2%
Citizenship of non-EU countries	55.4%	2.2%	42.2%	0.2%
Citizenship of EU countries	68.7%	17.5%	13.4%	0.4%

Source: ZUS data

The situation discussed above, related to the registration for insurance under which long-term benefits (pensions) are paid, is similar to the circumstances of registration for insurance under which short-term benefits can be obtained. Sickness insurance, under which it is possible to take advantage of sickness allowances (stoppages at work due to sickness and other random events listed in the Sickness Act), maternity, rehabilitation, compensatory or care allowances, also records a significant increase in the number of applications. Over the past four years, there has been an almost threefold increase in the number of applications for sickness insurance, with the highest increase being observed among non-EU citizens. Among people coming from countries covered by the coordination of social security systems and free movement of goods, services and workers, in the period between 2015 and 2018 we can observe an increase in the number of applications for sickness insurance by only less than 20%, while in the case of foreigners coming from third-party countries the increase is more than ten times higher and exceeds 200%. Ukrainians are characterised by the highest dynamics of applications for sickness insurance among all nationalities. In their case, the period of 2015–2018 saw an increase in applications by almost 300%, from 66,861 in 2015 to 263,804 in 2018. This situation is presented in Table 4.

Table 4. Number of foreigners registered for sickness insurance by country of citizenship (as of the end of each year)

	2015	2016	2017	2018*
Total	137,723	207,193	299,089	378,816
Citizenship of EU countries	23,855	25,675	27,425	28,861
Citizenship of non-EU countries of which:	113,868	181,518	271,664	349,955
Ukrainian	66,861	123,591	197,232	263,804
Belarusian	7,704	12,017	19,299	25,372
Vietnamese	5,762	6,108	6,952	7,364
Moldovan	2,280	4,017	4,340	3,963
Russian	3,920	4,795	5,574	6,036

* In 2018 as of the end of September.

Source: ZUS data

Among all those covered by sickness insurance in 2019,²⁰ most people took advantage of sickness allowances (1,321 persons), of which almost 77% were of Ukrainian origin (1,007 persons). Also as regards all other benefits from sickness insurance, Ukrainians constituted the majority of beneficiaries. This situation is presented in Table 5.

Table 5. Number of insured persons who declared non-Polish citizenship and who in the period from January to September 2019 received a short-term benefit

Citizenship	Sickness allowance	Maternity allowance	Rehabilitation benefit	Care allowance
Total	1,321	282	44	341
Ukrainian	1,007	181	28	235

Source: ZUS data

Therefore, it should be noted that both foreigners from European Union countries and third-party country nationals are increasingly visible in the Polish social insurance system. Among the third-party country nationals, the most numerous group are Ukrainian citizens, who dominate both among persons registered for social insurance and among persons taking advantage of short-term benefits. The number of old-age pension recipients is currently small, but taking into account the increase in the number of persons registered for pension insurance, it can be expected that within the perspective of several years the number of old-age pension recipients will increase. Today, the basic condition for determining the right to an old-age pension is to register for insurance and pay at least

²⁰ The data refer to the period until 30 September 2019.

one contribution, but it is necessary to collect as many contributory periods as possible, so that the benefit has any real income dimension.

In connection with the epidemic caused by COVID-19 and the closure of many workplaces in March and April 2020, and – as a result – a mass exodus of Ukrainians from Poland, it is currently difficult to predict how many contributory periods will be completed by Ukrainian employees and how much they will pay by means of contributions. As a result, it is difficult to assess the amount of old-age pensions from the Polish pension system for Ukrainians, but this is certainly a situation that requires monitoring in the upcoming years.

Summary

The analyses covering the participation of foreigners in the Polish social security system show that in recent years the number of persons registered for social insurance who have non-Polish citizenship has been systematically growing. The analyses of the number of Ukrainians registered for the system show clearly that since 2014, when the bilateral agreement on social security came into force, with its provisions allowing for the aggregation of insurance periods and the possibility to benefit from the Polish social insurance system, their number has been increasing not only systematically, but also very dynamically, considerably exceeding foreigners of other nationalities.

Allowing Ukrainians to participate in the Polish social insurance system has had a great impact both on the legalisation of previously undeclared work and on new migration decisions and “new” arrivals of Ukrainians to Poland. It was, *inter alia*, thanks to the provisions of the last bilateral agreement that it was possible to fill the shortages on the Polish labour market, where the lack of a domestic labour force is more and more noticeable in a growing number of industries.

However, it seems worthwhile to launch additional instruments of active migration policy and try to introduce facilitations for professional groups where we still experience shortages, such as doctors. There is a shortage of specialist doctors in Poland, further outpatient care facilities and hospitals are being closed. This finding also leads to the conclusion that it is necessary to accelerate work on a government document which would set out the main directions and assumptions of Polish migration policy. This would allow one to develop a real and systematic method of filling the shortages on the labour market. These actions seem even more urgent as the downtime on the labour market in Poland caused by the COVID-19 epidemic will have huge negative consequences for the Polish economy.

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Obywatele Ukrainy w polskim systemie ubezpieczeń społecznych

Artykuł stanowi próbę przybliżenia czytelnikowi dynamiki zmian w zakresie zgłaszania Ukraińców do polskiego systemu ubezpieczeń społecznych oraz powiązania tego zjawiska przede wszystkim z podpisaniem i wejściem w życie w 2014 r. polsko-ukraińskiej umowy o zabezpieczeniu społecznym. Autorka szuka odpowiedzi na pytanie, czy istnieje relacja między wzrostem liczby osób pochodzenia ukraińskiego zgłaszanych w ostatnich latach do ubezpieczeń społecznych a wejściem w życie wspomnianej umowy międzynarodowej.

Słowa kluczowe: sumowanie okresów, migracje międzynarodowe, polsko-ukraińska umowa o zabezpieczeniu społecznym, ubezpieczenia społeczne, Ukraińcy na polskim rynku pracy

Selected problems of social security provided outside the universal social insurance system to Ukrainian citizens residing in Poland

The right to social security is recognised as a human right implemented through the activities of a particular country, and therefore one difficult to guarantee in complex situations regarding nationality or place of residence of singular persons or families. In order to regulate their situation, states create legal instruments at international or supranational level. Also the role of national law is important here. This study presents selected legal aspects of ensuring social security for Ukrainian citizens residing in Poland. It focuses on benefits outside the scope of the universal social insurance system, *i.e.*, mainly on social benefits that are not directly related to professional activity.

Key words: bilateral agreement on social security, international migrations, social security, social security system

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Introduction. Legal framework of the social situation of Ukrainian citizens in Poland

The right to social security is now recognised as one of the basic human rights referred to as social rights. They are guaranteed by supranational legal acts. In implementing social rights, due to their subject, the role of the state or, more precisely, of individual states is immense. It is assumed that the state has an obligation to take actions to implement these rights. It does so by organising national social security systems. They are of a public and administrative legal nature, and thus closely related to the scope of the activity, territory, jurisdiction and competences of a given state. For example, according to Art. 67 and Art. 68(3) of the Polish Constitution, it is the citizen who has the right to social security and equal access to health care services financed from public funds, although everyone has the right to health protection (Art. 68[1]), and families are entitled to assistance from the state (Art. 71), without specifying their nationality.

For this reason, full implementation of the right to social security is problematic in the situation of migrants who are in a complex legal situation due to the potential impact of many legal systems. The effects of migration relate not only to individual migrants, but also to dependents, whom the legislation of individual states may provide with various rights. For example, consideration could be given to the situation of a family, in which the mother works in one country, the father in another, and the children live in yet another country (*e.g.*, with grandparents – the citizens of yet another country).

Solutions, satisfactory for migrants, their family members and the public interest of the states concerned can be adopted in international or supranational legal instruments. Then they are binding on the states involved. To an extent not resulting from international obligations, each state may independently arrange the conditions of a foreigner's stay in its territory and the granting of social security benefits. These legal regulations are distinct from those concerning the law applicable to employment relationships or other employment bases, legality of employment, taxes or jurisdiction in matters concerning a given category of persons. At the same time, it should be borne in mind that only the entirety of international and national legal regulations in many areas of law arranges the position of a migrant (foreigner) in a holistic manner, which ultimately determines a subjective sense of security. This may affect the process of making decisions on migration, and therefore undertakings in this area are particularly important for countries interested in recruiting foreign employees. Poland is currently in such a situation, and the citizens of Ukraine constitute the largest group of foreigners working in our country.

In terms of legal instruments affecting the social security of Ukrainian citizens in Poland, the following should be taken into account:

- Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (Official Journal EU L 161/3 of 29.5.2014); hereinafter referred to as the Association Agreement;

- Social Security Agreement between the Republic of Poland and Ukraine (Journal of Laws of 2013, item 1373; ratification: Journal of Laws of 2013, item 1378); hereinafter: the Social Security Agreement or the Agreement;
- national law, including selected legal acts regarding benefits aimed to ensure social security to their addressees.

Considerations will be carried out using a dogmatic and legal method, to determine whether, based on the current legal status, it can be concluded that Poland has adopted a coherent concept of ensuring social security for Ukrainian citizens as the most numerous of the groups of foreigners within the territory of the Republic of Poland. The study will focus on selected legal aspects of certain problems that fall outside the scope of the Polish universal social insurance system, covered or not by the Social Security Agreement with Ukraine¹: unemployment benefits, farmers' social insurance system and – due to the scale of the problems observed in practice – the social rights of families of Ukrainian citizens.

Association Agreement

In the Association Agreement, which basically entered into force on 1 September 2017, there are practically no provisions that would directly relate to ensuring social security to migrant Ukrainian citizens. On the contrary, the content of the provisions on movement indicates that these issues have been deliberately left out of the scope of the agreement. For example, according to the wording of Art. 141(3) of the Association Agreement, the provisions of the chapter on the establishment, trade in services and electronic commerce, as well as of the indicated Annexes² do not apply to the parties' respective social security systems. In addition, nothing in this chapter shall be construed in such a way as to prevent a party, including its public entities, from exclusively conducting or providing in its territory activities or services forming part of a public retirement plan or statutory system of social security, except when those activities may be carried out, as provided by the party's domestic regulation, by financial service suppliers in competition with public entities or private institutions (Art. 130).

Art. 97 of the Agreement, included in Section 4 *Temporary presence of natural persons for business purposes* and determining the scope of the application of this Section, provides that this Section applies to measures of the parties concerning the entry into and temporary stay in their territory of categories of natural persons providing services, as defined in Art. 86(17) to (21) of the Agreement, *i.e.*, the categories of persons who are also specifically distinguished within the Polish Act of 12 December 2013 on foreigners³

¹ See I. Kryśpiak, *Koordinacja bilateralna systemów emerytalno-rentowych. Umowy Polski z Ukrainą oraz Mołdawią*, "Ubezpieczenia Społeczne. Teoria i praktyka" 2013, No. 12, pp. 13–14.

² These are Annexes XVI-A, XVI-B, XVI-C, XVI-D, XVI-E, XVI-F and XVII to the Agreement.

³ The Act of 12 December 2013 on foreigners (consolidated text: Journal of Laws of 2018, item 2094, as amended; see, *e.g.*, Art. 139a *et seq.*).

(key personnel, graduate trainees, business services sellers, contractual services suppliers, independent professionals). The reference contained in this Article clearly states that all other requirements of the parties' laws and regulations regarding entry, stay, work and social security measures shall continue to apply, including regulations concerning period of stay and minimum wages as well as collective wage agreements.⁴ According to the title of the Section, it concerns only the "presence", *i.e.*, the rules of entry and residence, but not the social conditions of those resident. In the social sphere, we remain within the bilateral agreement and national regulations.

Although the provisions of the Association Agreement referring in any way to migrants indicate the intention that for the time being the social security of such persons should be left out of the arrangements, one should also bear in mind the indirect impact of the Association Agreement through the harmonisation of European and Ukrainian law (see Art. 289 *et seq.* of the Association Agreement). This process is leading to an extending similarity of the social situation of Ukrainian citizens in Ukraine and in EU Member States, including Poland. In accordance with Art. 419 of the Association Agreement, the parties shall strengthen their dialogue and cooperation on promoting the decent work agenda, employment policy, health and safety at work, social dialogue, social protection, social inclusion, gender equality and non-discrimination. Ukraine is undertaking to gradually approximate its legislation to the indicated EU regulations. Annex XL to Chapter 21 *Cooperation on employment, social policy and equal opportunities* indicates that the provisions of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security⁵ shall be implemented within three years of the entry into force of the Association Agreement. It can be assumed that raising the standards of social protection in Ukraine, including in the field of equal treatment for men and women, should affect the attractiveness of economic emigration from this country, but also the expectations of migrants in relation to the level of security within the host country.

Benefits covered by the Social Security Agreement

General remarks

According to the declarations accompanying the conclusion of the Social Security Agreement, its main addressees were to be repatriates and persons resettled to Poland outside of the repatriation procedure. Their interests were to be protected by the aggregation of Polish and Ukrainian insurance periods necessary to acquire the right to long-term benefits (pensions).

⁴ Commitments on the movement of persons do not apply in cases where the intent or effect of such a movement is to interfere in or otherwise affect the outcome of any labour/management dispute or negotiation.

⁵ Council Directive of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in the field of social security (Official Journal L 006, 10.01.1979 p. 0024–0025).

The justification of the draft Act on the ratification of the Agreement, in the economic field, points out the obligation of the double payment of insurance contributions for Polish employees posted to work in Ukraine. These persons were insured in their state of permanent employment, *i.e.*, in Poland, and at the same time in their state of temporary employment, *i.e.*, in Ukraine. Such a double payment of contributions increased the operating costs of Polish enterprises in Ukraine, inhibited the flow of employees and reduced the profitability of Polish investments in Ukraine.

The relevant provisions of the Agreement were aimed to eliminate the double payment of social insurance contributions, and thus eliminate one of the obstacles to the development of Polish-Ukrainian economic relations.

No mention was made there of the posting of employees from Ukraine to Poland. The regulatory impact assessment only noted that:

The number of Ukrainian citizens taking up legal employment in Poland is increasing with every year, which increases the insurance contributions paid to the Polish system, and thus the income to insurance funds.⁶

Currently, the scope of benefits provided to Ukrainian citizens from the Polish social insurance system raises doubts being also the subject of parliamentary questions.

As mentioned above, concern for the situation of repatriates was cited as the main reason for concluding the Agreement. Such a justification does not fit to the development of the situation, *i.e.*, the occurrence of large scale labour migrations from Ukraine to Poland, often of a short-term nature. Nevertheless, the basic scope of social security was ensured to economically active migrants as well as to their family members, because the Agreement covers survivors' pensions and funeral grants. The Polish Ministry of Family, Labour and Social Policy does not plan to renegotiate the Polish-Ukrainian Agreement on social security or to amend the Polish domestic regulations in this respect.⁷

Unemployment benefit

Unemployment benefit is coordinated pursuant to Art. 2(1)(2)(1), Art. 5(2)(2) and Art. 9 of the Social Security Agreement. In the Republic of Poland, it is granted outside of the universal social insurance system. The organisation and the rules for its granting are separate from other benefits covered by the Agreement: they are governed by the Act on employment promotion and labour market institutions.⁸ Tasks related to unemploy-

6 Uzasadnienie projektu ustawy ratyfikującej Umowę [Justification of the draft Act ratifying the Agreement], Sejm Paper 634 of 23 July 2012, p. 3.

7 Reply of the Undersecretary of State in the Ministry of Family, Labour and Social Policy, Mr. Marcin Zieleniecki, to question No. 16546 on the old-age pensions of Ukrainian citizens paid out of Social Insurance Institution [Zakład Ubezpieczeń Społecznych, ZUS] funds, Warsaw, 9 November 2017.

8 The Act of 20 April 2004 on employment promotion and labour market institutions (consolidated text: Journal of Laws of 2018, item 1265, as amended), hereinafter referred to as the Act on employment promotion.

ment benefit are mainly performed by the minister competent for labour issues together with poviats (local) and voivodeships (provincial) labour offices. Unemployment benefit is treated as a result of loss of employment, and thus a source of income. For this reason it intrinsically does not fit into the general assumptions adopted in the Agreement and applied in determining the applicable legislation, which link social insurance coverage with the performance of work within the territory of the country concerned (Art. 6 of the Agreement). Nevertheless, this principle is maintained even in this situation.

The wording of Art. 9 of the Agreement is relevant when determining the right to the benefit in Poland. It provides that periods of insurance completed in accordance with the legislation of one of the Contracting Parties are taken into account if necessary⁹ and if they do not overlap, but only when the person concerned can demonstrate that the periods of insurance completed immediately prior to the loss of employment under the legislation of the other Contracting Party established entitlement rights. Therefore, within the scope of the application of this provision of the Agreement, *i.e.*, regarding persons who acquire the right to unemployment benefit after aggregating Polish and Ukrainian periods of insurance, unemployment benefit is granted in Poland to persons who have lost their job in Poland for the last time.

To the extent not covered by the provision of Art. 9 of the Agreement, it should be assumed that persons subject to pension insurance in Poland, for whom contributions to the Labour Fund have been paid, acquire the rights provided for in the Act on employment promotion, possibly in the limited scope indicated in Art. 1(4)-(7). Therefore, the conditions for acquiring the rights depend on the status of the person concerned.

Ukrainian citizens intending to take advantage of unemployment benefit should also take into account the consequences of Art. 9(2) of the Social Security Agreement. The period of unemployment benefit payment is reduced by the period during which the unemployed person received unemployment benefit in the territory of the other Contracting Party during the 12 months prior to the date of filing the application. This corresponds to the regulation of Art. 73(5) of the Act on employment promotion. An unemployed person who had lost the status of being unemployed for a period shorter than 365 days due to taking up employment, other gainful employment, non-agricultural activity or obtaining income exceeding half of the minimum wage per month and has registered at a poviats labour office as unemployed within 14 days from the date of the cessation of employment or other activity, has the right to benefit for a period reduced by the period of receiving the benefit prior to the loss of unemployed status.

First of all, however, unemployment benefit is covered by an exception to one of the basic principles of coordination of social security systems – the principle of the export of benefits. It is expressed in Article 5(1) of the Agreement. Benefits from one party may not be reduced, suspended, revoked or withdrawn due to the fact that the beneficiary resides in the territory of the other party. However, pursuant to Art. 5(2),

⁹ A total period of at least 365 days is required during the period of 18 months immediately preceding the date of registration (Art. 71 of the Act on employment promotion).

that provision shall not apply to unemployment benefits. The scope of social security in the case of unemployment is therefore territorially limited and thus restricts the mobility of job seekers.

The exceptions are set out in the Act on employment promotion. Unemployed persons who stay abroad for a period of not more than 10 days or are in a different situation resulting in a lack of readiness to take up employment, are not deprived of the status of being unemployed, if they have notified the poviát labour office of their intended stay abroad or of remaining in a situation resulting in a lack of readiness to take up employment. The unemployment benefit is not granted for this period. The total period of the reported stay abroad and the lack of readiness to work for other reasons may not exceed a total of 10 days in a period of one calendar year. Besides, an unemployed person who has acquired the right to unemployment benefits in the Republic of Poland and goes to another EU or European Economic Area (EEA) country to look for a job (while meeting the requirements for legal entry and residence), retains the right to these benefits on the principles set out in the regulations on the coordination of social security systems (Art. 75[3] and [4] of the Act on employment promotion).

The provision of Art. 86(1) of the Act on employment promotion may also be useful for Ukrainian citizens covered by the Act. The documented periods of employment completed abroad with a foreign employer are taken into account when calculating the periods of employment in the Republic of Poland with regard to employee rights (in employment).

Farmers' social insurance system

Until recently, the social insurance system for farmers, which is distinct from the universal social insurance system, only exceptionally covered foreigners. However, the Act amending the Act on social insurance of farmers and some other acts¹⁰ introduced significant modifications to the system. Presently, farmers' social insurance covers foreigners who are entitled to work in the territory of the Republic of Poland pursuant to Art. 87 of the Act on employment promotion or are released from the obligation to have a work permit on the basis of special provisions. This often applies to Ukrainian citizens. The public has perceived these changes as mainly referring to Ukrainian citizens and, as in the case of Polish citizens who are engaged on the basis of harvest assistance contracts – as reducing the universal level of social protection in relation to persons providing work or services on a different legal basis.

The amendment of 2018 introduced a new type of civil law contract – the harvest assistance contract. With a certain simplification, the current wording of Art. 91a of the Act on social insurance of farmers¹¹ indicates that through the harvest assistance contract, the

¹⁰ The Act of 13 April 2018 amending the Act on social insurance of farmers and certain other acts (Journal of Laws of 2018, item 858).

¹¹ The Act of 20 December 1990 on social insurance of farmers (consolidated text: Journal of Laws of 2017, item 2336, as amended).

farmer's helper undertakes to provide assistance for the harvest of agricultural products, as well as herbs and herbal plants at a specified place on the farm and for a specified period, while the farmer undertakes to pay the agreed remuneration for the assistance provided. An adult person with whom the farmer has concluded a harvest assistance contract is called a farmer's helper (Art. 6[2a]). They are covered by statutory compulsory accident, sickness and maternity insurance, but only to the extent ensuring flat-rate compensation in respect of accidents at work or occupational diseases, *i.e.*, to the minimum extent resulting from the Republic of Poland's obligations under the International Labour Organisation Convention concerning workmen's compensation in agriculture.¹²

Even more important than any potential right to flat-rate compensation is the fact that farmers' helpers are covered by the compulsory health insurance in Poland. This results from Art. 66(1)(1)(ba) and Art. 69(2a) of the Act on health care benefits financed by public funds.¹³ At the same time, however, the obligation to register family members for health insurance in exchange only for the single contribution financed by the assistant has been excluded (Art. 67[3]). This exception applies both to Polish citizens and foreigners. However, it seems that its effects may be more severe for Ukrainian farmers' helpers, especially if both parents work as farmers' helpers in Poland and reside here with children.

Benefits granted under national law

Health care benefits

The Social Security Agreement does not cover benefits in kind, which in Poland are mainly financed from public funds under health insurance. According to the justification of the draft Act ratifying the Agreement, during the Polish-Ukrainian consultations on concluding the Social Security Agreement, organised in Warsaw on 28-30 October 2008, the Ukrainian side informed that due to the internal legislation in force in Ukraine it was not possible to cover benefits in kind by the material scope of the Agreement and none of the bilateral social security agreements binding on Ukraine contained regulations regarding such benefits. In this situation, the Polish Ministry of Health took the position that benefits in kind (health care benefits) should not be included in the material scope of the Polish-Ukrainian Agreement.

This issue seems very important, as it is estimated that many Ukrainian citizens working in Poland are not registered for insurance, and thus they do not have access to health care financed from public funds.

¹² The International Convention concerning workmen's compensation in agriculture, adopted on 12 November 1921 in Geneva at the General Conference of the International Labour Organisation of the League of Nations (ratified in accordance with the Act of 19 December 1923).

¹³ The Act of 27 August 2004 on health care benefits financed by public funds (consolidated text: Journal of Laws of 2018, item 1510).

Polish regulations allow foreigners to be covered by health insurance, closely linking their participation in the system with gainful activity as well as the purpose and basis of their stay. First of all, according to Art. 3(1) of the Act on healthcare services, the insured persons include, *inter alia*, persons who do not hold the citizenship of an EU Member State, the European Economic Area or the Swiss Confederation, who reside within the territory of Poland on the basis of a visa with the purpose of employment, a temporary residence permit, permanent residence permit or a residence permit for a long-term EU resident, as well as a humanitarian residence permit or a permit for a tolerated stay (point 2), as well as citizens of such third countries – legally residing in an EU Member State or a European Free Trade Agreement country other than Poland (point 3), if they are covered, in accordance with Art. 66 of the Act, by compulsory health insurance (and this applies to the vast majority of legal forms of gainful activity) or if they insure themselves voluntarily.

The family members of such persons are also subject to health insurance in Poland, if they meet the conditions specified in Art. 3(2)(5) and (6) of the Act, respectively. Particular attention should be paid to the requirement of family member residence within the territory of Poland (point 6). This requirement is interpreted in the light of Art. 25 of the Civil Code, according to which the place of residence of a natural person is the place where the person stays with the intention of permanent residence.¹⁴ Permanent residence in Poland is not necessarily the intention of family members of a Ukrainian citizen performing work here. The special situation of farmer's helpers has already been mentioned.

Child care benefit

Child care benefit, commonly known as Rodzina 500+, is a universal Polish social benefit for families. Pursuant to the Act on state aid in raising children,¹⁵ the purpose of the child care benefit is to partially cover expenses related to raising a child, including caring for the child and satisfying the child's life needs. It is granted to the mother, father, the child's actual guardian or the child's legal guardian.

The difference between the level of remuneration in Ukraine and Poland is one of the main arguments used by opponents of granting this benefit to foreigners (let us remember that Ukrainians constitute the largest group among them). In addition to Polish citizens, the child care benefit is also granted to foreigners from the groups indicated in the Act (to the extent of interest for us, outside the coordination under the Social Security Agreement: Art. 1[2][2][c]-[e]). They correspond to groups of persons coming legally to take up employment.

It should be emphasised that the right to the child care benefit is granted to foreigners if they reside in the territory of the Republic of Poland during the period in which they are to receive the child care benefit, unless the provisions on the coordination of social security systems or bilateral international social security agreements provide otherwise.

¹⁴ See A. Sidorko [in:] *Ustawa o świadczeniach opieki zdrowotnej finansowanych ze środków publicznych. Komentarz*, ed. A. Pietraszewska-Macheta, Warszawa 2018, p. 41.

¹⁵ The Act of 11 February 2016 on state aid in raising children (consolidated text: Journal of Laws of 2018, item 2134, as amended).

Despite this, the statutory definition of groups of foreigners entitled to the benefits has been also supplemented with the requirements regarding the length of the period for which a given person was admitted to the Polish labour market. Excluded are third-country nationals who have obtained a work permit in the territory of a EU Member State for a period not exceeding six months and citizens admitted to seasonal work, *i.e.*, for a period of up to 9 months (Art. 1[2][2][d]), and certain foreigners, who have been granted a permit to reside and work in the territory of the Republic of Poland for a period not exceeding 9 months (Art. 1[2][2][e]). These restrictions correspond to the time limits adopted when determining the simplified rules of residence and work in the Republic of Poland, which are used mainly when employing Ukrainian citizens (see Art. 87[3], [4] and Art. 88q of the Act on employment promotion). It seems that this is a significant obstacle to the integration of Ukrainian citizens in Poland in terms of social security.

Family benefits

The rights provided for by the Act on family benefits¹⁶ are intended to partially cover expenses for child maintenance (family allowance with supplements – Art. 4[1]), partially cover expenses resulting from the need to provide care and assistance to persons unable to exist independently (care allowance – Art. 16[1]) and provide funds to persons resigning from employment to take care of a dependent person (Art. 16a and 17) or a newborn child or infant (parental benefit – Art. 17c). As a rule, they depend on meeting the income criterion, including any income earned abroad.

Similarly as in the case of child care benefit (despite differences in the wording of the provisions), they are also granted to foreigners, with similar exclusions (especially referring to time periods), provided that they reside in the territory of the Republic of Poland during the benefit period in which they receive family benefits. The Act does not provide for a special procedure for verifying the place of residence of the family of persons claiming the benefit.

The Ombudsman during his activity, and courts in their rulings, have revealed the problem of a parent being a Ukrainian citizen applying for family allowance and supplements to family allowance for children who are Polish citizens. The benefit was qualified as financial assistance, the granting of which was clearly linked by the legislator to the situation of the child, whose parents or guardians are unable to provide for its maintenance due to insufficient income. Since the allowance in question is intended to meet the child's needs, it is to serve its welfare, although formally, for practical reasons, it is granted to the parent or guardian. These provisions should be interpreted in the light of the constitutional provisions relating to the family (Art. 71[1] and Art. 18). It was noted that the interpretation of the provisions of the Act, disregarding the Polish citizenship of children whose mother is a foreigner, puts them in a worse position than their peers – also Polish citizens. Such unequal treatment of minor children with Polish citizenship and

¹⁶ The Act of 28 November 2003 on family benefits (Journal of Laws of 2018, item 2220, as amended).

residing in the territory of Poland, only because their mother has different citizenship, has been declared as violating Art. 32 of the Polish Constitution.¹⁷

The interpretation of the law recognising the obligation to hold a residence card by a foreigner who has a humanitarian residence permit as a condition for granting family benefits has also raised constitutional doubts, as an excessive, unnecessary, pointless requirement, and thus prejudicial to the principle of a democratic state ruled by law. Such a criterion unduly differentiates foreigners entitled to stay for humanitarian reasons in access to family benefits, which in turn also leads to a violation of the principle of equal treatment by public authorities.¹⁸

Final remarks

The scope of rights of Ukrainian citizens in Poland, and thus the level of their social protection, is influenced by the status of individual persons and their family members with respect to the right of residence and access to the labour market within the territory of the Republic of Poland, as well as the basis for residence and, additionally, the period of residence in the territory of the Republic of Poland. With respect to particular benefits legal acts distinguish the legal position of foreigners from third countries (including Ukrainian citizens) in relation to the EU and EEA citizens in various ways. Against this background, there are visible problems for families whose members do not have identical status, *e.g.*, due to the Polish origin of only some of them.

There are practical problems with registration for social insurance and access to the social security system in the Republic of Poland. For example, many Ukrainian women work as nannies in households of Polish citizens who perceive the burden of registration for social insurance as excessive. Even if certain rights formally cover Ukrainian citizens and the obligations are similar to those applicable to Polish citizens, the detailed solutions prove too difficult to be applied in practice for ordinary families (or are subjectively perceived as such by the persons concerned). This applies in particular to the method of registration for social insurance and the calculation of the basis for contribution assessment (*e.g.*, when a family provides accommodation).¹⁹ Many persons use this argument to justify resignation from the legal employment of Ukrainian citizens, even if it would bring benefits such as subsidising part of the social insurance contributions, as in the case of nannies.

Based on the above review of legal regulations, it would be difficult to conclude that they have adopted a uniform concept of integration of Ukrainian citizens in Poland in the field

¹⁷ See the judgement of the Voivodeship Administrative Court in Opole of 23 July 2015, II SA/Op 211/15 and the case-law referred to therein.

¹⁸ The judgement of the Voivodeship Administrative Court in Rzeszów of 9 September 2016, II SA/Rz 1643/15.

¹⁹ See Art. 3(3) of the Regulation of the Minister of Labour and Social Policy of 18 December 1998 on detailed rules for determining the basis for assessing contributions to pension insurance (consolidated text: Journal of Laws of 2017, item 1949).

of social security. Nevertheless, it seems that such a uniform concept should be adopted, communicated to Polish society and the Ukrainian community in Poland, with an attempt to convince them thereto. It is also a frequently occurring and very controversial topic in political discussions. Depending on the decision taken in the area of social policy, it would be possible to render the conditions for acquiring the right to social benefits in Poland more flexible or to renegotiate the Social Security Agreement, in particular to determine the rules for access of Ukrainian citizens residing in Poland (on various grounds) to health care benefits provided under health insurance and to determine the way in which the Ukrainian side would participate in their financing. However, both these solutions seem unlikely and one can expect the maintenance of the current approach, which strongly links the rights of foreigners with legal residence and legal work in the territory of the Republic of Poland. Such an approach is understandable from the point of view of attempts at maintaining legal order, however one can expect an increase in social problems related to the residence within the territory of Poland of persons and families with an irregular status. Methods of preventing such situations and the resulting problems need to be discussed. In view of the expected shortage of employees on the labour market and the declared needs for the work of Ukrainian citizens, an approach based on the current assumptions may not be sufficient to arrange practical situations desirably.

The European Union law in force in the Republic of Poland is an additional factor to be considered when adopting Polish legal acts. On the one hand, the citizens of Ukraine compare themselves with the citizens of the Member States residing and working in Poland, whose social rights are much broader. On the other hand, heated disputes over the relation of EU citizens' rights in the area of free movement and the obligations of Member States towards them in the social sphere have led to a clear distinction between citizens of other Member States moving for the purpose of work and those who do not move for that purpose. It was recognised that the Member States have quite broad competence in determining the social position of persons who do not stay in the territory of a given state in connection with performing work.²⁰ When making decisions on the social security of foreigners, including Ukrainian citizens, on its territory, the Polish legislator is obliged to take into account the EU legal framework.

²⁰ See D. Dzienisiuk, *Glosa do wyroku TS z dnia 25 lutego 2016* [Commentary on the judgement of the Court of Justice of 25 February 2016], C299/14; *Glosa do wyroku TS z dnia 14 czerwca 2016* [Commentary on the judgement of the Court of Justice of 14 June 2016], C308/14, System Informacji Prawnej Lex oraz przywołane tam orzecznictwo; D. Thym, *The Elusive Limits of Solidarity: Residence Rights of and Social Benefits for Economically Inactive Union Citizens*, "Common Market Law Review" 2015, No. 52, pp. 33–36; H. Verschueren, *Preventing "Benefit Tourism" in the EU: A Narrow or Broad Interpretation of the Possibilities Offered by the ECJ in Dano?*, "Common Market Law Review" 2015, No. 52, p. 364.

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Wybrane problemy bezpieczeństwa socjalnego obywateli Ukrainy w Polsce zapewnianego poza powszechnym systemem ubezpieczeń społecznych

Prawo do zabezpieczenia społecznego jest uznawane za prawo człowieka realizowane poprzez działania konkretnego państwa, a zatem trudne do zagwarantowania w sytuacjach złożonych pod względem przynależności państwowej lub miejsca pobytu poszczególnych osób i rodzin. Dla pożądanego uregulowania ich sytuacji państwa tworzą instrumenty prawne na szczeblu międzynarodowym lub ponadnarodowym. Istotna jest przy tym rola prawa krajowego. Niniejsze opracowanie przedstawia wybrane prawne aspekty zapewnienia bezpieczeństwa socjalnego obywatelom Ukrainy mieszkającym lub przebywającym w Polsce. Skupia się na świadczeniach pozostających poza zakresem powszechnego systemu ubezpieczeń społecznych, a więc głównie na świadczeniach socjalnych, które nie pozostają w bezpośrednim związku z aktywnością zawodową.

Słowa kluczowe: umowa dwustronna w sprawie zabezpieczenia społecznego, migracja cudzoziemców, bezpieczeństwo socjalne, system zabezpieczenia społecznego

The economic situation of Ukrainians in Poland on the example of the Opole Voivodeship

The article presents statistical data taking into account the inflow of employees from abroad, in particular from Ukraine to Poland, including those settling in the Opole Voivodeship. It also discusses selected results of a survey conducted in the Opole region among 263 employers, concerning the recruitment of foreigners. The survey was aimed, *inter alia*, at establishing the level of remuneration offered to foreigners and possible non-salary employment conditions, e.g., those related to assistance in finding accommodation for them. The survey was carried out by means of a questionnaire. To reach the respondents, CAWI (Computer Assisted Web Interview) and PAPI (Paper and Pencil Interview) techniques were used. The research conducted in the Opole Voivodeship shows that the average wage offered to foreign workers was lower than the average wage in the region. As was *inter alia* established, wages offered to foreigners differed depending on the size of the company – the lowest wages were proposed by micro-entrepreneurs, while representatives of medium-sized companies were the most willing to pay. Employers drew attention to the fact that, in addition to remuneration, they also incurred additional costs related to employing a foreigner. These included: assistance with finding lodgings and/or paying for them, covering a part of food costs, as well as covering commuting costs. The text also presents selected data on the legality of employment of foreigners in the Opole Voivodeship.

Key words: employment conditions, immigration, labour market, Ukrainians, wages

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Introduction

A growing inflow of foreign workers to Poland has been observed in recent years. Most of the foreigners come from outside the European Union, with Ukrainians being the largest group. Thus, Poland is no longer just a country of emigration and not only do Poles' trips abroad affect socio-economic changes at the national and regional level.¹ Poland has also become an attractive place for immigrants, chiefly economic migrants. So one can observe a gradual transformation of the Polish mobility model – from an emigration to an immigration one.²

Foreigners' presence on the labour market in Poland is the subject of a growing number of analyses that cover various groups of foreigners and their role in the economy and society. The research conducted so far in Poland has concerned, *inter alia*, foreign workers – both from the perspective of employers³ and foreigners themselves⁴ – foreign students⁵ and immigrants running businesses in Poland.⁶

The purpose of the article is to discuss selected aspects of the economic situation of citizens of Ukraine in Poland. The text presents statistical data on the number of work permits issued to foreigners and declarations of intention to entrust work to a foreigner, and shows the share of such documents intended for Ukrainians (in Poland and in the Opole Voivodeship). Then, presented are the results of questionnaire surveys (CAWI [Computer Assisted Web Interview] and PAPI [Paper and Pencil Interview] techniques were used to reach respondents), which were carried out in 2015 in the Opole Voivodeship among 263 entrepreneurs. Their aim was, *inter alia*, to establish the amount of remuneration offered to foreigners and additional conditions of employment guaranteed by employers. The article also discusses data concerning the legality of the employment of foreigners in the Opole region.

1 K. Heffner, B. Solga, *Migracje zagraniczne jako czynnik sprawczy rozwoju regionów w Polsce*, "Studia Migracyjne – Przegląd Polonijny" 2016, No. 3 (161), p. 151.

2 B. Solga, S. Kubiciel-Lodzińska, *Poland: immigration instead of emigration. Transformation of the mobility model*, *Conference Proceedings of the 30th International Business Information Management Conference (IBIMA)*, Spain 2017, p. 797.

3 The following publications can be mentioned in this respect: A. Organiściak-Krzykowska, M. Piotrowski *et al.*, *Popyt na pracę cudzoziemców*, Olsztyn 2013; S. Kubiciel-Lodzińska, *Zatrudnienie cudzoziemców w przedsiębiorstwach. Determinanty i perspektywy (przykład województwa opolskiego)*, Katowice 2016.

4 Among publications presenting the results of surveys conducted among foreign workers we can mention, among others, the following: S. Kubiciel-Lodzińska, *Imigracja zarobkowa do województwa opolskiego. Skala, warunki i perspektywy*, Opole 2012; A. Górny, *All circular but different: Variation in patterns of Ukraine-to-Poland migration*, "Population, Space and Place" 2017, Vol. 23 (8).

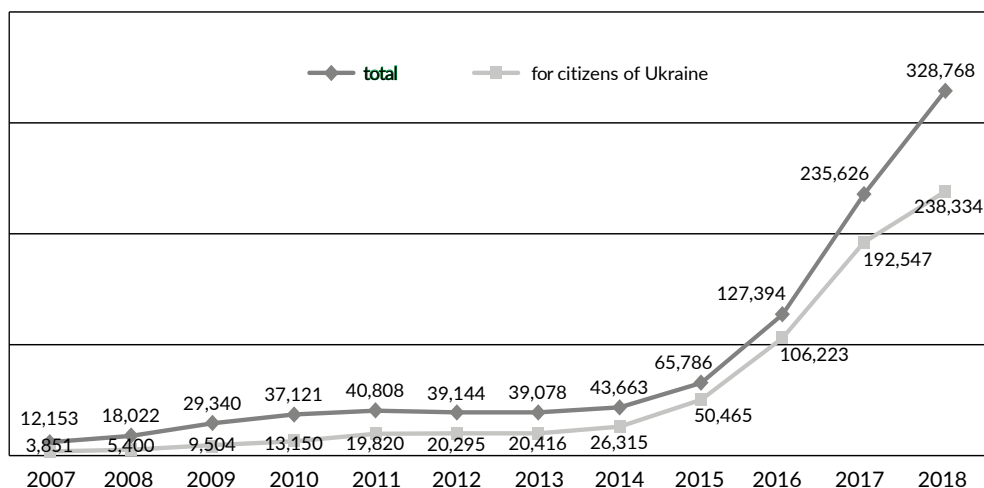
5 S. Kubiciel-Lodzińska, *Studenci zagraniczni w Polsce – ich obecność na rynku pracy oraz wydatki (na podstawie badań z województwa opolskiego)* [in:] *Edukacja w świetle przemian współczesnego rynku pracy – wybrane problemy*, ed. D. Kotlorz, "Studia Ekonomiczne. Zeszyty Naukowe Wydziałowe Uniwersytetu Ekonomicznego w Katowicach" 2014, No. 197; M. Gasińska, *Studenci z Ukrainy w Polsce. Uwarunkowania, oczekiwania i opinie w świetle badania ewaluacyjnego w AFiB Vistula*, "Zeszyty Naukowe Uniwersytetu Vistula" 2016, No. 47 (2).

6 In this area, the following works can be mentioned: K. Andrejuk, *Przedsiębiorcy Ukraińcy w Polsce. Struktura i sprawstwo w procesie osiedlania*, Warszawa 2017; J. Brzozowski, *Immigrant Entrepreneurship and Economic Adaptation: A Critical Analysis*, "Entrepreneurial Business and Economics Review" 2017, Vol. 5, No. 2; A. Brzozowska, *Przedsiębiorczość imigrantów wietnamskich w Polsce*, doctoral dissertation, Warsaw University, Warszawa 2015.

Selected statistics on the inflow of foreign workers to Poland, including to the Opole Voivodeship, over the period 2007-2018

The most numerous group of foreigners coming to Poland from so-called 'third countries' are persons arriving for the purpose of employment. To be able to work legally, they must have a work permit or their employer must register a declaration of intention to entrust work. Diagram 1 shows the number of work permits issued in Poland over the period 2007-2018.

Diagram 1. Work permits issued in Poland over the period 2007-2018

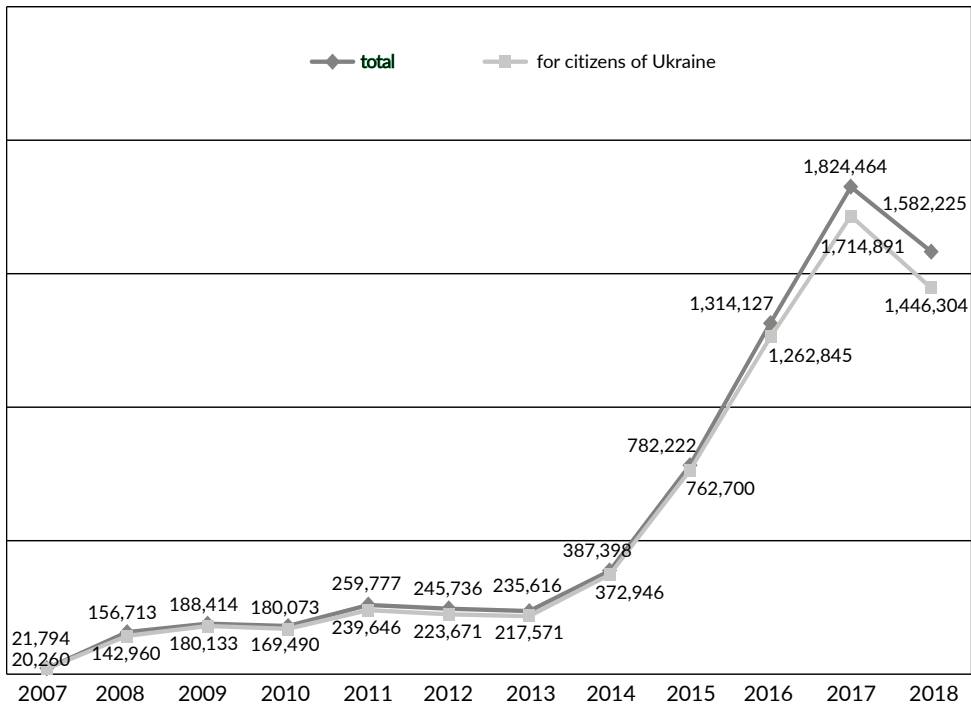


Source: own study based on data from the Ministry of Family, Labour and Social Policy, <http://psz.praca.gov.pl/rynek-pracy/statystyki-i-analizy/zatrudnianie-cudzoziemcow-w-polsce> (online access: 28.1.2019)

In 2007, slightly more than 12 thousand work permits were issued in Poland. The most dynamic increases were recorded over the period 2015-2017. In 2017, it was nearly 236 thousand permits, which is almost twenty times more than 10 years previously. In 2018, a further increase in the number of issued permits could be observed – it amounted to over 328 thousand. Most of the documents were intended for citizens of Ukraine.

Even more noticeable increases in the number of documents issued for foreign workers were observed in the registration of declarations of intention to entrust work to a foreigner. Nearly 22 thousand declarations were registered in 2007, while in 2017 it was more than 1.8 million (see Diagram 2), which is an over 80-fold increase. As in the case of work permits, the majority of declarations were also intended for citizens of Ukraine.

Diagram 2. Declarations of intention to entrust work to a foreigner registered in Poland over the period 2007-2018



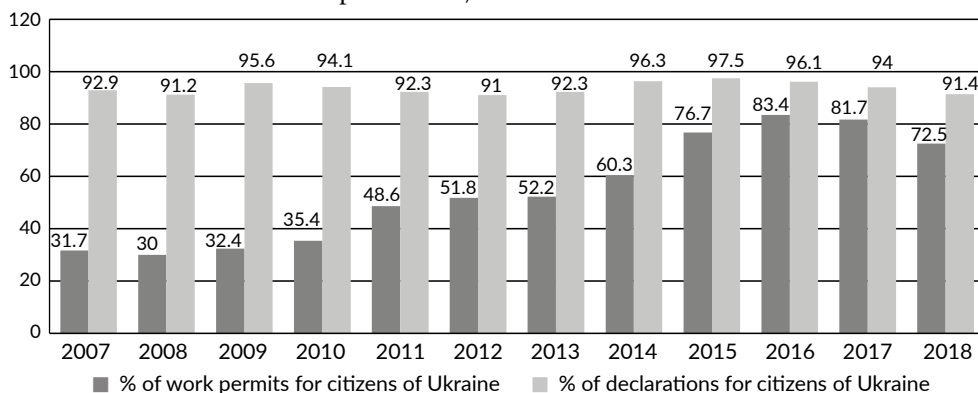
Source: own study based on data from the Ministry of Family, Labour and Social Policy, <http://psz.praca.gov.pl/rynek-pracy/statystyki-i-analizy/zatrudnianie-cudzoziemcow-w-polsce> (online access: 28.1.2019)

In 2018, legal regulations regarding foreigners' employment in Poland were modified and a seasonal work permit for a foreigner was introduced. This is issued for a period not exceeding 9 months.⁷ In 2018, 121 thousand such permits were issued in Poland. This change in the legal regulations could explain to some extent the decline in the number of declarations registered in 2018.

Over 90% of declarations issued over the period 2007-2018 were intended for citizens of Ukraine (see Diagram 3). In addition, an increase in the share of Ukrainians in the number of issued work permits was also observed. Over the period 2007-2010, about 30% of them were intended for citizens of Ukraine, from 2011 to 2013 it was about 50%, while between 2014 and 2017 it was as much as 80%. In 2018, this ratio fell slightly to 72.5% – with an increase in the number of work permits issued to citizens of Bangladesh, India and Nepal.

⁷ Regulation of the Minister of Family, Labour and Social Policy of 7 December 2017 on issuing a work permit for a foreigner and entering a declaration on entrusting work to a foreigner in the register of declarations (Journal of Laws of 2017, item 2345).

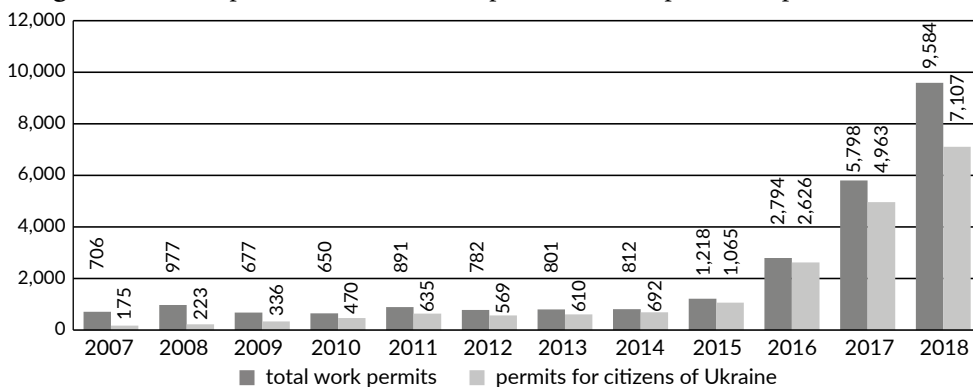
Diagram 3. The share of work permits and declarations of intention to entrust work, registered for citizens of Ukraine in the total number of such documents issued over the period 2007-2018



Source: own study based on data from the Ministry of Family, Labour and Social Policy, <http://psz.praca.gov.pl/rynek-pracy/statystyki-i-analizy/zatrudnianie-cudzoziemcow-w-polsce> (online access: 28.1.2019)

Data on foreigners' inflow to work in Poland show regional differences. Most documents intended for foreigners are issued in the following voivodeships: Masovian, Lower Silesian, Greater Poland, Łódź, Lesser Poland and Silesian.⁸ In the Opole region, both the number of work permits issued to foreigners and the number of declarations of intention to entrust work to a foreigner (in absolute numbers) is at an average level, as compared to other regions of Poland. However, it should be noted that the employment of foreign workers is growing. Diagram 4 shows the number of work permits issued in the Opole Voivodeship over the period 2007-2018.

Diagram 4. Work permits issued in the Opole Voivodeship over the period 2007-2018



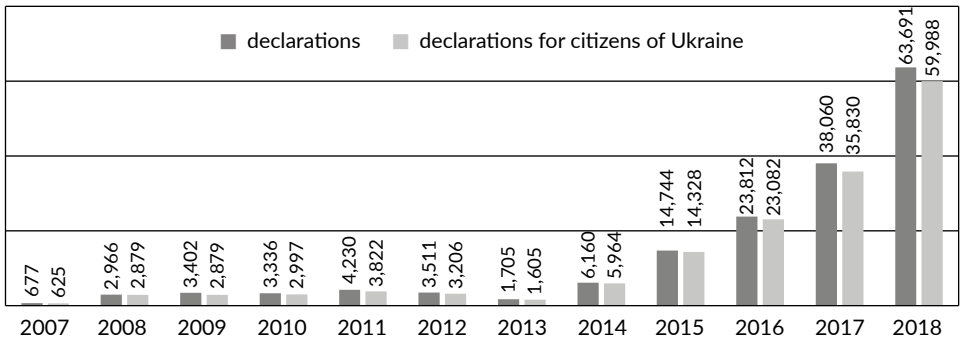
Source: own study based on data from the Ministry of Family, Labour and Social Policy, <http://psz.praca.gov.pl/rynek-pracy/statystyka-i-analizy/zatrudnianie-cudzoziemcow-w-polsce> (online access: 28.1.2019)

8 A. Organiściak-Krzykowska, M. Piotrowski, *Struktura przestrzenna krótkoterminowego zatrudnienia cudzoziemców w Polsce*, "Problemy Polityki Społecznej. Studia i dyskusje" 2018, 42 (3), p. 102.

Between 2007 and 2014, several hundred work permits for foreigners were issued annually in the Opole region. Since 2015, the number of issued documents has been increasing, it has exceeded 1200 and has been systematically growing – in 2018 it was almost 9.6 thousand. While over the period 2007–2009 about 25 to 50% of permits were intended for citizens of Ukraine, in subsequent years this group has gained in importance – *e.g.*, over 87% of work permits were issued to Ukrainians in 2015, and in 2016 it was almost 94% of work permits. In two consecutive years, *i.e.*, in 2017 and 2018, the share of documents issued to Ukrainian citizens in the region decreased to 85% and 74%, respectively. In the Opole Voivodship, as well as throughout Poland, an increase in the number of permits issued to citizens of Nepal (in 2018 over 1.2 thousand were issued to this group), Bangladesh and India is noted.

Over the period 2007–2018, an increase in the number of registered declarations of intention to entrust work was also observed in the Opole region (Diagram 5).

Diagram 5. Declarations of intention to entrust work to a foreigner registered in the Opole Voivodship over the period 2007–2018



Source: own study based on data from the Ministry of Family, Labour and Social Policy, <http://psz.praca.gov.pl/rynek-pracy/statystyka-i-analazy/zatrudnianie-cudzoziemcow-w-polsce> (online access: 28.1.2019)

The most dynamic increases in the number of registered declarations have been recorded in the Opole region since 2014. As in the whole of Poland, also in this voivodship over 90% of declarations were intended for citizens of Ukraine.

Research method and description of the surveyed group

The research discussed in the article was conducted in enterprises in the Opole Voivodship in 2015. The text presents its selected results. The aim of the research was, *inter alia*, to obtain information on the amount of remuneration offered to foreigners

and on additional conditions of employment, such as assistance with finding lodgings or paying for accommodation. The choice of the area to be analysed was not accidental. This voivodeship is distinguished by foreign trips (permanent and periodic) of its inhabitants, something that has been a feature since the 1990s.⁹ These have resulted in a significant loss of labour resources, which in turn has brought about a shortage of employees in certain industries and occupations. Although statistical data show that the inflow of foreign workers to the Opole Voivodeship remains at an average level, as compared to other regions, their presence is important from the point of view of the labour market. A nationwide survey of employers conducted by the Centre of Migration Research shows that the Opole region has one of the highest percentages of companies using foreigner labour. According to the aforementioned analysis, in 2016 it amounted to over 17%, and in 2017 to over 12% (while the average for the whole country is about 6%). Foreigners are important for employment stability in the region, which is also confirmed by the results cited. On a national scale, the total share of immigrants in employment was about 2%, while in the Opole Voivodeship in 2016 and 2017 these proportions were much higher and amounted to nearly 11 and 6.7%, respectively.¹⁰

The research discussed in the article was two-staged in character. Firstly, respondents were reached by means of an online questionnaire which was sent to all entities associated in the Opole Chamber of Commerce (479 companies), Club 150 (199 companies), participating in an international research project carried out by the Opole University of Technology and the University of Opole (200 companies), as well as entities entered in the database of the Opole Voivodeship Office as those which had obtained work permits for foreigners in 2014 (30 entities). The questionnaire was sent to over 900 companies. However, only 44 companies completed and returned the questionnaire, which is less than 5% of the whole group. Reaching respondents by electronic means proved to be ineffective. Secondly, the research was also conducted using a method of direct contact with entrepreneurs during meetings and training courses organised for them.

The following research hypotheses were conceived for the study:

1. Micro-enterprises offer the lowest wages to foreigners.
2. Large companies offer the highest wages to foreigners.
3. Entrepreneurs offer assistance to foreign workers in finding accommodation.

The largest group among 263 respondents, *i.e.* 43% (113 entities), were micro-enterprises. Over one third of respondents were small enterprises (88 respondents). Medium and large enterprises had a much lower share in the group of respondents – only 17.1% (45 companies) and 6.4% (17 companies) respectively. A detailed distribution of respondents is presented in Table 1.

⁹ The Opole region is also distinguished in terms of the number of studies carried out in the area of migration: *Raport o stanie badań nad migracjami w Polsce po 1989 roku*, ed. A. Horolets, M. Lesińska, M. Okólski, Warszawa 2018, p. 11.

¹⁰ A. Górny, P. Kaczmarczyk *et al.*, *Imigranci w Polsce w kontekście uproszczonej procedury zatrudniania cudzoziemców*, Warszawa 2018, pp. 68-71.

Table 1. Surveyed entrepreneurs by employment size

Specification	Micro companies	Small companies	Medium-sized companies	Large companies	Total
Number	113	88	45	17	263
Percent	43	33.5	17.1	6.4	100

Source: own study based on research results

In the group of companies covered by the survey, the largest number of entities – over one fourth (70 companies) represented construction. Second place was taken by employers from the service sector – 25% (66 entities), followed by enterprises from the metal industry – 11.8% (31 companies), while fourth place was occupied by companies from the food industry – 10.7% (28 respondents). The results are presented in Table 2.

Table 2. Surveyed entrepreneurs by industry

Industry	Entrepreneurs surveyed	
	number	percent
Construction	70	26.6
Metal industry	31	11.8
Fuel and energy industry	4	1.5
Wood and paper industry	12	4.7
Furniture industry	13	4.9
Medical and rehabilitation services	7	2.7
Transport and logistics	13	4.9
Food industry	28	10.7
Chemical industry	5	1.9
Agriculture	10	3.8
Services	66	25.0
Tourism	4	1.5
Total	263	100.0

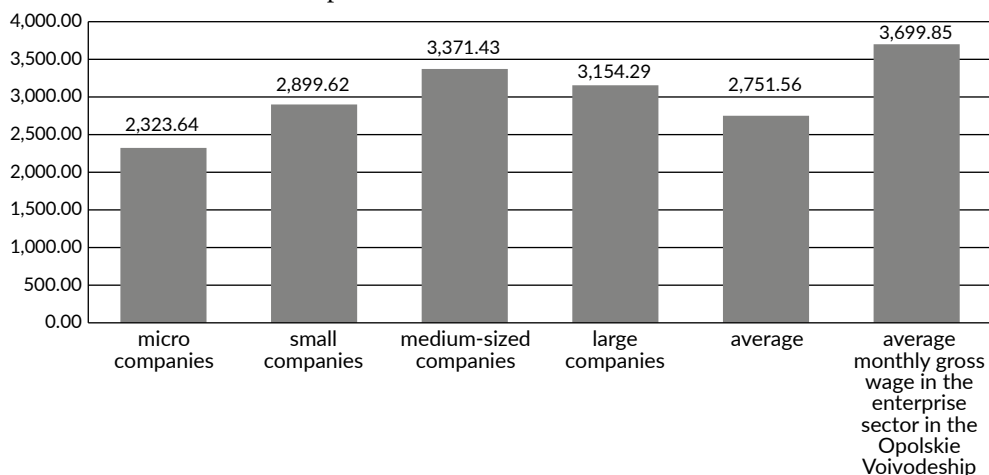
Source: own study based on research results

The shares of respondents from other industries were lower. Enterprises representing the furniture industry as well as transport and logistics accounted for 4.9% (13 companies each), and the wood and paper industry – 4.7% of the group (12 entities). The following companies should be also mentioned in terms of the number of respondents: agricultural companies, which accounted for 3.8% of respondents (10 entities), companies representing medical and rehabilitation services, which accounted for 2.7% (7 companies), companies from the chemical industry – 1.9% (5 companies), and companies operating in tourism and the fuel and energy industry – 1.5% (4 respondents each).

Amounts of remuneration offered to foreign workers

The research carried out in the Opole Voivodeship shows that the average gross monthly remuneration offered in the analysed group of employers amounted to slightly more than PLN 2,750 (for details, see the distribution of amounts in Diagram 6). The division of respondents according to the employment level showed that the highest wages were proposed in medium (over PLN 3,370 gross) and large companies (about PLN 3,150 gross). Slightly lower remuneration was declared by small and micro-enterprises, respectively: nearly PLN 2,900 gross and slightly over PLN 2,300 gross.¹¹ In the year of the survey, *i.e.*, 2015, the average gross monthly remuneration in the Opole Voivodeship was PLN 3,699.85.¹² Thus, this was over PLN 900 higher than the average wage offered to foreigners.

Diagram 6. Gross remuneration offered to foreigners in the Opole Voivodeship according to the survey and average monthly gross remuneration in the sector of enterprises from the same area [in PLN]



Source: study based on the results of own research

The results are also confirmed by other studies. The report of the *Economic Immigration Barometer – the second half of 2018* prepared by the Personnel Service shows that about 70% of Ukrainians earn over PLN 2.5 thousand net, and 45% of them receive

¹¹ The issue is discussed in more detail in the following text: S. Kubiciel–Łodzińska, J. Maj, *The amount of remuneration offered to foreign employees taking up legal employment in Poland on the example of the Opole Voivodeship*, "Applied Sciences Review" 2016, No. 13, pp. 67-69.

¹² Urząd Statystyczny w Opolu [Statistical Office in Opole], *Raport o sytuacji społeczno-gospodarczej województwa opolskiego w 2015 r.*, <http://opole.stat.gov.pl/publikacje-i-foldery/inne-opracowania/raport-o-sytuacji-spolesno-gospodarczej-wojewodztwa-opolskiego-w-2015-r-9,6.html>, p. 42 (online access: 25.1.2019).

remuneration higher than PLN 3 thousand net. About one fourth of respondents earn less than PLN 2.5 thousand net.¹³ As these are nationwide data, they do not take into account regional differences. For comparison, the average wage in Poland in the third quarter of 2018 reached PLN 4,580.20 gross,¹⁴ and the minimum national wage in 2018 was PLN 2,100 gross. Both presented studies show that earnings received in Poland by foreigners are lower than average wages.

Additional conditions of employment of foreign workers

Employers necessarily offer foreign workers non-salary employment conditions. Foreigners coming for employment purposes usually do not know well the language of the country they come to (or do not know it at all), so it is difficult for them to find themselves in the new reality, which is why it is common practice to introduce an informal or formalised system of care for them. In some countries, legal regulations specify, for example, the amount of remuneration, the scope of health care proposed, the party paying for transport, accommodation and recruitment fees.¹⁵ For example, Jordan has legally introduced a standardised employment contract for immigrants, which, *inter alia*, specifies that the employer: covers the costs related to the foreigner's travel, including those related to obtaining a work and residence permit, guarantees life and accident insurance, adequate accommodation and even meals, health care and an equivalent of 15-day earnings after the end of a two-year period of employment.¹⁶

In surveys carried out in the Opole Voivodeship, more than one third of entrepreneurs, when asked about additional conditions of employment proposed to foreign workers, mentioned assistance with finding lodgings (Diagram 7). Over 9% of respondents offered (or would offer) food or subsidies to food, and a similar group (8.9%) – free lodgings. In turn, 7.6% of respondents pay (or would be willing

¹³ Personnel Service, *Barometr Imigracji Zarobkowej 2018* [Economic Immigration Barometer 2018], <http://personnel-service.pl> (online access: 5.12.2018).

¹⁴ Communication of the President of the Statistics Poland of 13 November 2018 on the average wage in the third quarter of 2018 (Official Gazette "Monitor Polski" of 2018, item 1100), <https://stat.gov.pl/sygnalne/komunikaty-i-obwieszczenia/lista-komunikatow-i-obwieszczen/komunikat-w-sprawie-przecietnego-wynagrodzenia-w-trzecim-kwartale-2018-roku,271,22.html> (online access: 1.3.2019).

¹⁵ Additional conditions of employment for foreign workers are described, *inter alia*, by: M. Ruhs, P. Martin, *Numbers vs. Rights: Trade-offs and Guest Worker Programs*, "International Migration Review" 2008, Vol. 42 (1); K. Donato, C. Wakabayashi *et al.*, *Shifts in the Employment Conditions of Mexican Migrant Men and Women: The Effects of U.S. Immigration Policy*, "Work and Occupations" 2008, Vol. 35 (4); A. Cangiano, K. Walsh, *Recruitment Processes and Immigration Regulations: The Disjointed Pathway to Employing Migrant Careers in Ageing Societies*, "Work, Employment & Society" 2013, Vol. 28 (3).

¹⁶ J. d'Cunha, *Protecting Migrant Domestic Workers – Enhancing their Development Potential*, Round Table 3–3 Background paper prepared for the Global Forum for Migration and Development, Mauritius 2012.

to do so) the cost of a foreigner's travel to Poland. At the same time, over 27% of respondents have not proposed (or have not intended to propose) additional conditions of employment.¹⁷

Diagram 7. Additional conditions of employment offered to foreign workers according to a survey conducted in the Opole Voivodeship [in %]



Source: study based on the results of own research

Similar conclusions can be drawn from the survey conducted by the Personnel Service. Over one third of surveyed employers indicated assistance in completing formalities, 25% offered social benefits (e.g., health care), 24% offered lodgings, and 19% – transport to the work place. In turn, 12% declared that they had guaranteed their employees from Ukraine access to the Internet, and 9% (a similar percentage as in the Opole study) – food.¹⁸

Assistance for foreign workers with finding lodgings or even an offer of accommodation (free or paid) is a must. Foreigners often do not know how and where to find lodgings. They are not always able to use social networks that would make it easier for them to move around in their new environment. As the research conducted in Opole shows, ethnic networks, due to the small number of immigrants, are not important in this city.¹⁹ In addition, it happens that at the beginning of their stay in a foreign country, foreigners do not have sufficient resources to pay the necessary fees. The problem with accommodation for foreign workers offered by employers is the very low standard of such

¹⁷ The research results are discussed in more detail in the paper by S. Kubiciel-Lodzińska, *Zatrudnienie cudzoziemców w przedsiębiorstwach. Determinanty i perspektywy (przykład województwa opolskiego)*, Katowice 2016, and also S. Kubiciel-Lodzińska, B. Ruszczak, *Non-Salary employment conditions offered to foreigners legally employed in Poland (study based on the Opole Voivodeship data)*, "Central and Eastern European Journal of Management and Economics" 2017, Vol. 5 (1).

¹⁸ Personnel Service, *Barometr Imigracji Zarobkowej – II półrocze 2017 r.* [Economic Immigration Barometer – second half of 2017], p. 15, <http://personnelservice.pl/pl/biuro-prasowe/raporty> (online access: 5.12.2018).

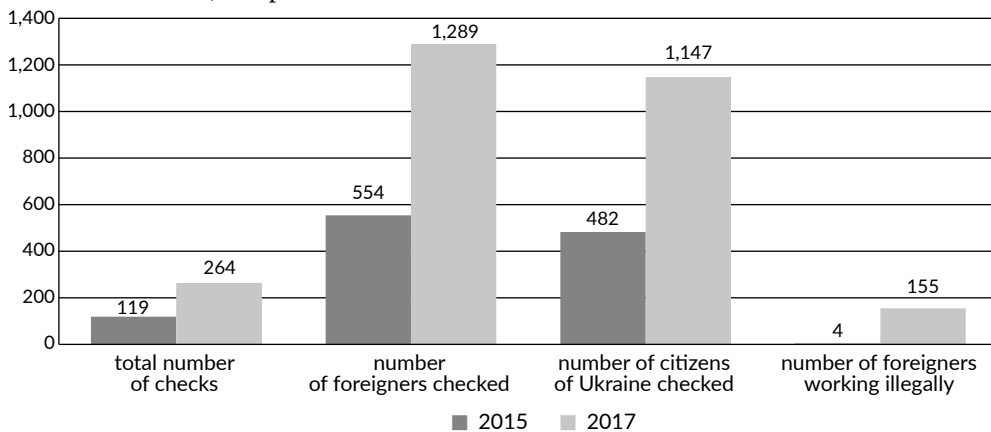
¹⁹ K. Jaskulowski, *Patterns of Middling Migrant Sociabilities: a Case Study of Disempowered City and Towns*, *Journal of International Migration & Integration*, 2019, <https://doi.org/10.1007/s12134-019-00657-0>.

accommodation.²⁰ The issue of employee housing proves to be so important that the International Labour Organisation has developed documents containing the (minimum) requirements for the accommodation offered by employers.²¹

Legality of employment taken up by citizens of Ukraine in the Opole Voivodeship

When analysing the economic situation of Ukrainians in the Opole Voivodeship, one should also look at the legality of their employment. In 2017, the Regional Labour Inspectorate in Opole carried out 264 checks on the legality of employment and work performance by foreigners. This is twice as many as in 2015 (*cf.* Diagram 8). Nearly 90% of all foreigners checked in 2017 in the Opole region were citizens of Ukraine. In 2017, the Inspectorate revealed 155 cases of illegal employment by foreigners, while in 2015 this situation concerned four foreigners.

Diagram 8. The number of checks on the legality of employment and the number of foreigners covered by the control in the Opole Voivodeship in 2015 and 2017 [in persons]



Source: own study based on: Okręgowy Inspektorat Pracy w Opolu [Regional Labour Inspectorate in Opole], *Sprawozdanie z działalności w 2017 r.* [Report on activities in 2017], Opole 2018, pp. 44-45, <https://opole.pip.gov.pl/pl/k/index/138> (online access: 5.3.2019)

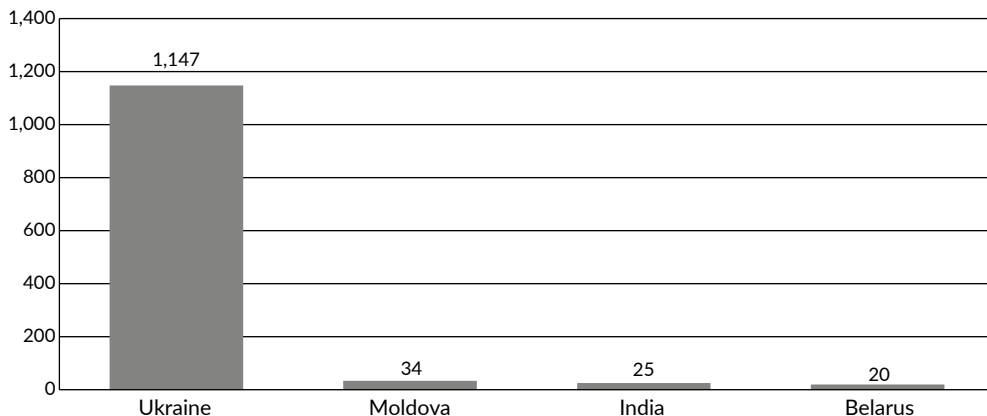
Among the foreigners covered by the survey, the most numerous group were citizens of Ukraine (nearly 90%). The number of foreigners from other countries was definitely

²⁰ *Housing for EU labour migrants*, <https://www.government.nl/topics/new-in-the-netherlands/contents/housing-for-eu-labour-migrants> (online access: 28.1.2019).

²¹ International Labour Organisation, *Workers' Housing Recommendation*, 1961, No. 115, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R115 (online access: 28.1.2019).

smaller. Moldovans (2.6%), Indians (1.9%) and Belarusians (1.6%) were also monitored, as illustrated in detail in Diagram 9.

Diagram 9. Selected countries of origin of foreigners covered by control in the Opole Voivodeship in 2017 [in persons]



Source: own study based on Okręgowy Inspektorat Pracy w Opolu [Regional Labour Inspectorate in Opole], *Sprawozdanie z działalności w 2017 r.* [Report on activities in 2017], Opole 2018, pp. 44-45, <https://opole.pip.gov.pl/pl/k/index/138> (online access: 5.3.2019)

The most frequent violation was the lack of a required work permit (118 foreigners). In addition, inspectors from the Regional Labour Inspectorate noted the absence of written contracts (this referred to 106 foreigners) and entrusting work to a foreigner on conditions other than those specified in the work permit (in the case of 14 foreigners).²²

Summary

Citizens of Ukraine are currently the largest group of foreigners in Poland. Due to their cultural and linguistic proximity, they fit into the labour market quite well and are willingly employed by Polish employers.

The research shows that this group of entrepreneurs was willing to pay foreigners less than the average monthly wage in the Opole region (most respondents were companies employing foreigners in the secondary labour market segment, which may affect the average remuneration). The first hypothesis, which assumed that micro-enterprises offered the lowest wages, has been positively verified. The second

²² Okręgowy Inspektorat Pracy w Opolu [Regional Labour Inspectorate in Opole], *Sprawozdanie z działalności w 2017 r.* [Report on activities in 2017], Opole 2018, p. 45, <https://opole.pip.gov.pl/pl/k/index/138> (online access: 5.3.2019)

hypothesis has been verified negatively because according to the obtained answers the highest wages were offered in medium-sized enterprises. The difference between the wages of foreigners and the average wages in the region was about 20%. According to the experience of other countries, immigrants have lower wages, because they usually take up the so-called worse jobs.²³ These observations are confirmed by research conducted, *inter alia*, in the United States, which shows that lower pay for foreign workers is almost the rule, with average differences of around 5-10%.²⁴ On the other hand, research conducted in Germany showed that foreigners have never reached the level of wages of native employees, which was mainly due to the fact that their migration was periodic.²⁵ In Spain, attention was drawn to the wage differences between immigrants from different parts of the world, *e.g.*, Africa, Asia or Europe. In addition, it was found that the pay gap was also due to the type of employment contract of the immigrant and their professional experience.²⁶ A wider interpretation of the results obtained in the Opole Voivodeship would require more in-depth research. The third hypothesis has been also confirmed. Employers who employ foreign workers also incur supplementary costs in addition to remuneration, such as assistance in completing the formalities for taking up employment and staying in Poland, finding lodgings (sometimes they cover part or all of the incurred costs) or providing transport to work.

Due to the growing demand for employees,²⁷ including those from abroad, as well as the companies' efforts to become more innovative (also through the implementation of the concept of diversity management²⁸), it is necessary to develop research on the immigration processes of foreign workers and their employers. It is worth expanding knowledge, among others, on the factors that would keep Ukrainians in Poland, encourage them to continue employment or even to settle. As a result, it would be possible to determine the level of their integration²⁹ and impact on the economy, *e.g.*, in terms of

23 T.J. Hatton, J.G. Williamson, *International Migration and World Development: A Historical Perspective* [in:] *Economic Aspects of International Migration*, ed. H. Giersch, Heidelberg 1994, p. 22.

24 P. McGouldrick, M. Tannen, *Did American Manufacturers discriminate against immigrants before 1914?*, "Journal of Economics History" 1977, Vol. 37 (3).

25 K.F. Zimmermann, *Some General Lessons for Europe's Migration Problem* [in:] *Economic Aspects of International Migration*, ed. H. Giersch, Heidelberg 1994, p. 265.

26 F. Munoz-Bullon, J.I. Garcia-Perez, M. Prieto-Rodriguez, *The wage gap between immigrant and native workers in Spain: an analysis using matched employer-employee data*, Working Papers Series (WP ECON 10.05), <http://www.upo.es/serv/bib/wps/econ1005.pdf> (online access: 15.3.2019).

27 The report prepared by PwC shows that if the current economic growth continues, the labour market may be short of 1.5 million people in the next 6 years. Details: <https://www.pwc.pl/pl/media/2019/2019-01-22-luka-rynek-pracy-2025-pwc.html> (online access: 23.1.2019).

28 The following publications can be mentioned in this respect: J. Maj, Ł. Walkowiak, *Diversity management in Polish Organizations, Proceedings of the 4th Virtual Conference on Advanced Research in Scientific Areas*, Zilina 2015; J. Maj, *Diversity Management Instruments in Polish Organisations*, "Journal of Corporate Responsibility and Leadership" 2017, Vol. 4 (1).

29 Certain actions have already been taken at regional levels, including in the Małopolska region, where the needs of immigrant integration have been diagnosed. Cf.: J. Brzozowski, K. Pędzwiatr, *Integracja imigrantów w Małopolsce w świetle etnomiernika*, "Studia Migracyjne – Przegląd Polonijny" 2015, Vol. 1 (155).

the amount of taxes paid and their use of the housing market.³⁰ It is also worth looking at a growing group of Ukrainians taking up degree programmes in Poland.³¹ Learning about their plans after graduation (*e.g.*, regarding their economic activity), determining the conditions that would encourage them to stay in Poland, could be very valuable, because the potential of human capital is an important factor, *e.g.*, within the context of knowledge transfer³² and improving the competitiveness of regions.³³ An important challenge facing Polish employers is the introduction by Germany of facilities for Ukrainians who want to work in their country. 2019 will probably show how attractive the German offer can be for citizens of Ukraine working in Poland, as well as how many of them will decide to leave and take up employment there.

³⁰ This is one of the factors of regional development, *cf.*: Ł. Mach, *An Analysis of Chosen Aspects of Regional Potentials of Housing Economy with Particular Focus on Social and Economic Dimension*, "Barometr Regionalny. Analizy i prognozy" 2016, Vol. 14, No. 4.

³¹ The presence of students stimulates the development of academic centres as well as local communities and enterprises, *cf. e.g.*, D. Rokita-Poskart, *The economic consequences of students inflow for local enterprises*, *Proceedings of the 5th International Conference Innovation, Management, Entrepreneurship and Sustainability*, Prague 2017 as well as D. Rokita-Poskart, *What Decides About The Ability Of The Academic City To Keep Educational Migrants? Case of Opole Academic Centre* [in:] *Proceedings of the 31st International Business Information Management Association Conference (IBIMA). Innovation Management and Education Excellence through Vision 2020*, ed. K.S. Soliman, Milan 2018.

³² M. Adamska, *Regionalny transfer wiedzy – perspektywa województwa opolskiego*, "Barometr Regionalny. Analizy i prognozy" 2012, No. 2 (28), p. 94.

³³ B. Klemens, K. Heffner, *Czynniki innowacyjności polskich regionów*, "Prace Naukowe Uniwersytetu Ekonomicznego we Wrocławiu" 2017, No. 467, p. 190.

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Sytuacja ekonomiczna Ukraińców w Polsce na przykładzie województwa opolskiego

Artykuł prezentuje dane statystyczne uwzględniające napływ pracowników z zagranicy, w szczególności z Ukrainy do Polski, w tym do województwa opolskiego. Ponadto omówiono w nim wybrane wyniki badania przeprowadzonego na Opolszczyźnie wśród 263 pracodawców, dotyczyły przyjmowania do pracy cudzoziemców. Ich celem było m.in. ustalenie wysokości wynagrodzeń oferowanych obcokrajowcom oraz ewentualnych pozapłacowych warunków zatrudnienia, np. związanych z pomocą w znalezieniu im kwaterek. W badaniu wykorzystano kwestionariusz ankiety. W dotarciu do respondentów zastosowano technikę CAWI (*Computer Assisted Web Interview*) oraz PAPI (*Paper and Pencil Interview*). Z badań przeprowadzonych w województwie opolskim wynika, że średnia płaca oferowana pracownikom z zagranicy była niższa niż średnia wypłata w regionie. Ustalono m.in., że wysokości płac oferowane cudzoziemcom różniły się w zależności od wielkości przedsiębiorstwa – najniższe wynagrodzenia proponowali mikroprzedsiębiorcy, natomiast najczęściej skłonni byli zapłacić przedstawiciele średnich firm. Pracodawcy zwracali uwagę, że poza wynagrodzeniem ponoszą także dodatkowe koszty związane z zatrudnianiem obcokrajowca. Są to m.in.: pomoc w znalezieniu mieszkania i/lub jego opłacenie, pokrycie części kosztów wyżywienia, jak również opłacenie kosztów dojazdu do pracy. Tekst przedstawia także wybrane dane dotyczące legalności zatrudnienia obcokrajowców w województwie opolskim.

Słowa kluczowe: warunki zatrudnienia, imigracja, rynek pracy, Ukraińcy, wynagrodzenia

The problem of European integration and relations with the European Union in public discourse in Ukraine following the Revolution of Dignity

Europe has a special place in the imagination of ordinary Ukrainians and plays an important role in contemporary political discourse in Ukraine. In this article I will discuss the changes in and the specific nature of the discourse on Europe and European integration in Ukraine after the Revolution of Dignity (2013–2014) based on polls of Ukrainian public opinion. The aim of this article is not to analyse in a comprehensive way European issues in the public discourse of Ukraine, but to show the current status and changes that have taken place after 2014.

Key words: European integration, public opinion, the revolution of dignity, Ukraine

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Introduction

The concept of integration with the European Union has become one of the key points of discussion in Ukrainian politics, as well as an important element of Ukrainian foreign policy and contemporary political discourse in general.¹ For this reason, the attitude of Ukrainians towards the priorities of Ukraine's foreign policy, in particular towards membership of the European Union, as well as the perception of Europe by Ukrainian citizens, should be considered an extremely important issue. In particular after the Revolution of Dignity of 2013–2014 and Russian aggression in Crimea and in Donbass, the issue of relations with the European Union has become one of the main reference points for almost all the dominant political forces in Ukraine.

The European Union and, more broadly, Europe have been attributed a number of meanings in various discourses in Ukraine, with the social, geographical and cultural aspects often being dominated by political issues. The concept of "Europe" is often used to address such diverse and ambiguous issues as Ukrainian civilisation and cultural affiliation, or Ukrainian national identity.

The concept of European integration often becomes an object of symbolic struggle in Ukrainian public discourse. It is an important reference point for developing Ukrainian national identity – by considering Europe as a value or by rejecting it.² Ukrainian anti-Europeans are building their own identity as opposed to European integration, referring to other symbolic centres, such as Moscow, which introduces the concept of the "Russian world."

The positive picture of the European Union, which is largely based on stereotypes of high living standards and prosperity in European countries, is dominant in Ukrainian public opinion. We can speak about the mythologizing of Europe as an archetype of a social system and cultural community.³ Ukrainian media pay much less attention to issues related to the functioning of the European Union and to the problems facing EU institutions.

Many studies⁴ on relations between Ukraine and the European Union were developed in Poland and abroad before the Revolution of Dignity. Some authors, as Wojciech Stankiewicz,⁵ believe that Ukraine was not yet fully ready to join European structures, which was due to its internal political and economic problems. Rafał Sadowski⁶ considered that Kyiv would have to make a strategic decision and choose the direction of

1 *Droga do Europy: opinie ukraińskich elit*, ed. I. Sariusz-Skapska, Warszawa 2004; O. Polegkyi, *The media and political discourse in post-communist Ukraine*, Ph.D. thesis, University of Wrocław/University of Antwerp, 2015.

2 *Sny o Europie*, ed. O. Hnatiuk, Kraków 2005.

3 M. Zolkina, *European integration of Ukraine: experience of yesterday for development of tomorrow*, "Public Opinion" 2013, No. 13.

4 W. Baluk, *Ukraińcy wobec integracji europejskiej*, "Komentarze/Polityka" 2013, No. 2.

5 W. Stankiewicz, *Proces integracji Ukrainy z Unią Europejską*, "Nowa Polityka Wschodnia" 2013, No. 2, pp. 27–53.

6 R. Sadowski, *The prospects for the EU-Ukraine free trade agreement*, "OSW Commentary" 2012, No. 94.

economic and, as a consequence, geopolitical integration.⁷ Even more attention was paid to these questions after 2014.⁸ Magdalena Karolak-Michalska⁹ has examined the importance of European integration from the perspective of the internal situation in Ukraine and its regional and political diversity. The topic of cooperation between Ukraine and Europe was examined in geopolitical terms, in the context of rivalry between the West and Russia.¹⁰ Nevertheless, there are no broader analyses that are devoted to changes in public discourse and in Ukrainians' attitudes to the EU, and to Ukraine's European integration after the Revolution of Dignity.

It is often assumed in colloquial language that integration with the European Union is one of the basic categories of Ukraine's foreign policy, which requires no further explanation. Some aspects of European integration are becoming the subject of electoral rhetoric, which does not care about the clarity of language and the meaning of basic concepts. On the contrary, some concepts may be deliberately misused by Ukrainian politicians for political purposes.

Conceptualisation of European integration in Ukrainian political discourse

Traditionally, the conceptualisation of European integration and the associated choice of Ukrainian foreign policy takes place in Ukrainian public discourse within the framework of geopolitical confrontation, civilisational choice and as the instrument of internal change. The conflict between Europe (the West) and Russia is the meta framework for the first two approaches.¹¹

Within the geopolitical confrontation, the European aspirations of Ukraine are primarily determined by relations between the EU, the US and Russia. Ukraine appears here only as an object of geopolitical struggle between world leaders and an instrument of their foreign policy. Ukraine is often referred to as a buffer zone between Russia and Europe or the West. The problem of Ukraine's geopolitical position is related to the debate about the civilisation and the part of the world that Ukraine belongs to. In this context, the independence of Ukraine is directly related to its being released from under Russian influence.

7 M. Shmelova, *Wielowektorowość w polityce zagranicznej Ukrainy: próba bilansu*, "Sprawy Międzynarodowe" 2008, No. 2, pp. 31–51.

8 A. Datsenko, K. Zuba, *Europejska polityka Ukrainy*, "ETE Working Paper" 2018, Vol. 4.

9 M. Karolak-Michalska, *Podziały regionalne społeczeństwa ukraińskiego w kontekście członkostwa Ukrainy w Unii Europejskiej*, "Studia Wschodnioeuropejskie" 2017, No. 6, pp. 79–96.

10 R. Zięba, *Ukraina jako przedmiot rywalizacji między Zachodem a Rosją*, "Środkowoeuropejskie Studia Polityczne" 2015, No. 3, pp. 5–26; A. Makarychev, *Regionalism and Identities in the Common Neighbourhood: European and Russian Discourses*, "EU-Russia Papers" 2013, No. 10; B. Woźniak, *Europejska Polityka Sąsiedztwa: udawane rozszerzenie czy niedoceniany instrument?*, "Sprawy Międzynarodowe" 2007, No. 3, pp. 77–89.

11 O. Polegkyi, *Framing of European integration in Ukrainian Media Discourse*, "Central European Journal of Communication" 2016, Vol. 9, No. 2, pp. 180–196.

Within the framework of European integration as a civilisational choice, the “European” topic has become dominant in Ukrainian discourse, mainly as a way of confirming autonomy from Russia. This framework mobilises discourse about feeling part of European civilisation and the Ukraine’s long European tradition, which was lost under the Russian domination.

For supporters of the European perspective of Ukraine, Europe is a valuable reference point. Ukraine’s independence was inextricably linked to the sense of its Europeanness. From this perspective, Europeanness was perceived as a determinant of Ukrainian identity and emphasised the organic autonomy of Ukraine from Russia and its unnatural separation from Europe for the centuries of Russian domination.

Within the framework of European integration as an instrument of internal change, the cooperation with the EU is an opportunity to modernise Ukraine. Accession to the EU means joining a “club” with higher standards in the political, social and economic sphere. For Ukraine, this is a way to modernise its economy and overcome technological backwardness. Full membership of the European Union is the ultimate goal of the Ukrainian path towards a completely independent, developed and democratic state. This framework is also often used for internal political struggle. To deny it, Ukraine is presented as a market for low-quality products, a source of cheap natural resources and cheap labour and a “dustbin” for Europe.

In the post-Soviet period, Ukraine’s relations with the European Union went through several phases. After the collapse of the Soviet Union, many Ukrainians believed that the tightening of links with Europe and with the United States would provide Ukraine with protection against an unpredictable Russia. For Ukrainian Democrats, a “return to Europe” meant rejecting communism and the heritage of centuries-old Russian domination. However, the problem was that in the first years of independence the West still considered Ukraine as a country dependent on Russia and did not develop its relations with Ukraine as an important ally.¹²

As Kataryna Wolczuk suggests, given that economic issues played an ambivalent role, it was primarily geopolitical and security reasons which led Ukrainian politicians from 1991 to take advantage of Ukraine’s location in Europe and seek membership in European institutions such as the EU and North Atlantic Treaty Organization (NATO). Recognition of independence and then Euro-Atlantic integration as an inherent objective of foreign policy,

was largely a response to Russia’s difficulties in accepting Ukrainian sovereignty, fuelled by doubts about the legitimacy and vitality of independent Ukraine.¹³

However, even after the Orange Revolution of 2004, Ukrainian political elites did not have the will to carry out coherent internal reforms in line with European standards. At the same time, the EU’s attitude towards Ukraine was very uncertain. On the EU

¹² P. Kubicek, *The history of Ukraine*, Westport–Connecticut–London 2008, p. 157.

¹³ K. Wolczuk, *Ukraine and its relations with the EU in the context of the European Neighbourhood Policy*, “Chaillot Paper” 2008, No. 108, p. 90.

side, there was no explicit recognition of Ukraine's "Europeanness". The perception of Ukraine as European only in terms of geography, but non-European in political and cultural terms, was deeply rooted in Europe.¹⁴

The situation changed after the Revolution of Dignity of 2013–2014, when Euro-Atlantic integration became an inevitable option for Ukraine. Ukrainian elites, as well as the majority of the population have undoubtedly expressed their willingness to connect with Europe, and the declarations of accession to the EU have become an integral part of programme statements of almost all large political parties. The consensus on closer integration with the EU was, however, accompanied by a dispute over the optimal strategy for achieving this goal. Orientation in internal and foreign policy towards the EU is for Ukraine principally a matter of national security, and perhaps even a matter of surviving as a state in the situation of open aggression by the Russian Federation.

At the same time, Ukraine has not received from the EU a clear signal about the prospects of EU membership. The political crisis, armed conflict with Russia and the non-implementation of a comprehensive reform strategy have further reduced these opportunities, at least for the forthcoming future. The European Union was not ready to promise even potential membership. As Benita Ferrero-Waldner, Commissioner for External Relations, said in 2005: "The door is neither open nor closed."¹⁵ However, European support for Ukraine and cooperation between them in various areas is currently reaching the highest level since Ukraine gained independence.

Ukraine-EU relations in the opinion of Ukrainians before the Revolution of Dignity

The level of support for both major directions of Ukraine's foreign policy – Europe and Russia – depended to a large extent on the political situation in the country. Regional differences in foreign policy orientation result from differences in political orientations, history, *etc.*, but also from the "politicisation" of decisions on foreign policy and struggles within various political groups.

The support for the idea of European integration among Ukrainians has been uncertain for many years. According to public opinion polls from 2006–2010, relations with Russia were largely considered as the main priority of Ukraine's foreign policy, but 2011 was to become a year of change.¹⁶ This trend was reversed and in the subsequent years the attention of Ukrainian public opinion turned to the EU.

¹⁴ "National Security & Defence" 2008, No. 1.

¹⁵ Quoted from: *Don't know much about geography*, "Financial Times" 25 January 2005, <https://www.ft.com/content/cf8de352-6f09-11d9-94a8-000000e2511c8> (online access: 8.10.2019).

¹⁶ M. Zolkina, *European integration of Ukraine: experience of yesterday for development of tomorrow*, "Public Opinion" 2013, No. 13.

The results of a survey conducted by the Razumkov Centre¹⁷ show a continuous domination of supporters for Ukraine's EU membership over its opponents since 2011. In October 2011, their number was 51.2% and 30.3% respectively. When asked about the choice between the European Union and the Customs Union with Russia, Belarus and Kazakhstan, 43.7% of Ukrainians have opted for EU membership, and 30.5% for the Customs Union.

In the same year, the majority of Ukrainians (54.6%) characterised relations between Ukraine and the EU as unstable; a minority (15.4%) considered them as bad, and only 14.3% described them as good. These results can be explained primarily by the assessment of the pace of European integration by Ukrainian citizens: 13% of respondents described it as null and 47.8% as low. Interestingly, this opinion was shared both by people who supported Ukraine's integration with the EU and those who did not.

Public opinion largely linked the instability in Ukraine-EU relations with the incoherent European integration policy of the Ukrainian government. Most Ukrainian nationals considered this policy as inconsistent (55.2%), non-transparent (59.5%), ineffective (62.6%) and incomprehensible to the general population (62.1%). 46.5% of respondents also believed that the Ukrainian government's policy was also misleading for EU Member States. In answering the question why the EU was interested in Ukraine, respondents pointed to the Ukrainian workforce (48.9%), energy transit to EU countries (48.6%), the Ukrainian market for EU goods (46.8%) and Ukraine's natural resources (46.6%). To a lesser extent, Ukrainians believed that the EU was interested in Ukraine's intellectual and scientific potential (26%); in reducing Russia's influence (20.3%); in the import of Ukrainian goods (15.6%); in the joint fight against illegal immigration, international crime and terrorism (15.5%); in strengthening security and stability in Europe (13.4%); in the military potential of Ukraine (11.2%) and in Ukrainian culture, tradition and history (6.1%).¹⁸

Ukrainians' attitude towards the priorities of Ukraine's foreign policy has changed over recent years, especially under the influence of events from the Revolution of Dignity and Russian aggression. According to the Razumkov Centre,¹⁹ in 2015 half of the respondents (51%) believed that relations with the European Union were a priority for Ukraine. Relations with Russia should be a priority in the opinion of 11% of Ukrainians, with other countries (not indicated in the list) and other (except Russia) countries of the Commonwealth of Independent States (CIS) – 6%, with the United States – 3%. In 2007, according to Razumkov Centre, 41% of respondents prioritised relations with Russia, 31% with the EU, 7% with other CIS countries, 1% with the United States. At the same time, 41% of respondents assumed that European integration could not be a unifying idea for Ukrainians. This was the opinion of 34% of people in 2015 (27% in December 2006), and 24% did not answer (27% in December 2006).

17 M. Kapitonenko, O. Shamshur, V. Chalyi, *Ukraine and EU: Challenges that Loom Ahead*, Washington 2012, p. 5, http://www.gmfus.org/wp-content/blogs.dir/1/files_mf/kapitonenkoetal_ukraineeu_feb12.pdf (online access: 17.9.2019).

18 *Ibid.*

19 *Ukrainian Identity: Changes, Trends, Regional Aspects*, "National Security & Defence" 2016, No. 3–4, pp. 13–14.

Changes in the perception of European integration after the Revolution of Dignity

After the Revolution of Dignity of 2013–2014, the situation has changed significantly. According to a nationwide opinion poll carried out in August 2018 by the Ilk Kucheriv Foundation for Democratic Initiatives and the International Institute of Sociology in Kyiv,²⁰ the data are as follows (data collected by other research institutions are similar²¹): most people (52%) believe that Ukraine should become a EU member, about one third (34%) do not agree with this, and 15% cannot decide. There are regional differences in the approach to EU membership. In the west and in the centre of Ukraine, the majority (79% and 58%, respectively) is in favour of integration, while respondents from the southern and eastern Ukraine do not share European aspirations (58% and 57%).

Table 1. Do you think that Ukraine should become a member of the European Union? [in %]

	2006	2009	2012	2013	2014	2018
Yes	43.7	42.8	42.1	48.0	47.5	51.5
No	35.9	32.9	38.6	35.9	36.6	33.7
It's hard to say	20.4	24.3	19.3	16.1	15.9	14.8

Source: *Yevropeis'ka integratsiia u vimiri gromads'koi dumki*, 2018, <https://dif.org.ua/article/evropeyska-integratsiya-u-vimiri-gromadskoi-dumki> (online access: 12.1.2019)

As regards Ukraine's foreign policy orientations, the majority of nationals (51%) support Ukraine's accession to the European Union (the highest number in the west – 80%, in the centre of the country – 58%), and only 11% believe that Ukraine should join the Eurasian Economic Union of Russia, Belarus and Kazakhstan. Every third person (33%) is of the view that Ukraine should join neither the EU nor the Eurasian Union. The latter option is most supported by the inhabitants of the east (54%) and south of the country (48%).

The main advantages of EU membership are: raising the standard of living (38%), supporting the fight against corruption (27%) and the free movement of people within

20 *Yevropeis'ka integratsiia u vimiri gromads'koi dumki*, 2018, <https://dif.org.ua/article/evropeyska-integratsiya-u-vimiri-gromadskoi-dumki> (online access: 12.1.2019).

21 *Portreti regioniv: pidsumki. Zvedeni dani, porivnial'nii analiz mizh oblastiami*, 2018, http://ratinggroup.ua/research/ukraine/portreti_regionov_itogi_svodnye_dannye_sravnitelnyy_analiz_mezhdu_oblastyami.html (online access: 17.9.2019); *Social and political attitudes of the residents of Ukraine: April 2018*, Kyiv 2018, <http://www.kiis.com.ua/?lang=eng&cat=reports&id=764&y=2018&page=6> (online access: 10.1.2019); T. Petronenko, *Which direction of integration Ukraine should choose: the European Union, the Customs Union or not joining any of the unions*, Kyiv 2016, <http://www.kiis.com.ua/?lang=eng&cat=reports&id=655&page=2> (online access: 10.1.2019).

the Member States (26%). Every fifth citizen expects Ukraine's membership of the EU to support young people's access to European universities (21%). 26% of respondents believe that Ukraine will not derive any benefits from EU membership.

Table 2. Which union should Ukraine join? [in %]

	2010	2013	2014	May 2014	December 2014	December 2015	June 2017	October 2017	August 2018
The European Union	38.1	46.4	40.4	50.5	57.3	55.8	56.8	49.3	50.7
The Eurasian Economic Union	48.8	35.7	38.5	21.4	16.3	13.1	7.8	10.8	10.9
None	-	-	-	17.4	-	-	25.5	26.3	32.5
It's hard to say	13.0	17.8	21.1	10.6	26.5	31.1	9.9	13.5	5.9

Source: *Yevropeis'ka integratsiia u vimiri gromads'koi dumki*, 2018, <https://dif.org.ua/article/evropeyska-integratsiya-u-vimiri-gromadskoi-dumki> (online access: 12.1.2019)

It is worth noting that perception of the key benefits of EU membership and their importance has changed over time. In the years 2005–2015, 35–40% of respondents considered that free movement of persons abroad was one of the key advantages of EU membership, while in 2018 – this was only 26%. Probably because a visa-free regime has been launched.

Expectations as to free access for young people to European universities have also decreased: in 2015 such potential benefits of EU membership were indicated by 34%, in 2018 – only by 21% of respondents. There was also a slight increase in the number of sceptics who do not expect any benefits for Ukraine from membership in the European Union: the lowest number was in 2005 and 2007 (14% and 16% respectively), in 2011 this figure increased significantly – to 28%, then decreased, but not significantly: 22% in 2015, 26% in 2018.

There are regional differences in the assessment of the benefits of EU membership. The further east of Ukraine you go, expectations fall – while 52% of people in the west have indicated an increase in their standard of living, such an answer was given by 40% in the centre, and only by 27% and 26% in the south and east of the country. The free movement of people is an advantage expected by 31% of inhabitants of the west of Ukraine, 30% of inhabitants of the south, 28% of the centre and by only about 5% of people living in the east of the country. The same is true for expectations regarding the possibility of studying at European universities and the prospects for combating corruption as a result of EU membership. 53% of inhabitants of eastern Ukraine, 36% of the southern part of the country, 22% of its central part and 8% of the western Ukraine do not see any benefits in membership.

According to respondents, emigration would be the main negative consequence of Ukraine's membership of the EU. The percentage of people fearing this phenomenon has increased dramatically – from 33% in November 2015 to 46% in August 2018. People

are also worried about the likelihood of an influx of foreigners and migrants (26%) and “selling the country” (24%). There are also concerns that EU membership will worsen relations with Russia and other countries of the Commonwealth of Independent States (18%); in 2015, 28% of respondents had such concerns. Other negative consequences mentioned by the respondents include deterioration of living standards (16%) and unemployment (16%).

Table 3. What benefits would you expect if Ukraine became a full member of the EU?
[maximum 5 answers, in %]

	2005	2007	2011	2015	2018
Improvement in the standard of living	30.8	33.0	28.0	36.8	38.1
Improvement in availability of goods	18.7	8.8	16.1	10.3	10.4
Free movement of persons	39.2	35.4	34.7	38.6	26.1
Free access for young people to higher education	25.5	19.0	24.3	33.7	21.3
Democratisation	17.1	13.0	13.7	12.6	14.5
Increase in national security	7.8	6.7	7.5	20.8	15.9
Assistance in the fight against corruption	-	-	-	-	27.0
Moving the state towards European civilisation	19.0	17.7	16.1	18.8	15.8
Development of the Ukrainian economy	19.1	15.0	13.3	-	18.9
Greater credibility in the international arena	17.5	11.0	11.2	17.3	9.8
Financial assistance	13.0	8.8	9.7	12.6	7.2
I have no expectations	14.4	15.7	27.7	22.0	25.9
It's hard to say	17.3	16.3	11.6	11.6	7.2

Source: *Yevropeis'ka integratsiia u vimiri gromads'koi dumki*, 2018, <https://dif.org.ua/article/evropeyska-integratsiya-u-vimiri-gromadskoi-dumki> (online access: 12.1.2019)

Perception of the potential negative consequences of Ukraine's accession to the EU is also regionally differentiated. Most people fearing emigration live in the south (58%), fewer in the centre (47%) and in the east (43%), with the lowest percentage being in the west of the country – only 33%. The risk of “selling the country” is most worrying for the inhabitants of southern (38%) and eastern regions (30%), while those living in the central and western part of the country are much less worried about it (20% and 13% respectively). The fear of rising unemployment is more common in the south (21%) and least common in the west of Ukraine (9%).

In the opinion of Ukrainians, the biggest obstacle to Ukraine's membership of the European Union is corruption (43%), insufficient economic development of the country (38%) and low standard of living (28% compared to 36% in November 2015). 21% of respondents believe that the war in Donbass is also an obstacle (27% in 2015). Another 17% consider the problem of democracy and human rights in Ukraine to be an obstacle.

Table 4. What could be the negative consequences of Ukraine's accession to the EU?
[maximum 5 answers, in %]

	2005	2007	2011	2015	2018
Loss of national sovereignty	18.8	12.6	9.7	11.0	14.1
Increase in crime rates	9.1	9.9	10.1	6.4	6.7
Increase in drug addiction, spread of AIDS, etc.	15.9	17.1	14.0	14.7	8.9
Spread of Western mass culture	21.5	11.2	11.2	11.3	7.6
Decrease in living standards	18.3	9.5	16.7	16.5	16.0
Unemployment	21.1	10.2	17.5	18.2	15.8
Emigration	32.9	26.7	31.1	33.1	45.5
Inflow of foreigners, "sale of the country"	28.6	30.9	22.0	-	-
Inflow of foreigners and immigrants	-	-	-	-	26.6
"Sale of the country"	-	-	-	-	23.8
Increase in social inequalities	16.1	10.8	12.3	14.5	12.6
Deterioration of relations with Russia and CIS countries	24.7	19.8	22.5	27.5	18.0
Other	1.4	2.0	0.9	1.7	0.6
None	6.0	13.2	16.3	16.8	15.0
It's hard to say	20.2	17.5	16.0	16.0	11.2

Source: *Yevropeis'ka integratsiia u vimiri gromads'koi dumki*, 2018, <https://dif.org.ua/article/evropeyska-integratsiya-u-vimiri-gromadskoi-dumki> (online access: 12.1.2019)

Table 5. What is the biggest obstacle to Ukraine's membership of the European Union?
[maximum 5 answers, in %]

	2007	2011	2015	2018
Insufficient economic development of Ukraine	51.8	34.5	41.3	37.7
Problems with democracy and human rights in Ukraine	17.6	22.6	19.8	17.4
Low standard of living in Ukraine	48.0	32.4	36.4	27.5
Corruption	-	-	43.2	42.5
Position of EU Member States that do not wish Ukraine to join the EU	12.9	18.7	22.0	11.6
Position of the leaders of the Ukrainian state who are not really coming out to meet the EU	6.2	17.6	14.6	10.0
Reluctance of Ukrainian citizens	13.4	8.9	6.7	4.2
Reluctance of EU Member States to spoil relations with Russia	-	-	-	6.2
War in Donbass	-	-	27.0	21.0
No obstacles, Ukraine is ready for it now	1.3	5.0	2.9	1.6
Ukraine does not need to become a EU Member State	17.2	14.5	10.5	13.5
Other	-	0.9	0.9	0.7
It's hard to say	11.0	11.2	8.6	6.6

Source: *Yevropeis'ka integratsiia u vimiri gromads'koi dumki*, 2018, <https://dif.org.ua/article/evropeyska-integratsiya-u-vimiri-gromadskoi-dumki> (online access: 12.1.2019)

In the opinion of respondents, to accelerate reforms in Ukraine, first of all the EU must increase its pressure on the Ukrainian authorities (28%). Respondents also believe that this will be favoured by a more open prevention of Russia's actions by the EU and its Member States (16%). The vast majority of respondents (60%) believe that Ukraine should continue pro-European reforms, even if the EU does not anticipate Ukraine's membership within a specified period. 39% of the above mentioned respondents consider these reforms to be necessary above all for Ukraine, while 21% believe that Ukraine has no choice but to proceed towards European integration, regardless of membership. At the same time, 17% of respondents claim that Ukraine does not need "European reforms," and in the opinion of 7% of respondents the country should turn towards integration with the Eurasian Economic Union with Russia. 15% of respondents have no opinion in this regard.

In regional terms, the greatest consensus is on the need for pro-European reforms regardless of the perspective of EU membership – such an opinion is expressed by the inhabitants of the west (78%) and the centre (67%) of Ukraine, but by far fewer of those from the east (48%) and south (38%) of the country.

Table 6. Is it important for Ukraine to continue pro-European reforms, even if the EU does not provide the country with the perspective of membership? [in %]

	2018
Yes, because these reforms are needed primarily for Ukraine	39.3
Yes, because Ukraine has no other choice but to move on to European integration, regardless of membership	20.8
No pro-European reforms needed	17.4
On the contrary, integration into the Eurasian Economic Union with Russia should be pursued	6.8
Other	0.6
It's hard to say	15.0

Source: *Yevropeis'ka integratsiia u vimiri gromads'koi dumki*, 2018, <https://dif.org.ua/article/evropeyska-integratsiya-u-vimiri-gromadskoi-dumki> (online access: 12.1.2019)

The number of Ukrainians who consider themselves to be Europeans is gradually increasing (44% compared to 38% in June 2017), but there are also still more people who do not consider themselves to be Europeans (48%). The most visible European identity is shown by the inhabitants of the west of Ukraine (61%) and its central part (51%), while the least visible European identity is presented by the inhabitants of the south (28%) and the east (22%) of the country.

When asked about what Ukrainians need to feel European, 46% of respondents indicated a level of material well-being, 34% – a sense of legal protection, 21% – respect for the values of democracy and human rights, and 17% – a sense of freedom.

Introduction of a visa-free regime in contacts with EU countries is important for 48% of respondents and this number increased over the year (in June 2017 it was 39%, in December – 46%). In regional terms, the introduction of visa-free regime in contacts with the EU is particularly important for residents of the west of the country (74%), of its central part (48%), less for residents of the south (29%) and the east (33%) of Ukraine.

Table 7. How important is the introduction of a visa-free regime to EU countries? [in %]

	November 2015	December 2016	June 2017	December 2017	August 2018
Very important	22.9	16.3	10.1	14.1	16.4
Generally important	33.7	28.0	28.6	32.2	31.9
Not very important	19.3	21.3	23.8	24.3	23.2
It doesn't matter	17.4	28.2	33.7	25.0	23.8
It's hard to say	6.6	6.3	3.8	4.4	4.8

Source: *Yevropeis'ka integratsiia u vimiri gromads'koi dumki*, 2018, <https://dif.org.ua/article/evropeyska-integratsiya-u-vimiri-gromadskoi-dumki> (online access: 12.1.2019)

Over the past year, a significant increase was noted in the number of Ukrainians with a new biometric passport, which ensures visa-free travel to EU countries. In June 2017, only 7% of Ukrainians had a biometric passport, in October 2017 almost twice as many – 13%, and in August 2018 – 24%. Most holders of these new passports inhabited the west of Ukraine – 41%, while 18% of new passports holders lived in the centre and east of the country and 14% in the south. In addition, the number of citizens who do not have a passport has slightly dropped during the year – from 66% in June 2017 to 60% in August 2018.

Table 8. Do you have a passport [several answers possible, in %]

	June 2017	October 2017	August 2018
I have a new biometric passport	6.9	12.6	23.5
I have an old passport with valid Schengen visas	8.5	6.3	7.0
I have an old passport but without a valid Schengen visa	19.6	14.8	9.8
I do not have an international passport	66.0	66.2	59.8
It's hard to say	-	0.3	1.3

Source: *Yevropeis'ka integratsiia u vimiri gromads'koi dumki*, 2018, <https://dif.org.ua/article/evropeyska-integratsiya-u-vimiri-gromadskoi-dumki> (online access: 12.1.2019)

The mobility of Ukrainians to EU countries has increased slightly over the past year: from 12% in October 2017 to almost 17% in August 2018. During the last 2 years, inhabitants of the western part of the country have often travelled to the EU (34%), while inhabitants of the central (12%), southern (10%) and eastern (8%) part of Ukraine have travelled to the EU far less frequently.

Table 9. Have you travelled to EU countries during the last two years? [in %]

	October 2017	August 2018
Yes	11.8	16.6
No	87.8	82.6
It's hard to say	0.4	0.8

Source: *Yevropeis'ka integratsiia u vimiri gromads'koi dumki*, 2018, <https://dif.org.ua/article/evropeyska-integratsiya-u-vimiri-gromadskoi-dumki> (online access: 12.1.2019)

A readiness to travel to EU countries in the near future has also increased. In October 2017, 19% of respondents declared their intention to go to the EU over the next year, while in August 2018 this was 24% of respondents. As in the case of mobility, more willing to travel to the EU are inhabitants of the west of Ukraine (39%) and to some extent of its central part (24%), less willingness to travel is shown by people from the south (17%) and east (11%) of the country.

Table 10. Do you intend to travel to EU countries next year? [in %]

	2017	2018
Yes	19.1	24.4
No	67.8	62.8
It's hard to say	13.1	12.8

Source: *Yevropeis'ka integratsiia u vimiri gromads'koi dumki*, 2018, <https://dif.org.ua/article/evropeyska-integratsiya-u-vimiri-gromadskoi-dumki> (online access: 12.1.2019)

Tourism is the main purpose of travel to the EU (61%, compared to only 49% of respondents intending to travel to the EU for this purpose in October 2017). Many Ukrainian citizens currently travel to the EU for employment (27%), for business purposes (24%), and there are also a lot of people visiting relatives (20%).

In the "Rating" Sociological Group's 2017 survey, 17% of respondents indicated that relatives had been employed abroad during the previous 6 months, and 11% – that their

families included permanent employees abroad. At the same time, 70% of respondents had not worked abroad during this period, and 2% did not answer this question. The highest percentage of people whose relatives have experience in working outside their home country is noted among the inhabitants of the western region (especially in Zakarpattia). The presence of family members working abroad was mentioned relatively more often by rural residents and people with higher incomes. 65% of respondents indicated that they did not want to change their country of residence. At the same time, 27% of people indicated that they were planning to emigrate. Of all those who wanted to leave, half were people under the age of 35. Most of those who expressed their willingness to leave Ukraine were noted among the residents of northern regions of the country (Zhytomyr Oblast, Sumy Oblast, Kyiv) and of its western regions (Zakarpattia, Ternopil and Chernivtsi Oblast). 50% of respondents described Ukraine as the preferred country for their children, one fourth would choose European countries for their children, 7% – the USA, 3% – other countries, and only 2% would choose Russia. 13% were not able to answer this question.

Table 11. If you are travelling to EU countries, for what reason are you travelling?
[several answers possible, in %]

	November 2015	October 2017	August 2018
Leisure (tourism)	50.9	49.4	60.8
Business travel	11.2	17.8	24.1
Visiting relatives	12.7	10.7	19.6
Medical treatment	7.3	0.4	5.6
Training, traineeship	7.1	2.7	7.8
Employment abroad	24.1	16.8	26.6
Other	2.3	0.4	0.5
It's hard to say	21.4	16.0	2.7

Source: *Yevropeis'ka integratsiia u vimiri gromads'koi dumki*, 2018, <https://dif.org.ua/article/evropeyska-integratsiya-u-vimiri-gromadskoi-dumki> (online access: 12.1.2019)

Conclusions

The geopolitical orientations of Ukrainians have evolved very much during the recent years, especially under the influence of the events of the Revolution of Dignity and Russian aggression in Donbass and Crimea. For quite a long time, the general view of the

two main political and cultural orientations in Ukraine dominated: the pro-European or pro-Western one and the pro-Russian one, which was most often perceived as anti-Western. This division has definitely simplified a more complex reality. We can, however, conclude that after the Revolution of Dignity of 2013–2014 the pro-European discourse has become dominant and now the vast majority of the population has pro-European aspirations.

The topic of European integration is strongly related to the mechanisms of developing the Ukrainian national identity. The issue of identity is one of the most visible divisions in Ukrainian society and is a constant source of conflicts that affect the orientation of citizens in foreign policy. As noted in previous studies,²² in spite of some regional determinants of political attitudes, the main dividing lines in Ukrainian society are based not so much on regional differences, but mainly on generational, social and, above all, value differences. One can rather argue that there is a rivalry between the “Soviet mentality” and values that include typical Soviet and now Russian narratives in terms of history, identity, geopolitical orientation and “Ukrainian mentality” – with all the differences and contradictions.

The situation after the Revolution of Dignity and Russian aggression became much more complicated.²³ War and armed conflict have always played an important role in redefining national identities because they require national unity and mobilisation, but at the same time they deepen the division in society and focus on the image of the enemy and notions of “others.” A negative image of Russia plays a key role in creating a Ukrainian national identity for certain part of society, serving as a unifying threat. For Ukrainian nationalists, Russia as the former imperial centre has become the primary source of “negative identity.” Since the image of Russia is different in different regions of Ukraine, it has been effectively used by various political forces to manipulate mass consciousness, especially during and after the Revolution of Dignity.

An analysis of public opinion polls shows that Ukrainians mostly have a positive attitude towards the EU and even idealise Europe. However, the low level of knowledge and awareness about EU institutions, EU rules and problems related to the process of European integration is a challenge. At the same time, Ukraine is uncertain of its future in Europe. The causes of uncertainty include both external factors – the influence of Russia and the weakness of the European Union, as well as internal factors – historically shaped political and cultural differences within Ukrainian society.

22 O. Polegkyi, *Identities building in post-communist Ukraine: post-imperial vs. post-colonial discourses*, “CFE Conference Papers” 2015, No. 7, pp. 169–191.

23 G. Pop-Eleches, G.B. Robertson, *Identity and political preferences in Ukraine – before and after the Euromaidan*, “Post-Soviet Affairs” 2018, No. 34, pp. 107–118.

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Problem integracji europejskiej i stosunków z Unią Europejską w dyskursie publicznym na Ukrainie po rewolucji godności

Europa zajmuje szczególne miejsce w wyobraźni zwykłych Ukraińców oraz odgrywa ważną rolę we współczesnym dyskursie politycznym na Ukrainie. W niniejszym artykule omówię zmiany i specyfikę dyskursu na temat Europy oraz integracji europejskiej na Ukrainie po rewolucji godności (2013–2014) na podstawie badań opinii publicznej ukraińskiego społeczeństwa. Celem artykułu nie jest całościowa analiza problematyki europejskiej w dyskursie publicznym na Ukrainie, lecz pokazanie stanu obecnego i zmian, które zaszły po 2014 r.

Słowa kluczowe: integracja europejska, opinia publiczna, rewolucja godności, Ukraina

The labor relations of Ukrainian youth

Introduction

The problems of young people in Ukraine have always been the focus of prominent researchers in the field of labor law and social security. Among them Galina S. Goncharova *Problems of Legal Regulation of Qualification Requirements for Employees in the Course of Employment*, Vladimir Zhernakov *Ukrainian Labor Law on its Way to Europe: Theoretical and Practical Problems*, Mykolaj I. Inshin *Problems of the Legal Regulation of Unemployment and Employment in Ukraine and Directions for its Improvement*, Konstantin Y. Melnik *The Sphere of Labor Law Action and Social Security Law*, Sergij M. Prilipko *Differentiation of Youth Work Legal Regulations: the Concept, Content and Grounds for their Providing*, Oleksandr O. Protsevisky *Is it Really so that the State does not Guarantee its Citizens the Right to Work?*, Galina I. Chani-sheva *Legal Regulation of Short-time Employment and Partial Unemployment*; and associated with them: Viktoria V. Vennikova *International Legal Standards are the Basis of the Guarantee of the Constitutional Right to Social Protection*; Konstantin Y. Herman *On the Use of the Term: First Job*, Oleksandr S. Kaytanskiy *Youth Employment under the Law of Ukraine on Employment*, Vladimir U. Lebid *Some Issues of Unity and Differentiation in the Labor Law of Ukraine (for example, studies)*, Anatolij A. Miroshnichenko *Labor Relations in Ukraine Today*, Anastasija O. Movchan *Legal Regulation of Recruitment Relations in Market Conditions*, Olena G. Sereda *Some Aspects of the Prohibition of Age Discrimination*, Galina A. Trunova *Labor Migration and its Influence on the Labor Market in Ukraine*, Feliks A. Cesarsky *Peculiarities of Employment Contracts with Minors* and many other academics. However, issues connected with young people's informal working relationships have not been sufficiently studied, so the authors of this article have attempted to make a thorough systematic analysis of young people, in order to help through the implementation of their own ideas to build a decent state social policy, to give one more direction to this problem under investigation. The purpose of this work is to reveal the main priorities of life, the problems of social status and the development of Ukrainian youth, their values, prime concerns and preferences, peculiarities of the organization of youth work in the condition of decentralization and their accordance to the real demands of the contemporary youth environment.

The Ukrainian realities in the sphere of labor relations are double in nature. On the one hand, this is the European vector of development in the field of labor legislation, its adaptation to the standards of the European Union, and on the other hand, the current practice of regulation of labor relations which does not only not approach, but on the contrary it varies markedly from European standards. The main problem of modern Ukraine is not the necessity to adopt new legislation but its implementation.

Especially, young people suffer from this situation. According to the Law of Ukraine: On the Promotion of Social Development and the Development of Youth, young people are deemed to be citizens aged 14 to 35 years old.¹ Today, it is difficult for a young person

¹ Zakon Ukrainy, Pro spry'yannya social'nomu rozvy'tku ta rozvy'tku molodi, 1993, No. 16, 1774-VIII, p. 167, edited 1.1.2017, <http://zakon.rada.gov.ua/laws/show/2998-12> (online access: 2.4.2020).

who has just graduated and has the intent to start their work activity. Besides, it is quite difficult to find work that corresponds to any basic requirements (a job connected with the profession or skills learnt, decent payment).

The results of the Youth of Ukraine – 2017 sociological research conducted by the Center for Independent Sociological Studies OMEGA, commissioned by the Ministry of Youth and Sports of Ukraine, showed that almost half of the young people interviewed (48.1%), who were employed, did not work according to their profession or specialty, obtained at a vocational-technical or higher educational establishment. The main factors that explain why young people do not work in their relevant professions are the lack of job vacancies by profession (36.7%) and unsatisfactory financial remuneration given (31.4%).²

These results are used in the preparation of state targeted social programs, annual reports to the President of Ukraine and the Verkhovna Rada of Ukraine on the situation of youth with the aim of further formulating youth policy in the country and the implementation of effective interventions directed to needs providing and overcoming the difficulties experienced by youth in Ukraine.

According to data obtained in 2017, Ukrainian youth identified as essential to their value profile the following basic individual values representing motivation: “decide for yourself what to do,” “make your own opinion, be the possessor of ideas,” “find time to learn something for yourself and improve your abilities,” “make every effort to get others enthralled with your accomplishments,” “to be a wealthy person,” “always achieve high goals” and “individually take decisions about your own life.”

Thematic sociological research allows one to assess the needs of modern youth, their desires, measure their values which are, in turn, connected with a striving for openness, changes and self-assertion. The results of the study will influence the formation of state youth policy, working out of targeted youth programs, sectoral and cross-sectoral youth initiatives and interventions. In conditions of decentralization, an understanding of the needs and perspectives of contemporary Ukrainian youth is a prerequisite for the development of communities and society as a whole. The survey was commissioned by the Ministry of Youth and Sports of Ukraine, and covered the period from July 20 to August 10, 2017. Research method: structured face-to-face interview as well as dialectical method, systematic approach, analysis and synthesis, modeling, statistical methods, comparison method.

The target group: young people aged 14-34 (citizens of Ukraine). Geographical scope of the research: 24 administrative units of Ukraine and Kyiv (except for the temporarily occupied territory of the Autonomous Republic of Crimea and Sevastopol and temporarily uncontrolled territory of Ukraine, where state authorities temporarily have no jurisdiction or jurisdiction that is curtailed in its scope). Selective totality: 2000 respondents aged 14-34 years, representative of major socio-demographic characteristics (gender, age, region of residence, size of settlement). In the process of devising the questionnaire taken

2. Ministerstvo Molody i Sportu Ukrainy, *Molod' Ukrainy' – 2017: Rezul'taty' sociologichnogo doslidzhennya*, Ternopil 2017, p. 72.

into account was the Project of the National Indicators of Youth Policy, developed by the State Institute for Family and Youth Policy.

According to the results of the sociological survey, the main priorities in life for the majority of young people are family happiness (64%) and health (54%). Careers (39.3%), freedom and independence (29.1%), and wealth (28.1%) are ranked second and third in the list of the most desirable achievements for the contemporary young.

Present-day Ukrainian young men and women demonstrate different gender life priorities: young women, in contrast to young men, are more focused on achieving family happiness and health, and young men, compared to young women, have dreamy horizons associated with career, freedom and independence (autonomy), wealth and power.

Young people of the older age group, aged 25-34, in comparison with those of the younger age groups are more frequently oriented toward the achievement of family happiness and health, and young people of the younger age, aged 14-19 in comparison with older age-group representatives – to achieve career success. Besides, young people of the younger age groups, to a greater extent, in comparison with older age groups are oriented towards such priority values as acquiring qualifications while the older age groups – on peace and the possibility of anything meddling with this.

The toolkit of the given research was the request, formed with taking into account previous pieces of sociological research conducted in accordance with the order of the Ministry of Youth and Sports of Ukraine (sociological surveys Youth of Ukraine – 2007, Youth of Ukraine – 2015 and Values of Ukrainian Youth – 2016). Also, while devising the questionnaires taken into account was the national youth policy indicators project developed by the State Institute for Family and Youth Policy.

Causes of difficulties arising in employment

The main causes of youth employment difficulties are, as a rule, the result of: an absence of sufficient work experience, insufficient level of practical skills, high labor market competition in a particular profession, a large number of proposals in the labor market, lack of demand for the given profession itself.

All of this results in increasing unemployment among Ukrainian youth. Thus, according to the State Employment Service, in January-September 2018, there were 303 thousand out of work (with young people constituting 36% of the total number of those unemployed). As to age groups: among the unemployed 29% were persons aged from 15 to 29 years, 31% were aged from 30 to 39 years.

In October 1, 2018 the number of unemployed youth was 91.5 thousand, that is 11.3 thousand persons fewer (11%) than the year previously.³

³ Derzhavna sluzhba zaynyatosti, *Nadannya posluh dlya molodi. Analitichni ta statystichni dani*, 2019, <https://www.dcz.gov.ua/analytics/68> (online access: 25.3.2020).

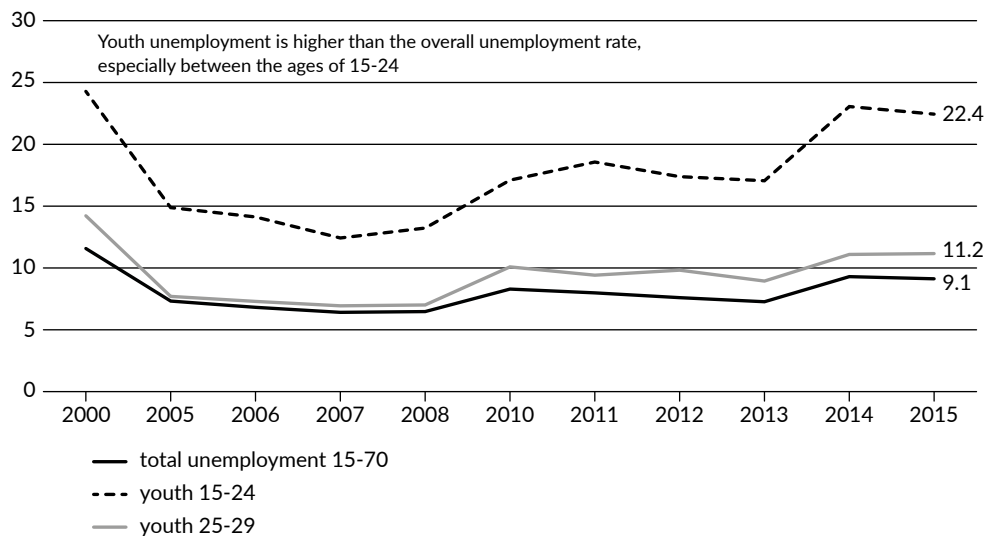
However, it can be stated with confidence that a great number of young people are not registered with the employment services, with many young people working without formal registration. Employers often violate labor legislation during employment.

It is difficult for young people to find a job

Half a century ago, when Ukraine was part of the Soviet Union, it was a normal situation when a person, after completing his education, worked at the same company, factory or state organization for the whole of his life. The modern world is characterized by the rapid destruction of jobs in many branches or professions and an uncertainty as to the knowledge and skills that will be needed in the future.

However, young people who, as a rule, do not have enough work experience and savings, being as if an “air bag,” in order to survive a period of life problems constitute one of the most vulnerable groups in the population that, probably, suffers to the greatest extent from unemployment.

Diagram 1. Unemployment rate in Ukraine over the last 15 years [%]



Source: State Statistics Service of Ukraine, *Economic activity of the population of Ukraine in 2015, 2016*

The loss of work or the inability to get a full-time job causes a number of problems during this period – stress, lowering of incomes, loss of permanent social status, and consequently, a decrease in mental and physical health and well-being.

The socio-economic phenomenon of unemployment is one of the manifestations of the many contradictions between the post-industrial technological mode of production and the system of modern industrial relations, along with the commercialization of education, market-commercial use of creative work and the achievements of science, the depletion of the environment, *etc.* A dangerous and unfortunate refraction of the problem of unemployment and underutilization of production facilities, that is, the insufficient use of human and all other resources is youth unemployment.

Youth unemployment is a socio-economic phenomenon during which able-bodied youth are in search of work and are ready to start it, but have no possibility to realize their right to work, thus losing their basic means of existence. There are the following categories of youth unemployment:

- graduates of secondary schools, educational establishments of all levels;
- discharge due to changes in production organization;
- discharge due to staff instability;
- servicemen dismissed from conscription;
- wives on maternity leave.⁴

According to the report on a large-scale economic and sociological study by Professor Ella Libanova,⁵ the modern youth labor market in Ukraine is characterized by rather threatening trends. So, there is an increasing number of unemployed youth who have lost confidence and who are not even trying to find a job. There is a strong segmentation of young people into those who immediately found a decent job and those who encountered numerous difficulties in the search. A large number of young people are dissatisfied with their jobs, so they plan to change jobs and even profession. In solving their problems, the youth rely mainly not on themselves, but on third parties – the state, relatives and friends.⁶ Besides, as it is considered by academics,⁷ the specificity of the youth labor market lies in the instability of demand and the job proposals on offer, the low competitiveness of young people, great variability, the difficult situation concerning women's employment.

As the main underlying cause of youth unemployment, researchers recognize the deep imbalance between the structure of demand and job proposals in the labor market, caused by the violation of relationships in the system “education-science-production.” Such a violation is caused by a whole number of factors, among which the gap between educational programs at the high educational establishment and the needs of enterprises, and hence the lack of qualifications and the lower competitiveness of young people in comparison with other age groups; the lack of necessary information on the job market

4 T.V. Chatchenko, *Molodizhne bezrobittya yak odna z vy'znachal'ny'x problem social'no-ekonomichnogo rozvy'tku Ukrainy' ta shlyaxy' jogo vy'rishennya*, “Global'ni ta nacional'ni problemy' ekonomiky” 2016, Issue 14, pp. 250-253.

5 E.M. Libanova, O.I. Cymbal *et al.*, *Perexid na ry'nok praci molodi Ukrainy'*, Zheneva 2014, p. 79.

6 *Ibid.*

7 T.V Chatchenko, *op. cit.*

about entrants' future professions; choice of specialty by its prestige, not by its content, etc.^{8,9,10}

This deep divergence between the requirements of the labor market and production, on the one hand, and the proposal of specialists, on the other, creates not only structural unemployment, but also a nonconformity with the specialty obtained and the actual place of work, too high qualifications for the position occupied, etc. So, according to a survey,¹¹ a third of young professionals are "over-qualified" for the work positions they hold.

In Ukraine, there are annually about half a million graduates at all educational qualification levels. Among them about one-third have qualifications in economic and legal specialties. At the same time, the number of personnel for the real production sphere is extremely low. According to the State Statistics Committee, the largest remains, the demand for skilled machine tool workers remains the greatest (20.1% of the total number of vacancies declared at the end of June 2017). In the first half of 2017 there was observed an increase in the demand for technical employees (by 85%) and for technological equipment maintenance employees (by 84%).¹² That is, employment opportunities exist for the graduates of vocational-technical institutions and representatives of professions now deemed not prestigious.

At the same time, the need for managers of different profiles and levels remains low. Simultaneously, about 80% of students plan to enter higher educational establishment and only slightly more than 10% – to vocational-technical educational institutions, the number of which is steadily declining and amounted to 60% in 2017 in comparison with the number in operation in 1990.

Accompanying negative factors of youth unemployment in modern Ukraine, in our opinion, may be the following objective factors. First, an important factor exerting pressure on the labor market, including the youth market – is the military aggression in the East of Ukraine; in certain regions of Ukraine in the short term this has led to complications in searching for work for both for the young and the local population as a whole. The results of which being that nearly 1,300,000 citizens have become internally displaced persons. Secondly, the socio-economic crisis in Ukraine 2014-2016, the fall in GDP (Gross Domestic Product) has influenced the growth of the unemployment rate, including the rate among youth. In 2017-2018 the GDP growth rate was about 2.5%, so we can talk about entering into a business cycle revival, and we shall wait for a gradual decrease in unemployment. Third, there are significant imbalances in the socio-economic development between the regions of Ukraine, the result of which are

8 L.A. Korotkina, R.V. Korobs'ky', *Ekonomichny'j mexanizm reguluvannya ry'nku praci molody'x specialistiv. Aktual'ni problemy' ekonomichnogo i social'nogo rozvytku regionu: Zbirny'k materialiv regional'noyi naukovo-praktychnoyi konferenciyi*, Krasnoarmijs'k: KII DonNTU, 2010, pp. 27-30.

9 L.V. Lebedeva, A.S. My'trofanova, *Problemy' komercializaciyi sy'stemy' vy'sbhoyi osvity' v Ukraini za umov formuvannya postindustrial'nogo ladu*, "Biznes Inform" 2017, No. 1, pp. 105-112.

10 E.M. Libanova, O.I. Cymbal *et al.*, *op. cit.*

11 *Ibid.*

12 Derzhavna sluzhba zaynyatosti, *op. cit.*

different level in the rates of regional youth unemployment – from about 6% in Kharkiv and Kyiv oblasts to 14-16% in the regions of Lugansk and Donetsk (for the first half of 2017). Fourth, the increasing of the retirement age also complicates the process in generating of specialists.

After graduating from an educational institute, young people go through several stages in the process of searching for a job: going out onto the labor market, getting acquaintance with work place offers, determining their own opportunities, needs and desires, the initial place of the employment search, gaining the first work experience and relevant skills, the development and formation of a personality suited to employment.¹³ While progressing through these stages, young people encounter many problems. Therefore, among the most pressing problems of the youth labor market in Ukraine can be distinguished, for example, long periods of actual unemployment which have significant negative consequences for the economy and society as a whole. Of course, the unemployed have lower incomes, so they spend money only on the bare essentials. Business development is oppressed and the country's economic growth slows. Those who have a job are afraid of losing it at any time and want to save up for any periods of austerity. Not so direct, but no less important, are the consequences of crime, divorce, social orphanage, suicide, as well as a decline of public confidence and even political crises and social disturbances.¹⁴

Young people with problems in employment

Within the framework of the EXCEPT project at the conference “People at the First Place” and at the panel discussion “Youth in the spotlight: the influence of labor market insecurity on young people's further life.” In 2016¹⁵ 40 personal interviews with young people on difficulties in work were carried out. The results of the research also show the negative influence of labor market instability on youth health. Material uncertainty encourages young people to work in difficult working conditions, which negatively affects their physical health (fatigue, trauma, exacerbation of chronic diseases). In addition, a lack of work, uncertainty as to employment (informal, part-time or seasonal employment), a lack of material security, “falsification” in positions that require low skills, all create psychological conditions for alcohol abuse. After all, poverty, which is also connected with unemployment, creates barriers to health improvement, even for those who are not addicted to bad habits. Unemployment, uncertainty in the labor market, uncertainty over the future and low wages also cause child birth delays for

¹³ E.M. Libanova, O.I. Cymbal *et al.*, *op. cit.*

¹⁴ L.A. Korotkina, R.V. Korobs'kyj, *op. cit.*

¹⁵ O. Nikolayeva, G. Kvitna *et al.*, *Ry'nok v Ukraini. Bezrobittya sered molodi: dribny'ci abo vy'roky'?*, project EXCEPT, 13 June 2017, <https://voxukraine.org/uk/bezrobittya-sered-molodi-dribnitsya-chi-virok/> (online access: 2.4.2020).

some young families. Young people are more likely to blame the state, the economy and other people for their own problems with their search for work. They have high levels of frustration and self-belief. Many of them do not know what they want to do and where to work, and those who know do not have the courage, determination and strength to take the first step toward their goal.

EXCEPT¹⁶ is an international research project which is organized within the framework of the program Horizon 2020 (the largest European Union program for financing science and innovations with a total budget of around 80 billion euro, estimated for 2014-2020). The Consortium of the Project consists of 9 countries: Estonia, Bulgaria, Greece, Germany, Italy, Poland, Sweden, the United Kingdom and Ukraine. The main aim of the project is to devise practical recommendations on inclusive and effective youth employment policies within the EU and Ukraine. Youth surveys are conducted; on the basis of the data obtained, three main aspects of unemployment as well as the causes of its appearance, its duration and consequences have been studied. The main aim of the project is to understand the consequences of unemployment. The causes of youth unemployment and the methods by which they manage to find their place in the labor market are not studied. The fact of upcoming unemployment is studied as well as how it affects the lives of young people, and what political decisions or measures can soften this impact. Factors that worsen this effect are also identified with the aim to rectify any negative impact derived from state activity. Data on European labor markets and the risks of social exclusion among young people are also examined. Investigated is not only quantitative data, with there also being an opportunity for young people to express their own views on real-life problems they have encountered while unemployed.

The main task of the research is to work out new strategies for overcoming youth insecurity in the labor market and its consequences. Studied is the link resulting from unemployment and visible at the personal level to three aspects of life: health and well-being (the level of life satisfaction), autonomy (housing, psychological, economic) and the socio-economic aspect in the future and the risk of being trapped in poverty for the duration. When young people become unemployed, it worsens their chances of obtaining decent financial support when retired.

Analyzing the above mentioned studies, we see that unemployment has negative consequences in the short and long term, and this phenomenon must be actively combated at the highest level, to develop government programs to overcome unemployment.

Therefore, this problem needs special attention from the authorities responsible for formulating and implementing youth policy, including employment policy. An effective state employment policy is one of the important strategies for overcoming the negative consequences of youth unemployment in Ukraine. Unfortunately, at present this is still not being sufficiently actively, effectively and productively pursued.

¹⁶ *Ibid.*

The results of the research were presented and discussed by the EXCEPT project team at higher education establishments in Mykolaiv, Cherkas and Kyiv. Students during the discussion indicated that they wanted from the state:

- the providing of consultations and psychological support, including the spreading of “success stories”;
- modernization of state employment centers;
- providing additional information on vacancies (for example, unification of the local employment center databases with the universal Ukrainian database on vacancies);
- increasing of financial and legal skills;
- widening of probationary period possibilities and combining education and work (namely, flexible training schedules).

In the course of the survey, the interviewed youth completed questionnaires, proposed ways to optimize the work of employment centers, in particular through cooperation with private enterprises, but equally with state-owned enterprises, and to create a youth employment system for a definite period following graduation for work experience to be gained.

Comments from enthusiastic young people, who responded openly to the interviews conducted by EXCEPT project team members, were noted, written up and reported to those authorities which can directly take decisions to change the situation for the better. It is important to understand what is happening in real life when these region selection surveys are conducted. When an official is sitting in his comfortable office, he has no idea how young people are feeling in Cherkasy, Mykolaiv, Kharkiv or even in Kiev.

However, it should be noted that the result largely depends on the personal efforts of the person themselves. For besides state policy, personal initiative and environmental support is an important factor in overcoming the negative consequences of uncertainty and indetermination on the youth labor market. Among the instruments for the overcoming of unemployment and its consequences, young people name mobility, enterprise initiative, volunteering, personal development, as well as emphasizing the importance of not despairing and seeking support, especially from their friends and family: that people strive to obtain an education to ensure independence in choice and to support their personal goal.

The transition from education to work is an important step in the formation of personality. Unemployment among the young during this period is not a trifle, for it has long-term effects on health and well-being, it can leave deep scars for the whole of their life. Support for unemployed youth from the side of their family, the community and the state is important to prevent the frustration and misuse of young people's potential in a difficult situation.¹⁷

¹⁷ C. Athanasiades, L. Figgou *et al.*, *Report on the impact of the institutional setting and policies on the well-being and health of youth in insecure labour market positions in EU-28 and Ukraine*, WP No. 7, Tallinn 2016, <http://www.exceptproject.eu/working-papers/> (online access: 2.4.2020). O. Nikolayeva, A. Kvit *et al.*, *One in five young people in Ukraine does not have a permanent job: what are the consequences of unemployment at a young age*, 19 June 2017, <https://dzerkalo.media/news/kojna-pyata-moloda-lyudina-v-ukraini-ne-mae-postiynoi-roboti-yaki-naslidki-bezrobittya-u-molodomu-vits> (online access: 2.4.2020).

Today, we can distinguish the following main problems related to youth employment:

- lack of state guarantees for providing young professionals with work;
- lack of provisions for concluding written employment contracts with a minor;
- not taking into account the migration trends of young professionals;
- insufficient state assistance with “youth work centers” creation and providing them with resources to function productively.

The main normative-legal acts regulating youth employment in Ukraine remain the Law of Ukraine: On the Promotion of Social and Youth Development in Ukraine¹⁸ according to which the state guarantees young people who have the opportunity to work on equal terms with other citizens, the right to a job, as well as Section XIII of the Labor Law Code.¹⁹

In the aforementioned acts, in particular, the salaries of young people, their registration, medical examinations, *etc.* draw attention. According to Art. 7 of the mentioned Law, the state promotes the creation of youth employment centers, as well as youth public organizations for youth employment, implementation of vocational training programs for young people and improving their professional qualification. Unfortunately, Ukrainian legislation still fails to provide an effective mechanism to draw young people into work. This reduces the level of social protection for young people, leads to an underutilization of the labor force and creative potential. Also an important role is played by the low level of information available for school-age children, students of Higher Educational Establishments and graduates on matters of the state and the dynamics of the labor market; while the requirement for a specific specialty becomes one of the factors for unemployment among youth. Generally, even with access to the media and the Internet, young people cannot find information on where and how to find free legal support to resolve legal issues with their employer. In Kharkov, for example, at the Yaroslav Mudryi National Law University there is a Center for Free Legal Aid, but only specialists know about it. Well, if a young person finds this address they will indeed be helped, but in most cases, the person does not know their rights, and they do not have enough strength for this far from easy battle.

There are many shortcomings in our country, but there are also positive aspects. Apparently, those who do find employment in companies, closely observe the labor market, keep their “nose to the wind” and are very interested in what prospects could materialize in their future life.

There are examples of companies in Ukraine that can serve as an example for others. They are still insufficient in number, but they do exist, for example, a joint venture between Ukraine and France, L'Oréal, the telephone companies Vodafone Ukraine, Kyiwnstar, 1+1 Media, Procter & Gamble. After a successful paid internship, you can obtain a paid position here. And make a career for yourself, even in another country.²⁰

18 Zakon Ukrainy, Pro spry'yannya social'nomu rozvy'tku ta rozvy'tku molodi, 1993, No. 16, 1774-VIII, p. 167, edited 1.1.2017, <http://zakon.rada.gov.ua/laws/show/2998-12> (online access: 2.4.2020).

19 Kodeks zakoniv pro pracyu Ukrainy, Zatverdzhuietsia Zakonom No. 322-VIII vid 10.12.71 VVR, 1971, dodatok do numer 50, ul. 375, <http://zakon.rada.gov.ua/laws/show/322-08> (online access: 25.3.2020).

20 E. Marunich, *5 stazhuvan' u krashhy'x kompaniyakh*, “Cosmopolitan” 25 December 2017, <https://www.cosmo.com.ua/5-stazhirovok-v-top-kompaniyah/> (online access: 2.4.2020).

Violation of Labor Law

Such violations include employers' candidate requirements which constitute discrimination. In the edition "Social'ny'j Rux"²¹ given are examples by Vitaly Dudin of court cases involving various Ukrainian enterprises, where employees have been discriminated against on the part of their employer, and this has really been the case. These are also plaintiffs with disabilities, who, instead of having the workplace adapted to the needs of a disabled person, were simply dismissed by their employer on the basis of a nonconformity to health standards connected with the work performed (Part 2 of Article 40 of the Labor Code); there are also cases of a

free vacancy, but for unknown reasons the plaintiff was informed adversely with an unjustified advantage being given to another person;

on the other hand, nepotism is also a problem (that is, the hiring a relative); as well as the transference of employees without their consent to a contract form of employment, instead of a regular employment contract on a permanent basis; this is also a need for documents hitherto not provided for by the current legislation²² (Article 25 of the Labor Code of Ukraine). Some managers wish to obtain information about a previous job position that is not provided for by the current legislation, and which constitutes discrimination. Restrictions may be related to the candidate's age, gender or appearance. According to Article 2-1 of the Labor Code²³ any discrimination at work is prohibited, especially the violation of the principle of equal rights and opportunities, the direct or indirect limitation of the rights of workers, in particular: on the basis of race, color, political, religious and other beliefs, gender, gender identity, sexual orientation, ethnicity, social and foreign background, age, health status, disability or suspicions of the presence of HIV/AIDS and property status, professional or other community organizations, participation in strikes, having a family, family responsibilities, place of residence, membership of trade unions or other public associations.

The big problem of the country today is the establishment of labor relations without official registration. This mainly concerns young people without professional practice.

University graduates and those who have completed their education at vocational-technical colleges find it difficult to find work because of a lack of experience. Unfortunately, only a small number of employers agree to hire such an employee. In this situation, any job is desirable, even if it is not related to one's specialization or personal preferences. Young people go to work in cafes, restaurants, retail, construction, that is, they are guided by any possible employment not requiring high qualification. The consequence of this phenomenon is that during the first three to five years they often change jobs. This is

21 V. Dudin, *14 sprav pro dy'skry'minaciyu. Krashly'cy'taty*, "Social'ny'j Rux" 24 May 2017, <http://rev.org.ua/discrimination-cases/> (online access: 25.3.2020).

22 Kodeks zakoniv pro pracyu Ukrainy, Zatverdzhuietsia Zakonom No 322-VIII vid 10.12.71 VVR, 1971, dodatok do numer 50, ul. 375 (online access: 25.3.2020).

23 *Ibid.*

connected, as a rule, with finding a suitable career path or the inappropriate conditions in force at their actual place of work.

Even if the employer hires a young person, he or she may be offered a probationary period without formal registration. In addition, he may be offered a salary that is much lower than that of other employees (obviously, this is a so-called “envelope” salary – any actual payment of which depends solely on the conscience of the employer themselves), or simply does not offer any remuneration whatsoever. Such behavior is illegal, as any work undertaken during a probationary period entails the concluding of an employment contract and insurance of the person employed. From the moment work is started, the employee receives all necessary rights, including the right to full remuneration (Article 26 of the Labor Code of Ukraine).²⁴ A significant difference in this issue is that an employee may be dismissed as a person who has not successfully passed the probationary period, although this does not justify termination of the length of service or remuneration for that period.

The next violation concerns the length of the probationary period. The Labor Code of Ukraine (Article 27) states that the probationary period should not exceed three months or, in some cases, six months (on the basis of an agreement with the relevant primary trade union body), unless otherwise provided by Ukrainian legislation. The length of the probationary period for an unskilled employee may not exceed one month.²⁵

Internship or probation term – what is the difference?

In most cases, according to information provided by young people applying for a job, employers offer an internship. One of the most controversial issues is the difference between the probationary term of employment and an internship itself. The internship takes place prior to the conclusion of the employment contract, whereas the probationary period is during work. According to the law, it can be offered only to those who pretend to a certain position and who require practical experience, the consolidating of theoretical knowledge into practical skills. But some employers offer internship to employees of every category, regardless of their education, professional experience, and for any length of time. A young person who is admitted to work has to remember that an internship or period of training can take place on a paid or unpaid basis and can be paid by the employer-company and by the employee. Practice shows that internships are usually free of charge.

Employers explain this by the fact that they teach a future employee, take up the time of their most qualified people and, as a result, incur losses. In addition, the probationary

²⁴ *Ibid.*

²⁵ *Ibid.*

period, as a rule, terminates with a failure to conclude an employment contract and the simple hiring of another intern.

Working without a formal contract is a gross violation of current labor law. A young person who agrees to work in such conditions is in a very disadvantageous situation.

The consequences of such consent are:

- the employee is deprived of a guaranteed wage (including the amount of the employee's remuneration or wages, co-payment, social package);
- the worker cannot avail himself of state guarantees in accordance with the current normative acts, such as: state aid for families with children, social assistance for low-income families, subsidies;
- these periods are not added to any calculations for future pensions;
- contributions to social security funds are not made, which impedes the social protection of workers.

These people lose the right to paid periods of leave, a remuneration that takes into account the level of minimum and safe working conditions.

Locally, as well as nationally, the negative effects of agreements incompatible with the Labor Code are felt. Informally concluded employment or illegal jobs constitute:

- underpaid local taxes, loss of funds that can be used for social needs of people, the insufficient implementation of socio-economic development programs in regions and cities;
- instability and danger of the citizens' future (lack of adequate pensions, other social benefits);
- lack of supplementation to social insurance funds, which leads to excessive burden on the state budget.

Young people who work illegally, without a formal employment contract, usually justify their choice by a necessity to help parents, pay for tuition, housing and other reasons. However, the wages they receive do not meet the set standards, they are much lower than those actually offered during interviews or stated in advertisements; the amounts are unstable and depend on sales made or products manufactured.

The average wage in Ukraine (quite low or minimal) is incapable of providing an adequate standard of living and also does not create a sense of security for the individual.

In the search for decent work, young people often change their place of residence, employers and remain dependent on parental assistance, have no permanent housing, while plans for the future are short-term because of the abovementioned circumstances.

According to the poll Ukrainian Youth – 2017 – 74.1% of young people want to leave their city and Ukraine. The most popular destination for emigration among Ukrainian young people is the European Union (45.6%), other countries attract 21.7% of respondents, and 6.8% want to go to the Commonwealth of Independent States. One in five young people (21.7%) would like to leave Ukraine. The main reason for the emigration

of young Ukrainians is to improve their financial position (54.1%), which is a consequence of the difficult economic situation in the country. Other reasons include the lack of employment opportunities in the country, failure to comply with the principles of democracy and law in Ukraine. There are also individuals who simply want to test their skills and knowledge abroad.

Conclusion

Developed countries' experience shows that overcoming informal employment is only possible in the case when employers and employees are interested in the implementation of employment in accordance with current legislation. Economic space unification has become the stimulus for the formation of the integrated employment policy among states which are part of the EU.²⁶ In 1997, at the EU Summit in Luxembourg, the idea of a European Employment Strategy was put forward, aiming at: providing full employment; improving productivity and quality of work; promoting unity and solidarity.²⁷ In spring 2010, approved was the EU Strategy of economic growth and employment, namely, Europe 2020, among the objectives of which, in particular, were increasing the level of employment in the EU population aged 20-64 to 75%.²⁸ This is possible by setting preferences in the sphere of tax and social benefits, safety standards, economic infrastructure development, business promotion, implementation of business stimulation and support programs, or the establishment of stable regulator acts in the social and labor spheres. The state should support those employers who are interested in the implementation of European standards of quality and social protection at their enterprises (striving to enter into international markets). Besides, it is important to create a specialist unit in the State Labor Inspection system, which would promote the elimination of such phenomena as illegal employment or corruption.

The state has almost completely removed from itself the burden of youth employment. This is a large-scale problem, because the state must first of all take care of young people and their employment and, instead, we have a situation of "leakage," a "brain drain" from the country that can be traced in leading branches of industry, and which finds talented young people ending up in the more developed countries of Europe, Asia and America.

In concluding the material examined, the surveys of youth and analysis of the current situation in Ukraine, we think that this problem should be considered strategically, but

26 M. Torzhevs'kyj, *Detinizaciya zajnyatosti naseleennyja v Ukraini, dy'sertaciya na zdobuttya naukovogo stupenja kandydata ekonomichnyx nauk*, Specialnist 08.00.07, "Demografiya, ekonomika praci, social'na ekonomika i polityka" 2017.

27 European Commission, *Joint employment report 2006/2007. Employment in Europe 2007*, http://www.pakte.at/attach/JointEmploymentReport_2006-2007.pdf (online access: 2.4.2020).

28 European Commission, *Europe 2020: A strategy for smart sustainable and inclusive growth*, 2010, <https://www.eea.europa.eu/policy-documents/com-2010-2020-europe-2020> (online access: 2.4.2020).

for this to happen it is necessary to start with concrete steps and, first of all, activate factors that will contribute to the development of youth skills in the implementation of their plans, as well as the main activities necessary to reduce unemployment among youth:

- to create youth labor exchange;
- to include internships in students' educational programs;
- to study job search technologies, the ability to write resumes and make presentations;
- to spread materials connected with employment;
- to implement courses on the technology of job searches and educational lectures on establishing one's own business within programs taught at educational institutions;
- to coordinate international activity on exchange by students activities such as internships and volunteer programs.

Thus, one may summarize the material as follows: under the current conditions in Ukraine, a very small percentage of companies are interested in high-quality staff, there is no single direction for the development and training of university graduates in the area of market relations. Issues related labor market development forecasts, and, therefore, the definition of future priority specialties, remain unresolved. The system of training young specialists in higher education institutions, taking into account the requirements of the modern market, rather than the usual rules under the old scheme, requires changes. Five-year plans do not work in a market environment. The Ministry of Youth and Sport states it is necessary to implement a well-considered employment policy in Ukraine. The creation of an effective employment system for young professionals will give the possibility to provide training for the skilled workers of the future who will build the industry of the country in accordance with the principles of innovation, transparency and their own further development. Concerning specific actions, in our opinion, the current normative-legal base should be adapted to the provisions of the Basic Law of Ukraine and leading global social practices, as well as providing high quality and transparent state supervision of the employment mechanism of young people and university graduates in Ukraine.

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Implementation of the Polish-Ukrainian Agreement on Social Security by the Social Insurance Institution. The experience of the first years of applying this regulation

Conclusion and implementation of the Agreement

On 1 January 2014, the Agreement on Social Security between the Republic of Poland and Ukraine, signed on 18 May 2012,¹ and the Administrative Arrangement on the application of this Agreement entered into force.² Their entry into force was preceded by a negotiation process. Representatives of the Social Insurance Institution took part in the negotiations as experts of the governmental team led by the Ministry of Family, Labour and Social Policy (former Ministry of Labour and Social Policy).

Negotiations of the Agreement and of the Administrative Arrangement took place first in Warsaw (8-11 December 2009), and subsequently in Kiev (13-16 July 2010).

The procedures for the implementation of the agreements and the liaison forms used in contacts between the Polish social security administration (*i.e.*, Social Insurance Institution [Zakład Ubezpieczeń Społecznych, ZUS] and the Agricultural Social Insurance Fund [Kasa Rolniczego Ubezpieczenia Społecznego, KRUS]) and the Pension Fund of Ukraine were agreed upon during the implementation meetings held in Warsaw (17-20 June 2013) and in Lviv (4-5 February 2014). During the meetings agreement was reached on the following matters:

- organisation of the implementation of the Agreement – the designation of competent institutions, *i.e.*, institutions to be responsible for the implementation of the Agreement, including for awarding of pension benefits under the Agreement;
- case handling processes under the Agreement between the two countries;
- model forms for customers and the liaison forms to be used between institutions under the Agreement;
- the scope of data mutually certified by the institutions on liaison forms,
- the rules and scope of compiling applications and documents for the partner country based on the Agreement.

The substantive implementation of the Agreement in ZUS involved a wide range of activities:

- elaboration of changes in procedures and the processes followed in the area of insurance and benefits, mainly pension benefits;
- development and introduction of model forms to be used between the insurance institutions;
- introduction of model forms to be used by customers when applying for pension benefits and in the realm of applicable legislation;
- development of legal and procedural instructions concerning the performance of the Agreement and model forms and their forwarding to local ZUS units to be applied;

1 Agreement on Social Security between the Republic of Poland and Ukraine, signed on 18 May 2012 (Journal of Laws of 2013, item 1373).

2 Administrative Arrangement on the application of the Agreement on Social Security between the Republic of Poland and Ukraine, signed in Kiev on 18 May 2012 (Journal of Laws of 2013, item 1375).

- development of information materials for the website and brochures;
- modification of ZUS IT systems;
- entrusting local ZUS units with the implementation of the Agreement;
- initiating the transfer of pensions from ZUS to the bank accounts of beneficiaries residing in Ukraine;
- delivering substantive training sessions for the employees of ZUS branches.

The main role in these activities was played by the relevant departments of ZUS Headquarters, *i.e.*, the Foreign Pensions Department, Insurance and Contributions Department, Medical Certification Department and Allowances Department.

Polish liaison bodies and competent institutions in the field of general social insurance

The Polish-Ukrainian Agreement provides for the functioning of liaison bodies and competent institutions. The task of the liaison bodies is to provide for arrangements related to the implementation of the Agreement, including specification of the procedures and model forms to be used for its implementation, as well as supervision over its subsequent implementation by local units.

The function of a liaison body in Poland in the field of general social insurance is performed by ZUS Headquarters, and the following units are involved:

- Foreign Pensions Department – for pensions, long-term benefits in respect of accidents at work, occupational diseases and funeral grants, also acting as the coordinator of the implementation of the Agreement,
- Insurance and Contributions Department – for insurance and contributions,
- Allowances Department – for short-term benefits,
- Medical Certification Department – for certifying incapacity for work.

The so-called competent institutions have a responsibility to implement the Agreement by handling individual customer cases within the scope of the applicable legislation, including the certification of employees' postings to the partner country, and within the scope of the determination of benefits for persons who have been working in Poland and in Ukraine.

In ZUS, the function of the Polish competent institution under the Polish-Ukrainian Agreement is performed by:

- Insurance and Contributions Divisions in ZUS branches, as regards the tasks related to the determination and certification of the applicable legislation;
- Allowances Divisions in ZUS branches – within the framework of activities related to granting cash benefits in respect of sickness and maternity from sickness insurance and benefits in respect of sickness from accident insurance, as well as funeral grants (excluding benefits handled by Divisions for the Implementation of International Agreements);

- The ZUS Branch in Rzeszów, the Division for the Implementation of International Agreements. This branch has been designated as the competent institution for the determining of pensions based on the Polish insurance periods for persons residing in Ukraine and persons who are able to prove a period of insurance in Ukraine during the course of their employment abroad (irrespective of their place of residence). This branch also issues decisions on the transfer of Polish pensions to persons residing in Ukraine and on the determining of initial capital; it also cooperates in the granting of Ukrainian pensions by the Pension Fund of Ukraine.

On the Ukrainian side, the liaison body and the competent institution responsible for the implementation of the Agreement is the Pension Fund of Ukraine, the Department of International Cooperation with its headquarters in Kiev. The function of the Ukrainian institution competent for the determining of pension benefits administered by the Pension Fund of Ukraine is performed by the Main Board of the Pension Fund of Ukraine in the Lviv Region – The Foreign Pensions Department based in Lviv.

The objective of the Agreement on Social Security

The objective of the social security agreements concluded by Poland is to protect people migrating for employment between countries and their family members.

The following are the specific objectives of concluding such agreements:

- to prevent double payment of social insurance contributions (in both countries simultaneously) and to avoid a lack of insurance coverage, *i.e.*, a situation in which contributions are not paid for a migrant worker in any country and he/she is not covered by the social insurance system;
- to establish legal rules for determining in which country social insurance contributions should be paid;
- to guarantee equal treatment in social insurance for persons covered by the Agreement;
- to facilitate the acquisition of the right to benefits under the Agreement, mainly to old-age and disability pensions, through mechanisms for insurance periods aggregation, equal treatment of events and circumstances;
- to introduce the transfer (export) of benefits – benefits payment from one country to the bank accounts of eligible pensioners residing in another country;
- to recognise a pension claim submitted to the insurance institution of one state as being submitted to the institution of the other state (and to recognise the date of the claim submission);
- to maintain the cooperation between insurance institutions of both countries and facilitate procedures for benefits determination.

The material and personal scope of the Polish-Ukrainian Agreement

The material scope of the Polish-Ukrainian Agreement defines the social security branches covered by the Agreement.

On the Polish side, the Agreement applies to legislation governing compulsory insurance, unemployment benefits as well as benefits from social insurance and farmers' social insurance: sickness and maternity benefits, old-age, disability and survivors' pensions, benefits in respect of accidents at work and occupational diseases, funeral grants.

On the Ukrainian side, the Agreement applies to the legislation governing general state social insurance, which covers:

- sickness (temporary incapacity for work), pregnancy and childbirth (maternity);
- accidents at work, occupational diseases and/or death due to these causes;
- unemployment;
- old-age pensions and pensions in respect of: disability, the loss of the breadwinner, seniority, in accordance with the legislation on the general state pension insurance;
- funeral grants.

As regards the personal scope of the Polish-Ukrainian Agreement, it covers persons who were or are subject to the legislation of one of the parties or both parties to the Agreement, and other persons (*e.g.*, family members) if they derive their rights from the above mentioned persons. It should be emphasised that the Polish-Ukrainian Agreement does not apply only to Polish and Ukrainian nationals: it applies to "persons" irrespective of their nationality (including third-country nationals and stateless persons). Thus, the Agreement has a wide personal scope.

In addition, the Agreement covers persons irrespective of their place of residence. Therefore, it does not apply only to persons residing in Poland or in Ukraine, but also to third-country residents. Of course, certain provisions of the Agreement, such as the principle of benefits export, are associated only with the territories of the states that are parties thereto.

The principles of social security systems coordination resulting from the Agreement with Ukraine

The Agreement implements the basic principles of social security systems coordination. They include:

- The principle of single legislation (*lex loci laboris* and exceptions, including posting to the other country), whereby a person coming from one country and working in

the other country is subject to social insurance only in the country of employment. This principle is restricted by the rule of the so-called temporary posting of workers to work in the other state, with the contributions still being paid in the posting state.

- The principle of equal treatment of persons covered by the Agreement, whereby insurance institutions must deal with persons covered by the Agreement in the same way in terms of rights and obligations under the social insurance system (more broadly – within the social security branches covered by the Agreement).
- Rules for determining the eligibility for and amount of benefits for persons who have been working in both states – parties to the Agreement. The following may be mentioned:
 - The principle of granting pensions by each of the states, in which the person concerned was subject to insurance – whereby the right to pensions is established separately by the social insurance institutions of both parties to the Agreement, *i.e.*, ZUS (or KRUS) and the Pension Fund of Ukraine.
 - The technique of aggregating insurance periods and determining pensions *pro rata temporis* for aggregated periods – for the award of pension rights, account is taken, where necessary, of insurance periods completed in the other country, and the benefit thus determined is calculated in proportion to the share of the own insurance periods in total insurance periods completed in both countries (Poland and Ukraine).
 - The technique of the equal treatment of events and circumstances, according to which insurance episodes and circumstances as well as benefits from one state are taken into account in the other state in appropriate situations, where they are of legal significance, *e.g.*, in order to have the Polish old-age pension paid, it is also necessary to terminate the employment relationship with the Ukrainian employer.
 - Special rules for the protection of acquired rights for repatriates – according to which, if after entry into force of the Polish-Ukrainian Agreement, the benefit granted before its entry into force is converted, the person concerned is entitled to a supplement from the Polish system to the amount of the earlier benefit. In practice, this regulation applies to repatriates, whose benefit granted before the entry into force of the Agreement on the basis of Polish and Ukrainian employment periods of repatriates, may be converted by excluding the Ukrainian periods from the benefit and determining two separate benefits: from Poland and from Ukraine. If, after such a conversion, the total amount of these benefits is lower than the earlier amount of the Polish pension, the person concerned is entitled to a supplement paid by ZUS.
 - The principle of transferring pensions acquired in one country to the pensioner's bank account in another country. According to this principle, upon the request of the pensioner residing in one country, the benefit from the other country is payable at the place of residence of the beneficiary. In such cases, benefits' transfer is made by ZUS in the form of transfers to beneficiaries' bank accounts in Ukraine.

Application of the Polish-Ukrainian Agreement on the example of the disability pension determination by ZUS

It is worth looking at how the Polish-Ukrainian Agreement works in practice when ZUS determines the disability pension. The Agreement generates a number of advantages by facilitating people migrating between countries to obtain benefits. Particularly important are the mechanisms for the recognition of periods, which facilitate the acquisition of the right to benefits dependent on the eligibility period.

A good example to discuss the manner of applying the Agreement could be the case of a person claiming a benefit. A man born in 1973 claims a disability pension, and may prove the periods completed, before the occurrence of the incapacity for work, in Poland (including a 3-year contributory period and a 1-year non-contributory period) and in Ukraine (including a 1-year insurance period and a 4-year equivalent non-contributory period).

The person concerned may prove a total of four years of Polish periods, which is insufficient to meet the condition of completing the eligibility periods in accordance with Polish law. It is therefore necessary to take into account the Ukrainian periods, *i.e.*, five years (a 1-year insurance period and a 4-year equivalent period). For the purposes of assessing the right to a Polish pension, the man shows the required contributory and non-contributory period of nine years (four years in Poland and five years in Ukraine). Thus, after applying the Agreement, the insured person meets the required condition to be granted the Polish pension, *i.e.*, at least 5-year eligibility period completed during the last decade. Thanks to the application of the Agreement, the person concerned will receive a pension from ZUS which he would not have obtained in the absence of such a legal act.

The amount of the pension in respect of aggregated insurance periods is determined in two stages. The first step is to calculate the theoretical amount of the benefit after aggregating the insurance periods completed in Poland and in Ukraine. In this example, the theoretical amount of the pension was calculated for nine years of contributory and non-contributory periods completed in both countries (with also so-called hypothetical periods). The actual pension amount is then calculated based on the share of the insurance period completed in Poland in the total Polish and Ukrainian insurance period (proportional pension).

In this example, the actual amount of the benefit due to the person concerned will be calculated according to the formula:

$$\text{Proportional (actual) pension} = \text{Theoretical pension} \times \frac{\text{duration of Polish insurance periods}}{\text{total Polish and Ukrainian periods}}$$

The proportional (*pro rata*) benefit thus obtained is the pension due (gross amount).

Parallel application by ZUS of EU regulations on coordination and the Agreement with Ukraine

With regard to persons who can prove the insurance periods in Poland and abroad, both in EU Member States and in Ukraine, the right to benefits is determined in two ways, or in two variants. On the one hand, the pension rights of such a person are determined, in accordance with EU regulations on the coordination of social security systems (Regulation [EC] No. 883/2004), on the basis of insurance in Poland and in other EU/EFTA Member States, on the other hand, these rights are determined in accordance with the Polish-Ukrainian Agreement, taking into account Polish and Ukrainian insurance periods.

It is worth analysing this situation on the next example. In the case if a person claiming an old-age pension who has completed the eligibility periods in Poland (EU), Austria (EU) and Ukraine (bilateral agreement with Poland), pension rights will be considered by ZUS in parallel:

- under EU Regulations (aggregation of the Polish and Austrian periods), as well as
- based on the Agreement with Ukraine (aggregation of the Polish and Ukrainian periods). A very important issue should be raised here. Namely, if the Polish and Ukrainian periods are insufficient to be granted the right to benefit under the Agreement, the Polish-Ukrainian Agreement also provides for taking into account the insurance periods completed in third countries with which Poland and Ukraine have concluded social security agreements.

Then the more favourable option for the person concerned is selected, *i.e.*, the one in which the right to the benefit is acquired (based on EU Regulations or the Agreement with Ukraine), and if in both variants the benefit is acquired – the one in which the amount of the calculated benefit is more favourable (based on EU Regulations or the Agreement with Ukraine).

Status of Ukrainian nationals under Regulation No. 883/2004 and in accordance with the Polish-Ukrainian Agreement on social security

EU Regulation No. 883/2004 applies to third-country nationals (non-EU/EFTA), including Ukrainian nationals, provided that they reside legally in a European Union Member State and are in a situation that involves at least two Member States.

There are exceptions to these provisions. The United Kingdom applies to third-country nationals Regulation (EC) No. 859/2003, which extends the application of the Regulation (EC) No. 1408/71 to them. However, Denmark does not apply EU regulations in

this respect to third-country nationals – those from outside the EU (including Ukraine) – similarly as EFTA (European Free Trade Association) Member States (Norway, Iceland, Liechtenstein, Switzerland).

To summarise the status of Ukrainian nationals under EU law and under the bilateral agreement, it should be noted that EU Regulation No. 883/2004 provides for the aggregation of insurance and residence periods completed in EU Member States, but does not provide for the aggregation of insurance periods from third countries (*e.g.*, from Ukraine). Ukrainian nationals are not covered by regulations on coordination in relations with Denmark, Norway, Iceland, Switzerland and Liechtenstein (the United Kingdom applies Regulation No. 1408/71).

Furthermore, in accordance with EU regulations, benefits are not exported outside the EU.

On the other hand, the Agreement with Ukraine provides for taking into account Polish and Ukrainian insurance periods, as well as periods completed in third countries (other than Poland and Ukraine), with which both Poland and Ukraine have agreements on the aggregation of these periods. This currently applies to: Bulgaria, the Czech Republic, Estonia, Lithuania, Latvia, Spain, Portugal and Slovakia. The Agreement covers persons irrespective of their nationality and provides for the export of benefits from Poland to Ukraine (*i.e.*, transfers of pensions to bank accounts in Ukraine).

Therefore, it can be assumed that the Agreement is quite advantageous for those Ukrainian nationals who have migrated not only to Poland, but also to other EU Member States (with the above mentioned exceptions).

Cooperation between the Social Insurance Institution and the Pension Fund of Ukraine

Since the coming into force of the Polish-Ukrainian Social Security Agreement, there have been temporary problems with the implementation of the Agreement by ZUS. These resulted from the armed conflict in a part of the territory of Ukraine (in Donbass and Crimea). These problems related to contact with customers when considering the pension claims of persons residing in Crimea, the prolonged time of obtaining pension documentation that was kept in the Pension Fund unit in Crimea, as well as handling the applications of persons who had the established entitlement to Ukrainian benefits in the Donetsk and Lugansk region. These problems have been resolved and at present the Foreign Pensions Department of ZUS does not have any other problems related to the implementation of the Agreement in this respect.

Since the beginning of the Polish-Ukrainian Agreement, inter-institutional cooperation under the Agreement has run smoothly.

Implementation of the Agreement by the Ukrainian side (Pension Fund) should be considered as very good. Pension claim forms under the Agreement are correctly completed. The Ukrainian side forwards the documents without delay. Applications sent by

ZUS to Ukraine are also considered on an ongoing basis. The Ukrainian institution tries to comply with all the formalities and procedures agreed upon during the implementation meetings and liaison meetings.

The Division for the Implementation of International Agreements at the ZUS Branch in Rzeszów deals with the granting of pensions in Polish-Ukrainian relations and maintains constant contact with the Ukrainian institution in Lviv, which, if necessary, provides the necessary information immediately.

It is planned to further strengthen the mechanisms of ZUS cooperation with the Ukrainian social administration, including the extension of the scope of services for customers under the Agreement, joint knowledge and competences building in ZUS and in the Ukrainian institution. It is also proposed to exchange experience and good practices, to automate cooperation between the organisations through the introduction of electronic solutions, software, systems or applications, while servicing pension issues, in order to accelerate their handling.

The current scale of the implementation of the Agreement with Ukraine by ZUS

The number of PL/UA 1 certificates concerning the application of Polish legislation which ZUS confirmed for the period from 2014 to the second quarter of 2018, is presented in Table 1.

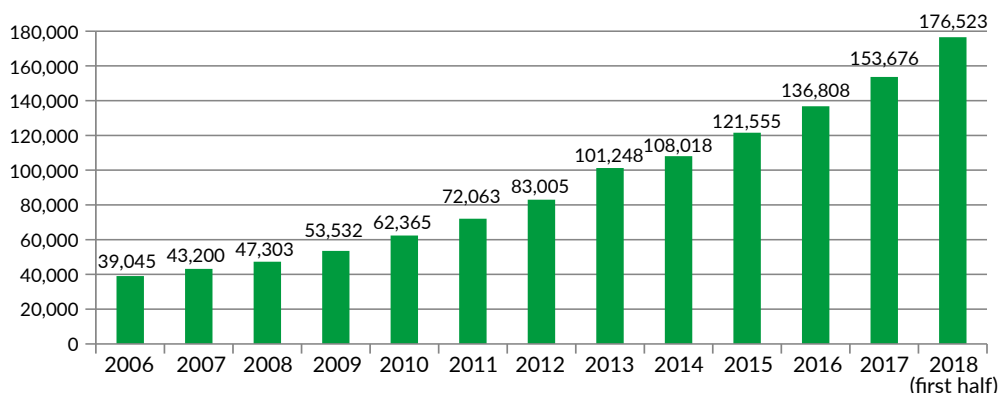
Table 1. Number of certificates concerning the application of Polish legislation PL/UA 1 from 2014 to the second quarter of 2018

Year	Number of PL/UA 1 certificates
2014	114
2015	79
2016	288
2017	236
I-II quarter 2018	124
Total	841

Source: own study based on ZUS data

From 2014 to the second quarter of 2018, ZUS branches, under the Polish-Ukrainian Agreement, have confirmed a total of 841 PL/UA 1 forms, the so-called insurance certificates. 873 persons receive pensions paid by ZUS under the Agreement with Ukraine, of which pensions for 111 persons are transferred by ZUS to their place of residence in Ukraine. These are very low numbers when compared to the total number of pensions that ZUS pays on average monthly under all international agreements and EU law (international pensions) – see Table 2.

Table 2. Average number of benefits paid by ZUS Divisions for the Implementation of International Agreements per month under international regulations from 2006 to the first half of 2018



Source: own study based on ZUS data

The importance of the Agreement in the context of social protection

The Polish-Ukrainian Agreement on social security plays a very important role in the protection of benefits for both Polish employees coming to Ukraine and their family members, as well as Ukrainians and their relatives employed in Poland. Posting is scarcely used, so most of the hundreds of thousands of Ukrainian national working in Poland are covered by the Polish social insurance system in accordance with the basic principle of *lex loci laboris*. As a consequence, employees pay contributions to the Polish Social Insurance Fund and may receive part of the benefits from this fund. Most of these persons also have completed an insurance (employment) period in Ukraine, which means that once they become eligible for pensions, the coordination mechanisms resulting from the Social Security Agreement will be applied (now and in the future). At present, the Polish-Ukrainian Agreement applies only to a limited extent in the area of pension benefits, although the number of pensions granted under the Agreement is constantly growing. Cooperation between the Polish and Ukrainian social security administrations is very good, and contacts are strengthening. Legal mechanisms contained in the Agreement help migrants to receive pension benefits, and thus provide them and their families with social protection in the field of social security.

As of November 2018
Andrzej Szybkie, Ph.D.
 Foreign Pensions Department
 Social Insurance Institution (ZUS) Headquarters

Conference report: “Citizens of Ukraine in the Polish social insurance system. Legal, demographic, economic and social aspects”

Opening of the conference

On 27 November 2018 an academic conference “Citizens of Ukraine in the Polish social insurance system. Legal, demographic, economic and social aspects” was held at the Headquarters of the Polish Social Insurance Institution [Zakład Ubezpieczeń Społecznych, ZUS].

The conference was opened by Prof. Gertruda Uścińska, Ph.D., President of the Polish Social Insurance Institution. She noted that we live in extremely dynamic times, something reflected in the negotiated agreement on the United Kingdom’s withdrawal from the European Union, as well as in other issues related to the free movement of EU citizens and the right to social security for migrants. When discussing the ongoing processes in a broader perspective we should also tackle demographic processes, including those relating to the currently observed ageing population in Europe. Prof. G. Uścińska pointed out the need to focus on cooperation with third countries, as well as on the legal and formal basis for such cooperation. This task is also part of the broadly defined guarantees of security, which should be provided both on the labour market and in the area of social security, having regard to payment of benefits in cash and in kind. Polish-Ukrainian relations should be perceived through taking into account various elements, including the geopolitical, sociological and social. However, the main task should be to map out the various formal and legal regulations in the field of social security. In this context, the key document governing Polish-Ukrainian cooperation is the Social Security Agreement of 2012, which sets out the rules for acquiring the right to benefits, their transfer and the posting of workers. As a member of the European Union, Poland is bound by EU law, to which it must refer. Prof. G. Uścińska also identified, as one of the problems in the current research, the lack of statistics that would take into account the situation of third-country nationals in Poland. In this respect, a centralised system is needed that would collect various statistical data relating both to economic and non-economic issues. According to estimates, 1.8 million Ukrainian citizens currently reside in Poland. 570,000 foreign nationals are registered with ZUS, including 420,000 Ukrainians. Foreigners work in Poland on the basis of an employment contract or mandatory agreement. Not all foreigners working in Poland are registered with ZUS (some of them are, for example, employed under a specific-work contract, which does not entail a contribution payment obligation) and therefore their exact number is not known.

Presentations and discussions

After the official opening of the conference, Dr Marek Benio of the Krakow University of Economics initiated and moderated the first part of presentations.

Dr Beata Samoraj-Charitonow, Deputy Director of the ZUS President’s Cabinet and a representative of the University of Warsaw, discussed the changes in the quality of work

in Poland given the context of the inflow of employees from Ukraine. She pointed out that the multithreaded nature of the issues discussed at the conference requires the co-operation of representatives of a wide range of research fields. ZUS will also make efforts to contribute even more actively to research on migration issues. So why is this subject so important for us? Contemporary Ukraine is a country with a very high dynamics of political events as well as being our eastern neighbour. In addition, Ukrainian citizens are the most numerous group of foreigners working in Poland; we are currently also experiencing the greatest dynamics in their registration with the Polish social insurance system.

With the entry into force of the agreement on social security between Poland and Ukraine on 1 January 2014, a growing number of applications from persons entitled to social insurance was noted. The admission to work of persons from outside the European Union is very limited, and they must first obtain a work permit in Poland. Starting from 2007, there has been the possibility of access to the national labour market in Poland under a simplified procedure – an employer's declaration of intention to entrust work to a foreigner. This formula was designed mainly for the nationals of Eastern countries: Armenia, Belarus, Georgia, Moldova, the Russian Federation and Ukraine. According to research, the declarations are a kind of legal fiction – they had been issued by employers *en masse*, then they were forwarded to Ukraine and on this basis Ukrainians have been given the right to enter Poland and to take up employment here. Practice has also indicated that declarations were very often issued by farmers who owned multi-hectare farms. As it turned out later, the recipients of such declarations were being employed to a large extent in completely different industries than those that appeared in the documents.

Another issue raised in Dr B. Samoraj-Charitonow's paper was the problem of employment legalisation. The Social Insurance Institution actively promotes legal work by participating in an information and education campaign initiated by the National Labour Inspectorate [Państwowa Inspekcja Pracy, PIP]. The most important objectives of the campaign are to promote the choice of legal work, to make people aware of the advantages of such a form of employment, to stigmatise prohibited practices, as well as to inform about opportunities of substantive assistance provided by both PIP and ZUS. Dr B. Samoraj-Charitonow noted that the conference would give rise to many questions and would be a place to discuss the most important problems related to the implementation of the social security agreement and to the impact of Ukrainian migration on the Polish labour market, and more broadly on the Polish economy. There is more and more information in the media indicating that the Polish economy may slow down in the case of any departure of Ukrainian employees westward to Germany.

Then the floor was taken by Dr Sabina Kubiciel-Lodzińska, of the Opole University of Technology, who discussed three groups of Ukrainian citizens residing in Poland: employees, students and entrepreneurs. An analysis of data concerning the number of work permits for Ukrainian citizens indicates that they are one of the most numerous groups using this form of employment. According to wage surveys conducted in more than 260 companies employing foreigners, most of whom were Ukrainian citizens, the gross average remuneration offered to foreigners is over PLN 2,700. The highest wages

were in medium and large companies – over PLN 3,000, while the lowest were offered by the smallest companies. The average monthly gross wage proposed in the Opolskie Voivodship was about PLN 600 higher than the average wage declared by employers. The following should be considered as the most important factors with the greatest impact on the increase in the number of immigrants from Ukraine: the on-going labour market segmentation, unfavourable demographic changes causing an increase in the demand for care services for the elderly and an increase in health care costs.

Katarzyna Andrejuk, Ph.D., Professor at the Institute of Philosophy and Sociology at the Polish Academy of Sciences, started her speech by emphasising that the main theses of her presentation “Entrepreneurship of Ukrainians in Poland” were based on the book *Przedsiębiorcy Ukraińscy w Polsce. Struktura i sprawstwo w strukturze osiedlenia* [Ukrainian Entrepreneurs in Poland. The structure and governance of the settlement],¹ published in 2017. The speaker has carried out qualitative research on a sample of 51 Ukrainian citizens living in Poland, who are independent professionals and run companies with their own capital. All the interviews were conducted in the years 2014–2017 and were accompanied by an analysis of official data and of state policy concerning immigrant self-employment. Recent years have seen increased activity amongst Ukrainians in the Polish labour market, including an increase in the number of migrants who run their own businesses. The activity of Ukrainian citizens in this branch of Polish entrepreneurship can be divided into three phases. At the beginning of the 1990s, it was mainly an activity related to the petty trade of an illegal or semi-legal nature. The next phase, referred to as the entrepreneurship of settled immigrants, was associated with the legal stabilisation of conditions for running a business in Poland. During this period, well integrated and permanently resident people started to develop their own businesses in Poland. Another category of entrepreneurs has also emerged – young people, less burdened with the socio-cultural heritage of the Soviet period. The incomers were also interested in permanent residence in Poland. Thanks to their cultural distinctiveness and life in a specific ethnic community, employees from Ukraine gained an advantage over other national minorities in starting up own businesses in their chosen country of residence. They use their cultural capital by offering specific services, *e.g.*, they set up translation agencies or Ukrainian restaurants, and then use their network of mutual contacts within the immigrant community, which is especially important in those sectors that deal with the import and export of goods. Ethnic employment, *i.e.*, looking for employees among other Ukrainian citizens, is also a way of using resources. This results both in the reduction of labour costs and in the creation of specific bonds between an employee and an employer. A very popular trend nowadays is to employ relatives within family businesses, thus basing the business on relationships with an increased level of trust. The basic strategies for creating and developing business activity by Ukrainians in Poland should be mentioned here. The first of them is self-employment aimed to obtain residence status. The second trend observed is self-employment and exercise of an

¹ K. Andrejuk, *Przedsiębiorcy Ukraińscy w Polsce. Struktura i sprawstwo w strukturze osiedlenia*, Warszawa 2017.

independent profession (within it) or gainful employment in addition to a full-time job. This strategy usually concerns prestigious industries where high qualifications are needed, often requiring certificates for additional courses and exams. The third strategy is running a business as empowerment, which applies to people performing simple jobs in the first period, but who have managed to become independent and start their own business in Poland. The fourth strategy is the forced self-employment imposed by a quasi-employer who forces his/her employees to do so. The fifth and last of the observed strategies is running a business in order to multiply professional opportunities – *e.g.*, a business run in several countries simultaneously.

As the greatest challenges, Ukrainian entrepreneurs indicated, among others, significant labour costs, high taxes and language problems (especially with regard to specialised official language). Other examples mentioned included the stereotypical thinking of Poles about the low quality of an average, unskilled Ukrainian worker and frequent amendments to the laws on the conducting of business activity. On the other hand, the mentioned advantages most often included: ease and trouble-free registration of individual business activities, lack of corruption, the predictability and transparency of state authorities. Other values indicated are independence from an employer, a greater sense of responsibility and economic certainty. At the same time, business activity plays an integrating and activating role within the Ukrainian community in Poland. The entrepreneurship of Ukrainians in Poland is advantageous from the economic point of view. From the perspective of the sending country, however, we are dealing with a drainage of entrepreneurship and a loss of the most operative individuals who consequently remain in emigration.

The post-presentation discussion was started by Daniel Lach, Ph.D., Professor of the Adam Mickiewicz University in Poznań. He noted that the problem of care services does not relate to nursing services, although the care of the elderly is associated primarily with nursing. However, Ukrainians more and more often provide care services, ensuring contact and companionship, and making the experience of old age not so unpleasant. Many European Union countries have developed systems that finance care services. In Poland, such a system is fragmented and does not offer adequate benefits for the carers of older people, and there is a lack of employees willing to work in this sector. Prof. D. Lach also expressed his doubts as to the extent to which the inflow of immigrants from Ukraine to Poland and an attempt to integrate them within the Polish labour market is an antidote to the problems of this market in the years to come.

Prof. K. Andrejuk argued that other sending countries and other immigrant groups, also from the Central Asia, should certainly be considered. We are currently observing an increase in the number of students from these countries and they are the natural base for any future migrant workers in Poland.

Dr S. Kubiciel-Lodzińska noted an increasingly marked problem from the perspective of Opolskie Voivodeship, *i.e.*, the fact that the resources of Ukrainian employees is becoming exhausted of Ukrainian employees and the increase in the number of workers coming from such remote countries as India or Nepal.

According to Dr B. Samoraj-Charitonow, the instruments of migration policy should be used in the demographic context, but at the same time more attention should be paid to cultural differences. In her opinion, the state should introduce wide-ranging tools aimed at returning Poles to their homeland, especially in the context of the negative consequences of the UK's withdrawal from the EU. As regards the immigration of Ukrainian citizens to Poland, the migration streams should be properly managed, to ensure that Ukrainian employees are able to fill the largest gaps in the Polish labour market. Referring to the problem of medical care for the elderly, Dr B. Samoraj-Charitonow noted that migration should be perceived in a comprehensive way.

The discussion was followed by the second part of the meeting, with presentations by subsequent speakers. This part was moderated over by Dr B. Samoraj-Charitonow.

Assistant Professor Agata Górny, Ph.D., from the University of Warsaw presented information about the scale of migration and about the role of the simplified system. She used various data, including those obtained from the Statistics Poland [Główny Urząd Statystyczny], the Ministry of Family, Labour and Social Policy, Eurostat, but also the data collected at the Centre of Migration Research of the University of Warsaw [Ośrodek Badań nad Migracjami Uniwersytetu Warszawskiego] in cooperation with various institutions. In terms of the demographic situation, permanent immigration is a key element, and in this context, when looking at the registration data, emigration still outweighs immigration. Prof. Marek Okólski, Ph.D., attempted, at the request of the Government Population Council [Rządowa Rada Ludnościowa], to assess the extent to which immigration affects the demographic balance of Poland. We are observing a very rapid increase in immigration to Poland. This is worth mentioning because it is a new phenomenon and many things are still unknown. In recent years Poland has been the region's leader in the number of long-term visas issued to Ukrainian citizens. In the survey, employers were asked how many foreigners were working for them on the basis of declarations and how many declarations they had issued.

In terms of the labour market analysis, it is worth noting that in 2013 declarations were issued primarily for Ukrainian employees with the intention to employ them in agriculture.

It is difficult to predict what will be the inflow of immigrants from Ukraine in the future – this is affected by the temporary nature of migration. It is easy to notice that after the recent armed conflicts in Ukraine there are more citizens from this country in Poland. The liberalisation of the law in 2014, which allowed for easier settlement in Poland, also had an impact on this situation. Prof. A. Górny argued that further legislation developments and migrant integration *via* the labour market would be important.

Assistant Professor Dorota Dzienisiuk, Ph.D., drew attention to the very diverse status of people coming from Ukraine, those staying and working in Poland. During the conference on the employment of workers in Podlaskie Voivodeship, Prof. Bogusław Cudowski stated that the large number of workers coming from countries of the former Union of Soviet Socialist Republics affects the level of remuneration in Poland, and this finds

reflection in the standard of living and requirements of Polish citizens. The basic assumption is that Ukrainians migrating to Poland for employment usually come with whole families, *i.e.*, they work, but at the same time support their relatives. As Prof. B. Cudowski has emphasised, social security is currently perceived as one of the basic human rights of every person, regardless of their nationality. Issues important from the legal point of view include the legality of employment, methods of tax calculation, as well as the jurisdiction of courts competent to rule on entitlements to benefits from the social security system or access to the National Labour Inspectorate. In the Polish-Ukrainian agreement, in the Association Agreement concluded between the EU and Ukraine in 2014 there were no provisions directly related to the social safety of Ukrainian workers migrating to Poland. However, there are provisions aimed at a closer harmonisation of legislation and at raising certain standards in order to make them as similar as possible to the EU level. And a careful reading of the explanatory memorandum to the Act ratifying the agreement shows that repatriates should be the main parties interested in the agreement. The explanatory memorandum to the Act also considered the interest of Polish companies in posting employees to work in Ukraine. The assessment of impact of the Act ratifying the agreement referred to Ukrainian citizens in Poland covered by social insurance, including in the specific payment of contributions, contributing to the increased inflow to central social insurance funds, something quite significant in the context of the country's demographic state. The bilateral agreement with Ukraine can be considered flexible, it has a fairly broad scope, because it concerns persons who are or have been covered by the legislation of one of the parties and also includes employees' family members. The speaker paid particular attention to the principle of equal treatment and the principle of the retention of acquired rights, according to which residence in the territory of the other State should not affect the right to benefits, except for unemployment benefits and the aggregation of insurance periods. The material scope of the agreement is very broad, because on the Polish side it includes: unemployment benefit, benefits related to sickness, maternity, pensions, benefits related to accidents at work. Due to a lack of interest on the Ukrainian side, the agreement does not include regulations in the area of the coordination of benefits in kind.

With these words, Prof. D. Dzienisiuk concluded her presentation on the social safety of Ukrainian citizens in Poland. Then the floor was taken by Dr M. Benio, who drew attention to the problem of the posting of Ukrainians from Poland to other EU Member States.

The breakthrough for European Union law relating to the posting of workers is the judgement of the Court of Justice in the VanderElst case. It contributed to the creation of a clear case law stating that the posting of workers includes nationals of third countries who are legally employed by their employer in any EU Member State (where the employer is established). Therefore, in order to legally post such an employee to provide services, it is necessary to make sure that he/she is legally employed by the entrepreneur and that the entrepreneur has a registered office and conducts business activity within the territory of Poland. The VanderElst document is often referred to as a visa, but in fact it is not a visa in the full meaning of this word, because it is only a document confirming

that the conditions for posting a foreigner to the territory of another EU Member State have been met. In the context of the emerging shortages on the Polish labour market and the growing need to employ professionals from Ukraine, posting of workers simply constitutes a different type of labour migration. The traditional model of labour migration most often involves a situation when a young person, after completing studies in Poland, looks for a job abroad, and after his/her situation abroad has stabilised, considers staying permanently outside Poland. The second type of migration is when a company which operates in one country can offer its services in the territory of other Member States, without the need to register another company there. Such is a meaning of the freedom of establishment. According to the labour regulations governing this type of temporary migration, starting from 2020, no person may be employed with remuneration below the compulsory minimum rates of pay in the host Member State. In such a case, the nationality of the employee is not significant, the only important factor being his/her legal residence and work in the territory of one of the EU Member States. Migration based on the posting of workers enables one to carry out work in a place where wages are higher while the scope of the duties performed does not change. At the end of his speech, Dr M. Benio mentioned that only one change has been introduced based on the current proposals of the European Commission and the Council – the “link company” must operate normally in the Member State where its registered office is situated, in order to avoid a situation where the company *de facto* acts only as a “mailbox.”

After Dr M. Benio’s speech, the third conference panel began, moderated by Dr Robert Marczak. The first speaker in this part was Assistant Professor Joanna Konieczna-Sałamatin, Ph.D., who discussed the problem of the cultural integration of Poles and Ukrainians.

She paid special attention to the importance of the cultural differences affecting Polish-Ukrainian relations. It turns out that these relations are particularly affected by the remembrance policy issues raised in both countries, defined as activities undertaken within the public space, where images from history are used to build a certain community. Analyses of surveys carried out in Poland and in Ukraine in 2018, as part of a grant from the National Science Centre [Narodowe Centrum Nauki] under the direction of Prof. Tomasz Stryjek, and surveys conducted by the Institute of Public Affairs in 1999 and 2013 indicate that in 1999 Poles and Ukrainians had practically no deeper knowledge about each other – the first and dominant group of Poles’ associations with Ukraine referred to recent history, especially the Second World War (39%). The second group of Poles’ connotations concerned the negative personality traits attributed to Ukrainians, especially cruelty and stubbornness. In turn, the survey conducted in 2013, directly before the events of the Majdan revolution, drew attention to aspects of history, as well as to closeness resulting from the geographical proximity and similarity of cultures. Ukrainians associated Poland and Poles mainly with Europeaness, modernity, economic success, while the associations related to mutual history were marginal. Among Poles’ connotations with Ukraine and Ukrainians, history appears equally often (being mentioned by 26% of respondents, Volhynia is again most frequently mentioned),

as well as the reference to proximity, liking and closeness (again, this was the opinion of 26% of respondents – the closeness of culture and language as well as hospitality being the most frequently mentioned).

In another study concerning history in Poland and Ukraine, contrary to the common opinion that Poles look at everything through the prism of past events, it turned out that it was Ukrainians who more often, on a declarative level, indicated interest in their past. This is shown by the results of a nationwide survey conducted in Poland and in Ukraine in 2018 by the Institute of Political Studies of the Polish Academy of Sciences [Polska Akademia Nauk] and Collegium Civitas – 36% of Ukrainians indicated a “strong interest” in their country’s past. The same answer was given by 13% of Poles. Questions also concerned the attitude to known people – the respondents were presented with 27 figures known in Poland and in Ukraine, as well as persons who are widely recognised in the world, *e.g.* Vladimir Lenin or Joseph Stalin. Analysis of their answers showed that three figures from the country’s recent history, *i.e.*: Taras Shevchenko, Ivan Franko and Lesia Ukrainka are the most liked by Ukrainians, with more than half of the respondents giving such an answer. And among the most negative figures were mentioned Joseph Stalin and Mikhail Gorbachev. Among the Polish respondents, it was noted that the most respected historical figures, indicated by at least half of the respondents, included personalities from all the epochs of over two thousand years of Polish history. It was therefore not possible to find one variable that could differentiate Polish citizens from Ukrainians. The next question concerned any opinion on events that had a positive, negative or neutral impact on the future of Poland and Ukraine. In Poland, the following were mentioned as events with a positive impact: the underground movement in 1939–1945, the Warsaw Uprising, the activity of anti-communist partisans after the end of World War II and the activity of the Catholic Church during the years of communism. In turn, the most frequently recorded answers among Ukrainians were participation in the Red Army and the activity of Soviet partisans during World War II. Another important question relating to the remembrance policy concerned the official interpretation of history by the state and making decisions on past events. The obtained results indicated that Poles and the Ukrainians generally did not differ in their opinions. However, regardless of the survey, two cases may be indicated where both countries interpreted the past in a conscious manner. The first was the resolution of the Supreme Council of Ukraine concerning the Great Famine in Ukraine [the Holodomor], the second was the resolution of the Sejm stating that the Volhynia crime was an act of genocide. Respondents in Poland and in Ukraine were asked to refer to the following two sentences: “There have been situations in the past where Poles (Ukrainians) behaved heroically, as well as situations in which the behaviour of some deserved to be condemned. One should speak openly about both in order to learn from history.” The second sentence was: “If there were any uncomfortable facts, one should not talk about them because it weakens the state.” Respondents from Ukraine more often agreed with the first opinion, while among Poles the view

prevailed that some things are better kept quiet. However, in both countries the prevailing opinion was that uncomfortable facts should be spoken about.

Dr Oleksii Polegkyi from the University of Antwerp began his speech with outlining the problem of the perception of the European Union by Ukrainian society and the three key aspects appearing in the Ukrainian public discourse on European integration. The first, often visible aspect, is political negation, according to which Ukraine is part of the great geopolitical game played out between the EU and Russia. The second issue, which is currently of relatively lesser importance, is treating European integration as a certain civilisation challenge. And the third aspect is that European integration is perceived as an instrument that can help in social changes, in the transformation and transfer of certain values leading to internal transformation within Ukraine. Since 2011, there has been a significant increase in the number of Ukrainians in favour of integration with the European Union compared to the number of supporters of the union with Russia, Belarus and Kazakhstan. According to the results of the research of 2013, Ukraine's accession to the union with Russia was approved by one fourth of society, while in 2018, after the events at Ukrainian Majdan, only about 10% supported such a union, and over 50% of Ukrainians believed that Ukraine should become a member of the European Union. Individual regions of Ukraine also vary considerably in their opinion on European integration, but most of the EU's opponents are in the south of the country. The obtained results indicate that the greatest advantage of Ukraine's accession to the EU would be the increased standard of living, as the EU is widely associated with economic growth and better living standards. Among the negative consequences of EU accession, 20% of those surveyed in 2015 indicated that Western culture would replace traditional Ukrainian culture. Analyses of the perception of the EU in the Ukrainian media carried out several years ago did not indicate any particular interest in the EU. An increasingly important issue for respondents is the introduction of a visa-free regime with EU countries – 25% of Ukrainians were in favour of such a regime, while in 2016 it was only 12–16%. In the group of young people up to the age of 30, about 60% declared their willingness to go abroad to study, work or for permanent residence. In turn, analyses carried out by the University of Warsaw together with the Polish National Bank on Ukrainian students staying in Poland showed that 22% of the respondents declared their willingness to go to another country in the European Union, 36% wanted to stay in Poland, while only 2.5% did not plan to return to Ukraine. The economic crisis and difficult life situation are conducive to a search for other places of employment. Business trips were mentioned in 56% of answers, but tourist trips also achieved a high score. The choice of direction in which Ukraine will develop depends to a large extent on the age of the respondent. Young Ukrainians are mostly positive about their country's membership of the European Union, while people over 60 are more likely to be in favour of an alliance or union with Russia.

Dr Andrzej Szybkie of the Polish Social Insurance Institution's Foreign Pensions Department focused in his speech on the analysis of particular elements of the Polish-Ukrainian social security agreement. He examined in particular: the purpose and

validity of the agreement, including its subject matter and personal scope, the most important rules for coordination of the social security systems, legal elements concerning ZUS obligation to apply EU law and the provisions of the agreement, as well as administrative cooperation between ZUS and its Ukrainian counterpart. Dr A. Szybkie paid particular attention to the process immediately preceding the entry into force of the agreement. This process started with the participation of ZUS representatives and experts in bilateral negotiations, which have evolved into regular cooperation with the Ukrainian side in the implementation of the agreement. The cooperation mainly involved the determination of procedures to be followed, templates of forms to be used and the scope of data exchanged by the institutions. Preparations to draft the text of such an agreement usually take several years. The bilateral agreement with Ukraine did not provide for any change in internal regulations – it was aimed to reconcile laws, to create a framework enabling the migrant to improve his/her situation. The key rules for the coordination of Polish and Ukrainian legislation include the principle of single legislation, the principle of the export of benefits and the principle of granting benefits by each of the countries in which the person was insured. A very favourable solution contained in the agreement is the possibility for the aggregating of insurance periods completed in third countries with which both states are bound by a social insurance agreement. Problems of a political and formal nature that appeared on the Ukrainian side were due to military operations. They affected particularly people living in the Crimea and Donbass, and were related mainly to customer service, exchange of correspondence in the occupied territories and access to documentation of the Pension Fund of Ukraine. Thanks to cooperation with Polish consular posts, these obstacles have been overcome. The cooperation with the Ukrainian Fund through the ZUS Branch in Rzeszów is very well evaluated. The scale of cooperation, resulting from the agreement, is still limited in scope, with the number of beneficiaries slightly exceeding 800, including 111 persons whose benefits are transferred by ZUS to Ukraine. Finally, Dr A. Szybkie noted that repatriates, although not directly covered by the agreement, are guaranteed benefit inviolability.

Conference summary

In summing up the conference, Dr B. Samoraj-Charitonow pointed out that three groups of the papers presented referred to the following: the economic and social area, legal area, and that associated with the cultural context and integration of foreigners in Poland. The conclusions from the papers showed how important Ukrainians are in our labour market, how much this migration affects many areas of life, the economy and law. Along with the growing migration, new challenges have also appeared for ZUS – concerning the right to benefits, their acquisition and payment. In this regard, a problem to be solved may be, for example, payment of one contribution which authorises the use of other social services, although the benefit may amount to only a few groszy.

The final group of papers on Polish-Ukrainian integration discussed the behaviour of these culturally close groups. The study on economic migration did not reveal open conflicts based on nationality, but it is advisable to build effective, multifaceted integration programmes for foreigners.

Finally, Dr R. Marczak distinguished areas requiring further intensive research, such as: the social and financial safety of emigrants from Ukraine, the quality of the work performed by Ukrainian citizens in Poland and their holding of jobs below their qualifications.

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Selected dilemmas of sickness insurance: sickness allowance

Introduction

The paper is an effect of the nationwide seminar “Dilemmas in sickness insurance: sickness allowance,” organised on 13 June 2018 in Warsaw by the Warsaw-Łódź Branch of the Polish Social Insurance Association [Polskie Stowarzyszenie Ubezpieczenia Społecznego, PSUS] and the Insurance Law Department of the University of Warsaw’s Faculty of Law and Administration. The paper focuses on the coverage of a temporary incapacity for work through sickness allowances granted under the general sickness insurance and sickness, accident and maternity insurance for farmers. The aim of the study is to discuss selected issues of sickness allowance, including the criticism of the legal provisions and a presentation of conclusions. The following research methods have been used in the paper: historical, dogmatic and legal, sociological and statistical.

The first part of the paper briefly presents the evolution of incapacity for work insurance coverage due to sickness. Then, the legal dilemmas related to the acquisition of the right to sickness allowance in the general system were selected and shown. In the third part, attention is paid to the economic balance of the Sickness Fund and changes in the structure of its expenditure over the last decade. The fourth part contains a description of sickness allowance under the farmers’ social insurance and an analysis of applicable solutions in the context of the right to social security and the matching of existing solutions to farmers’ needs. The paper is concluded with a number of specific proposals for changes in the described area. The members of the Polish Social Insurance Association’s Warsaw-Łódź Branch hope that the proposed formula will become a permanent element within academic discourse.

Evolution of temporary incapacity for work insurance coverage

The beginnings of the insurance coverage

The first state-guaranteed benefits in respect of sickness were introduced in Germany in 1883. German sickness insurance provided cash allowances during sickness and assistance in covering the costs of employees’ medical treatment. The developed German models were also applicable in those Polish territories under Prussian rule and have subsequently affected the form of insurance in Poland. In Germany, the burden of contributions collected to finance the benefits was borne by both employees and employers.¹ It was the time when the idea of social insurance employee solidarity was born, with the contribution set in such a way as to ensure the balance between contributions and benefits.²

¹ *Rozwój ubezpieczeń społecznych w Polsce*, ed. C. Jackowiak, Wrocław 1991, p. 91.

² W. Szubert, *Ubezpieczenie społeczne: zarys systemu*, Warszawa 1987, p. 15.

The health care benefits introduced were aimed to cover the costs of medical treatment, and allowances – to partly compensate for lost earnings.³

The first legal act introducing sickness allowances in the newly established Republic of Poland was the Decree on compulsory sickness insurance of 11 January 1919,⁴ which was drafted before the end of the war. Although the Decree was not to come into force, because it had established but a single sickness fund in Sosnowiec, but equally almost all its provisions were transferred to the Act of compulsory sickness insurance of 20 May 1920.⁵ The Act introduced sickness insurance designed to operate on a universal and compulsory basis, taking into account the place of residence. It contained innovative solutions and influenced the development of sickness insurance.⁶ Sickness funds were established to implement compulsory sickness insurance, one for each powiat. Compulsory insurance covered all persons in gainful employment, irrespective of the type of employment contract. This means that the Act covered by obligation the insurance of all persons employed on the basis of an employment or service relationship. It should be also noted that the insurance also covered seasonal workers, non-regularly employed persons and those working with them.⁷ The Act was not applicable to nominated government officials, and employees who earned more than PLN 7,500 a year, directly substituting the employer, could be exempt from the insurance obligation.⁸ Self-earning persons were not covered by the insurance. Persons insured compulsorily became members of the fund from the starting date of their employment, and those insured voluntarily – from the moment of notification of being entered onto the list of fund members. In the event of sickness, the insured persons were entitled to a cash allowance, which was paid from the third day of any incapacity for work for a maximum of 26 weeks. Benefit payment could be extended to 52 weeks.⁹ Insured persons were also entitled to free medical assistance – from the first day of sickness, for a period of 26 weeks. Assistance provided by funds which had existed for more than three years, could be extended to 39 weeks.

The cash allowance amounted to 60% of the statutory pay¹⁰ when the insured person stayed at home. In the event of hospital treatment, people with one or more

3 W. Muszalski, *Wprowadzenie do nauki ubezpieczenia społecznego*, Warszawa 1988, p. 30.

4 Decree on compulsory sickness insurance of 11 January 1919 (Journal of Laws of the Polish State No. 9, item 122).

5 Act of 20 May 1920 on compulsory sickness insurance (Journal of Laws No. 44, item 272), hereinafter referred to as the Act of 1920.

6 A. Kaczmarek, *Zakres podmiotowy ubezpieczenia chorobowego* [in:] *Ubezpieczenie chorobowe*, ed. B. Wagner, A. Málaka, Iwonicz Zdrój 2010, pp. 32 and 33.

7 Art. 7 of the Act of 19 May 1920 – non-regularly employed persons are persons whose main source of income is the letting of services and who, without being in a regular working relationship with the same employer, work continuously for one employer for no longer than six days.

8 J. Łazowski, *Ubezpieczenia społeczne w Polsce w pierwszym dziesięcioleciu niepodległości*, "Studia i materiały z historii ubezpieczeń społecznych w Polsce" 1991, Vol. 8, p. 16.

9 J. Sadowska, *Prawno-organizacyjne podstawy ubezpieczenia na wypadek choroby w Polsce (1920–1939)*, "Studia i Materiały z Historii Ubezpieczeń Społecznych w Polsce" 1993, Vol. 9, p. 19.

10 The insurance contribution amounted to 6.5% of the pay and was financed by the employer to 3.5% and by the employee at 2.5%. Contributions for employees remunerated only in kind were fully covered by the employee, see W. Muszalski, *op. cit.*, p. 47.

dependents received half the allowance (home allowance). Persons with no dependent persons, in addition to hospital treatment and maintenance, were entitled to a hospital allowance equal of 10% of their statutory pay. If the insured person fell ill again with the same disease within eight weeks of recovery, the second incapacity was included in the same allowance period. When the insured person has already used up the 26 or 39 weeks allowance period and fell ill again within 12 months, he/she could receive the fund benefit for 13 weeks. The legislator introduced a period of waiting for benefits for homeworkers, persons subject to voluntary insurance and non-regularly employed persons, who acquired the right at the earliest after four and at the latest after six weeks of membership. Other people acquired the right from the very date of employment commencement. The Act also provided for situations in which the insured person was deprived of the right to an allowance, *e.g.*, when after falling ill he/she went abroad without the consent of the fund management board, or for the duration of his/her stay in prison if he/she was imprisoned after falling ill. And in the event of an addiction to drunkenness, the management board of the fund was entrusted to pay allowances to the dependents of the insured. Pursuant to the law, the amount of contributions was to be determined at a level sufficient to cover all expenses and benefits. The fund could increase the amount of benefits above the determined amount when its income was sufficient to cover expenses, and it could introduce extraordinary benefits when the supplementary fund had reached the double amount. Naturally, when the income did not cover expenses, the fund stopped paying benefits.¹¹

Sickness allowance under the Act of 28 March 1933 on social insurance¹²

The Act of 1933, commonly referred to as the Consolidation Act, was nationwide in scope, covering both white-collar and blue-collar workers, but excluding government officials, employees of the Polish State Railways, the clergy, the military, foreigners, permanent and seasonal agricultural workers, as well as short-term employees. It introduced two types of insurance: in the event of sickness and maternity and in the event of the inability to earn money or the death of the insured person as a result of an accident at work, an occupational disease or for other reasons. Tasks in the field of sickness insurance were performed by social insurance companies and by the Sickness Insurance Institution [Zakład Ubezpieczenia na Wypadek Choroby]. Such a legal status was to last but a year. By means of an amendment of 24 October 1934, separate insurance institutions were liquidated and the Social Insurance Institution [Zakład Ubezpieczeń Społecznych, ZUS] was established in their place.

¹¹ M. Kuszewska-Kryś, *Sytuacja finansowa i świadczenia ubezpieczenia na wypadek choroby w latach kryzysu (1930–1935)*, "Studia i materiały z historii ubezpieczeń społecznych w Polsce" 1991, Vol. 8, p. 51.

¹² The Act of 28 March 1933 on social insurance (Journal of Laws No. 51, item 396, as amended).

The competence of social insurance companies was left to the area of sickness insurance. The amendment introduced cost-cutting measures unfavourable to sickness insurance, which were aimed to balance the expenses related to the introduction of a new old-age pension insurance for workers.¹³ As a cash benefit, the Act provided for sickness, home and hospital allowance. Initially, the Act granted sickness allowance to insured persons for each day of any certified incapacity for work, starting from the fourth day of incapacity for work, and not from day three, as it had been before. The post-war amendment to the Act granted the right to sickness allowance from the first day of any certified incapacity for work, provided that sickness lasted for at least three days.¹⁴ It was not until 1954 that sickness allowance was granted for each day of work incapacity.¹⁵

In the Consolidation Act of 1933, the sickness allowance rate was reduced to 50% of the average weekly earnings calculated from the last 13 weeks before falling ill.¹⁶ When calculating the allowance, all days of the week were taken into account, unlike in the Act of 1920.¹⁷ The statute of the insurance company could increase the allowance rate for insured persons with more than two dependent children. The allowance amount was restored to 60% in 1937. After the war, the allowance was increased to 70%, and a supplementary allowance was granted for each child.¹⁸ In 1951, the supplementary allowance for children was stopped.¹⁹ The maximum allowance period was 26 weeks (182 days). Benefits in respect of sickness were also supplemented with medical assistance for no longer than 26 weeks. The legislator granted sickness allowance after four weeks of being subject to compulsory insurance, although previous insurance periods were also taken into account.

If, as a result of mass redundancies, the number of allowance recipients exceeded the average number to such an extent as to endanger financial sustainability, the insurance company could reduce the allowance period to 13 weeks, although only for those who had lost their jobs for reasons other than sickness. Such a reduction could be introduced for a period of not longer than half a year.

No sickness allowance was payable for a period during which the insured person was in hospital. In such a case, the insured person was entitled to a home or hospital allowance. The home allowance was payable for the period of hospital treatment if the insured person had one or more dependents living with them. It amounted to half the sickness allowance, however supplementary allowances for children were paid in full. Hospital

¹³ W. Szubert, *op. cit.*, p. 29.

¹⁴ Decree of 13 December 1946 amending the Act of 28 March 1933 on social insurance (Journal of Laws of 1947 No. 2, item 4.); W. Muszalski, *op. cit.*, p. 50.

¹⁵ Decree of 6 May 1954 amending the Act on social insurance (Journal of Laws No. 22, item 78).

¹⁶ "The amount of allowances was far from satisfactory [...]; for persons without any other source of income during sickness it was a significant assistance that enabled many families to survive the critical period" quoted from: M. Kuszewska-Kryś, *op. cit.*, p. 61.

¹⁷ W. Muszalski, *op. cit.*, p. 50.

¹⁸ Based on the Decree of 13 December 1946 amending the Act of 28 March 1933 on social insurance, see footnote 15.

¹⁹ Decree of 29 March 1951 amending the Act on social insurance (Journal of Laws No. 17, item 138).

allowance was granted when an employee had no dependents and was hospitalized. This was granted to the amount of 1/5 of the sickness allowance.

The Consolidation Act allowed the insurance companies to impose a fine on insured persons who violated doctors' instructions or patients' regulations. The amount of the fine could not exceed 40% of the weekly sickness allowance. An insured person who has caused the disease intentionally, through a fight or act of violence, would lose all or a part of the sickness allowance (also hospital allowance).

As a rule, the obligation for insurance companies to grant benefits ceased on the date of the termination of the insurance obligation or continued insurance, unless the disease occurred within three weeks from the date of the termination of insurance, and in the case of diseases with a longer incubation period – within four weeks. An additional condition was the duration of the insurance before the event in question, *i.e.*, for ten weeks or for thirty weeks during the last twelve months. Thus, the legislator extended the period of insurance cover. The turning point affecting the form of sickness allowances was the introduction of the Decree of 2 February 1955 on the transfer of social insurance tasks to trade unions.²⁰ The adoption of legislation tightening the bases for the right to the allowance, and the combating of sickness allowance fraud was the next stage in the shaping of sickness allowances.²¹ Any employee who used sick leave contrary to its intended purpose, and therein evaded work would lose the right to sickness allowance for the entire period of their incapacity for work. If such a situation repeated itself within a year, the employee would lose the right to sickness allowance for the first three days of their incapacity for work.

The amount of insurance allowance in respect of employee sickness benefit was increased by means of the Act of 1972.²² The sickness allowance was granted irrespective of the employee's family status or whether they were at home or in a health care institution. As of 1 July 1974, allowances were increased to 100% of monthly earnings.²³ The allowance for a single day of work incapacity amounted to 1/30 of the monthly allowance. The value of tax and the insurance contribution was excluded from the assessment basis, which means that the assessment basis was equal to net remuneration, and not gross remuneration as before. In the event of work incapacity due to drunkenness, the benefit was not granted for the first three days of the said. In the event of a fight or work incapacity resulting from intentional offence, no allowance was payable for the entire period of the incapacity for work.

20 Decree of 2 February 1955 on the transfer of social insurance tasks to trade unions (Journal of Laws No. 6, item 31); for more, see W. Szubert, *op. cit.* p. 39 *et seq.*

21 Act of 6 June 1958 on combating fraud in the use of certificates of a temporary incapacity for work (Journal of Laws No. 35, item 154, as amended).

22 Act of 6 July 1972 on the increase of social insurance allowances in the event of an employee's sickness (Journal of Laws No. 27, item 191).

23 "Such a rate of sickness allowance is deemed optimal, which would satisfy to the greatest extent possible the needs related to the loss of earning capacity, while not creating an incentive to take advantage of these benefits without sufficient justification" quoted from: W. Szubert, *op. cit.*, p. 157.

Changes in sickness allowances since 1974

The 1972 regulation was short in duration being replaced by the Act of 7 December 1974 on cash social insurance benefits in respect of sickness and maternity.²⁴ Sickness allowance was payable under the Act in the event of incapacity for work due to sickness and it was granted to employees. The Act designated two insurance events: incapacity for work due to sickness and the inability to perform work for reasons specified in the legislation.²⁵

Originally, a person employed for an indefinite period or for an initial period acquired the right to sickness allowance irrespective of their period of employment. Persons employed for a trial period, specified period or for the duration of a specific job acquired the right to allowance after being employed for at least one month. The Act of 1974 also extended the insurance coverage after the cessation of the insurance obligation. Contrary to the previous regulation, it introduced a protective period for all cases of incapacity for work, provided that the incapacity lasted for at least 30 days.

The maximum period for receiving sickness allowance was six months (180 days), and in the event of incapacity for work due to tuberculosis – nine months (270 days). The sickness allowance could also be extended for another three months if there was a fair prognosis regarding the restoration of earning capacity as a result of further medical treatment or rehabilitation. The allowance period included all periods of uninterrupted incapacity for work due to the same disease or various diseases, and the period of any subsequent incapacity for work if the interval between the two periods did not exceed 30 days. The allowance rate for the first year of the Act's validity was 100%. After a year, the allowance rate was differentiated, depending on the employment period. 80% and 75% rates were also introduced.²⁶ When determining the allowance amount, previous employment periods were taken into account. It was not until the 1995 amendment that the allowance rate was standardised at the level of 80%, while the increased rate was retained, *inter alia*, for the period of pregnancy or incapacity for work due to an accident at work.²⁷ The basis for allowance assessment was initially equal to the permanent remuneration received. If the remuneration was not paid monthly to the same amount, the average for the previous three calendar months was taken. The amendment introduced the rule for determining the average amount for the previous six and twelve months if the monthly amounts of remuneration fluctuated significantly. In 1995, the basis for sickness allowance assessment was limited to 250%

24 Act of 7 December 1974 on cash social insurance benefits in respect of sickness and maternity (consolidated text: Journal of Laws of 1983 No. 30, item 143, as amended).

25 W. Muszalski, *op. cit.*, p. 73.

26 W. Szubert, *op. cit.*, p. 157.

27 The Act of 3 February 1995 amending the Act on cash social insurance benefits in respect of sickness and maternity, and amending the Act – Labour Code (Journal of Laws of 1995 No. 16, item 77), hereinafter referred to as the Act amending the Act on cash social insurance benefits in respect of sickness and maternity, and amending the Act – Labour Code.

of the average monthly remuneration.²⁸ Allowances were paid by public enterprises. ZUS branches paid allowances to non-public enterprises and the employees of public enterprises following termination of employment. Ultimately, enterprises constituted allowance payers if they employed more than 20 insured persons.

It should be emphasised that the Act of 1974 covered employees, there is no mention of craftsmen and persons engaged in gainful activity for whom the sickness allowance was introduced by the Act of 18 December 1976 on social insurance for craftsmen and certain persons engaged in gainful activity.²⁹ The Act introduced cash benefits for this group in respect of sickness and maternity, which were granted under the principles set out in the Allowance Act of 1974. The sickness allowance was payable for each day of certified incapacity for work lasting continuously for at least 30 days. The sickness allowance was not due if the contribution had been unpaid for a period exceeding three months. Most of the provisions of the Act of 1974 were transferred to the Act of 1999.

Legal characteristics of the right to sickness allowance and selected problems related to its acquisition

The risk of temporary incapacity for work under sickness insurance

Sickness allowance is a social insurance benefit intended to compensate the insured person for earnings lost as a result of any temporary incapacity for work. The very issue of acquiring the right to this benefit is associated with a number of problems requiring in-depth analysis, ones that can only be signalled in this paper.

The discussion of the above issue should begin with explaining the key concept of “disease/sickness.” Sickness is a biotic event, which means that it is a biological phenomenon being an integral part of everyone’s life.³⁰ The doctrine emphasises the possibility of defining this concept both in the biological aspect as a state of disruption to the proper functioning of the body, as well as in a legal aspect. In the second sense, sickness is an event linked to a certain benefit. It should be emphasised that, within the meaning of the law, sickness begins at the moment when a person’s health condition affects his/her capacity for work in a certain way. It is

²⁸ The Act amending the Act on cash social insurance benefits in respect of sickness and maternity, and amending the Act – Labour Code.

²⁹ The Act of 18 December 1976 on social insurance for craftsmen and certain persons engaged in gainful activity (Journal of Laws No. 40, item 235, as amended).

³⁰ I. Jędrasik-Jankowska, *Pojęcia i konstrukcje prawne ubezpieczenia społecznego*, Warszawa 2017, p. 120.

therefore neutral from a legal point of view until its impact on the earning capacity is certified.³¹

Since social insurance does not provide protection for the occurrence of certain random events, but only do their effects referred to as risk – an insurance event – entitle the insured person to certain benefits, it is necessary to consider the very content of the risk, *i.e.*, a temporary incapacity for work.

Apart from the temporary incapacity for work, social insurance also covers other situations, referred to in Art. 6(2) of the Act on cash social insurance benefits in respect of sickness and maternity,³² which is justified by the similarity of the mentioned obstacles to work performance to the biological sickness and by the fact that they evoke the same type of needs.³³

“Temporality” may not be identified with the duration of incapacity as the persistent condition of a lack of earning capacity defined in days or months. “Temporality” means only fleetingness, the possibility of quick cessation. In the event of disruption of the proper functioning of the body, resulting in a permanent lack of earning capacity, the insured person is entitled to coverage under disability insurance, because there is no certainty as to the cessation of incapacity in the foreseeable future.

Within the meaning of the Allowance Act, the risk of temporary incapacity for work does not apply to any work, but only to work currently performed. Therefore, in order to consider that risk has materialised, it is enough to establish that the health condition constitutes an obstacle to the performance of current work without having to take into account the possibility of performing other types of work. In this way, Art. 3 of the Regulation governing the procedure and manner of certifying temporary incapacity for work,³⁴ indicated that when certifying any temporary incapacity for work, one should take into account all the circumstances relevant to the assessment of the health condition and impairment of body functions resulting in the temporary incapacity for work on the part of the insured person, with particular regard to the type and conditions of work. As regards employment in several places at the same time, in accordance with the linguistic interpretation of the law, it would be necessary to evaluate separately the situation for each employment relationship, taking into account the type of work and the nature of the disease causing temporary incapacity to perform such work. Nevertheless, in practice, a medical certificate releases the insured person from any work they perform. The lack of legislator consistency in this respect should be noted, since Art. 12 of the same Regulation provides

31 See Ł. Prasolek [in:] *Społeczne ubezpieczenia wypadkowe i chorobowe. Komentarz*, ed. M. Gersdorf, B. Gudowska, Warszawa 2012, p. 471.

32 Act of 25 June 1999 on cash social insurance benefits in respect of sickness and maternity (consolidated text: Journal of Laws of 2017 item 1368, as amended), hereinafter: the Allowance Act.

33 I. Jędrasik-Jankowska, *op. cit.*, p. 250.

34 Regulation of the Minister of Labour and Social Policy of 10 November 2015 on the procedure and manner of certifying temporary incapacity for work, issuing a medical certificate as well as the procedure and manner of correcting an error in a medical certificate (Journal of Laws item 2013).

that in the event of two or more insurance titles, the doctor issues, at the request of the insured person, a certificate in the relevant number of copies.

Deprivation of the right to sickness allowance for persons taking up employment during sick leave

The issue of deprivation of the right to sickness allowance is connected with the issue of refraining from work during sick leave. In accordance with Art. 17(1) of the Allowance Act, an insured person who performs gainful employment during the period of a certified incapacity for work or uses the sick leave in a manner inconsistent with its purpose, loses the right to sickness allowance for the entire period of the sick leave.³⁵

Gainful employment is understood as any work providing revenue to the insured person. It can be both work performed on the basis of an employment contract, irrespective of the working time, civil law contract, running one's own business, or illegal work.³⁶ It means that the insured person may not perform any work – failure to comply with the above rule results in deprivation of the right to sickness allowance. The Supreme Court has recognised that any gainful employment performed during the period of sick leave results in the loss of the right to sickness allowance, even if the work performance was recommended and contributed to health condition improvement.³⁷ The aforementioned position, which is a consequence of the linguistic interpretation, does not take into account the economic effects for the Social Insurance Fund, because any performance of work recommended for health reasons may result in a shortening of the allowance period. The Supreme Court emphasises that an employee should receive an allowance from both their employers.³⁸ It also emphasises the fact that to cause the loss of the right to allowance, gainful employment within the meaning of Art. 17(1) of the Allowance Act does not have to be performed on a full-time basis.³⁹ The law does not require that work be undertaken with a view to “making a profit.” It is also irrelevant whether certain activities are carried out against payment or free of charge. It is important how they have been actually performed.⁴⁰

This prompts one to analyse the situation of a person covered by insurance under two occupational titles, when temporary incapacity for work concerns only one of them and does not constitute an obstacle to the pursuit of another profession. If a person continues

35 Article 17 para. 1 of the Allowance Act does not cover by its hypothesis the situation when the insured person performs his/her current work. In such a situation, Art. 12 is applicable, which provides for the suspension of the right to any allowance.

36 A. Radziśław, *Ustawa o świadczeniach pieniężnych z ubezpieczenia społecznego w razie choroby i macierzyństwa. Komentarz*, Warszawa 2016, p. 97.

37 Judgement of the Supreme Court of 12 August 1998, file No. II UKN 172/98 (OSNP of 1999, No. 16, item 522); the same position was taken by the Supreme Court in the judgement of 20 January 2005, I UK 154/04 (OSNP of 2005, No. 19, item 307).

38 Judgement of the Supreme Court of 19 March 2003, II UKN 257/02 (unpublished).

39 Judgement of the Supreme Court of 6 February 2008, II UK 10/07 (OSNP of 2009, No. 9-10, item 123).

40 Judgement of the Supreme Court of 20 January 2005, I UK 154/04 (OSNP of 2005, No. 19, item 307).

employment to which the incapacity does not apply, he/she will be deprived of his/her right to sickness allowance and remuneration for any such work. An alternative solution would be to give up all work and collect allowance in respect of one or other of the titles, even though the risk does not relate to the other. It means an obligation to pay a higher sickness allowance than would be justified by the real needs of the insured person if they did not have to give up additional employment. The economic effects of this solution, both on the part of the person concerned and the Social Insurance Fund, support the admissibility of collecting allowances and simultaneously performing work that is not affected by the incapacity.

Staying in sickness insurance as a prerequisite for acquiring the right to allowance

It should also be emphasised that in Art. 11 of the Act on the social insurance system,⁴¹ the legislator indicated titles subject to compulsory or voluntary sickness insurance. In this context, voluntary access to sickness insurance deserves special attention. It was stated that sickness insurance may be joined on request only by persons subject to compulsory pension and disability insurance. In the opinion of Inetta Jędrasik-Jankowska, this wording means that persons released from the insurance obligation due to overlapping titles will be deprived of the opportunity to insure themselves against the loss of income from a given activity if risk materialises. She refers to this regulation as the “coupled voluntariness,” while pointing to the irrationality of combining sickness insurance under a given title with compulsory pension insurance under the same title, since this goes beyond the very essence of voluntariness.⁴²

Acquisition of the right to allowance has been made conditional on the materialisation of risk during the insurance period. Under Article 6(1), the sickness allowance is granted to an insured person who has become incapable of work due to sickness during the period of sickness insurance, however the term “during the period of insurance” itself may be understood in two ways. As Łukasz Prasolek has pointed out, some representatives of the doctrine recognise that “holding the insurance title” is identical with the “duration of sickness insurance.” However, according to the prevailing opinion, these are two separate concepts, with the first of them being wider in scope than the second.⁴³

Insurance also covers cases where the risk materialises during the insurance period and the incapacity continues despite the expiry of this period. Protection in respect of continuation is only granted if the incapacity is uninterrupted and it is irrelevant whether this is caused by the same or a different disease. Interruption will mean the need to determine whether there are grounds for acquiring the right to the allowance after the

41 Act of 13 October 1998 on the social insurance system (consolidated text: Journal of Laws of 2017 No. 1778, as amended).

42 See I. Jędrasik-Jankowska, *op. cit.*, pp. 115–116.

43 See Ł. Prasolek, *op. cit.*, p. 475.

cessation of insurance, as defined in Art. 7 of the Allowance Act. For the assessment of whether incapacity for work after cessation of the insurance title is an insurance event, it does not matter if it is the first or subsequent incapacity due to the same disease – for it is the moment when the incapacity has arisen that is decisive.

Qualifying period as a prerequisite for acquiring the right to sickness allowance

Acquisition of the right to allowance has been made conditional on the materialisation of risk during the insurance period. In addition, the legislator requires the insurance to last for a specific period. This requirement is defined as the qualifying period. The ratio legis of this requirement was the desire to eliminate cases where, after a short period of paying contributions, an insured person could take advantage of this insurance even for a few months.⁴⁴

Pursuant to Art. 4 of the Allowance Act, an insured person acquires the right to sickness allowance:

- 1) after 30 days of uninterrupted sickness insurance, if he/she is subject to compulsory insurance;
- 2) after 90 days of uninterrupted sickness insurance – if he/she is insured voluntarily.⁴⁵

This means that different qualifying periods have been adopted depending on the compulsory or voluntary nature of the insurance. This issue became the subject of a Constitutional Tribunal ruling,⁴⁶ which stated that Art. 4(1)(2) of the Allowance Act is compliant with Art. 32(1) and Art. 2 of the Constitution of the Republic of Poland to the extent that it provides for a longer period of uninterrupted sickness insurance required to acquire the right to sickness allowance for those engaged in a non-agricultural business activity and subject to voluntary sickness insurance than for persons subject to compulsory sickness insurance. When assessing the mentioned regulation from the perspective of the principle of equality and taking into account the purpose of the challenged Act, the Constitutional Tribunal recognised the status of a person insured in respect of sickness and maternity and incapacity for work due to sickness as important relevant features. In its opinion, the main purpose of differentiating qualifying periods was to ensure a proper correlation between the amount of contributions paid and the amount of benefits within each category of insured persons. In its justification, the Tribunal paid particular attention to the financial aspects, *i.e.*, the possibility of covering expenses for sickness allowances due, however, it ignored issues related to the functioning of the market, which is particularly evident in the case of the other voluntary entitlement to

⁴⁴ *Ibid.*, p. 466.

⁴⁵ The law provides for incorporating previous insurance periods within the qualifying period if the gap between them does not exceed 30 days or was due to child-care leave, unpaid leave, or active military service by a non-professional soldier. Art. 4(3) of the Act gives an advantage to certain categories of insured persons by releasing them from the qualifying period requirement, thus granting the right to sickness allowance from the first day of insurance.

⁴⁶ Judgement of the Constitutional Tribunal of 6 November 2010, P 86/08.

sickness insurance, *i.e.*, performing work under a commission contract.⁴⁷ In this case, employment instability requires not only that the qualifying period be equated with the qualifying period for persons covered by compulsory sickness insurance, but also that analysed be the effects of shortening the indicated period below 30 days.

Impact of legislative changes on the Sickness Fund's balance over the last decade

The Sickness Fund is one of four funds separated under the Social Insurance Fund. It guarantees the payment of cash benefits in the event of random events, such as sickness or maternity: the following are paid in this respect: sickness allowance, rehabilitation benefit, compensatory allowance, maternity allowance and care allowance.

The sickness insurance contribution amounts to 2.45% of the basis for contributions assessment and is paid out from the insured person's funds.

Sickness Fund balance-sheet for the years 2009–2018

The financial situation of the Fund has been gradually deteriorating over the last decade. Table 1 summarises the Fund's receipts from contributions and their derivatives, as well as the Fund's expenditure. In the first year of the period under review, revenues exceeded expenditure, but starting from 2010, the difference is already negative, and its absolute value is increasing year on year. The reasons for this situation will be discussed below.

Table 1. Financial situation of the Sickness Fund [data in PLN thousand]

Year	Own revenues	Expenditure	Difference
2009	10,553,386	10,180,927	372,459
2010	9,387,575	10,981,965	-1,594,390
2011	9,876,231	11,535,962	-1,659,731
2012	10,324,053	12,841,043	-2,516,990
2013	10,695,880	14,331,627	-3,635,747
2014	10,809,624	17,106,671	-6,297,047
2015	11,300,106	19,080,947	-7,780,841
2016	12,022,953	20,277,252	-8,254,299
2017	13,150,319	21,278,070	-8,127,751

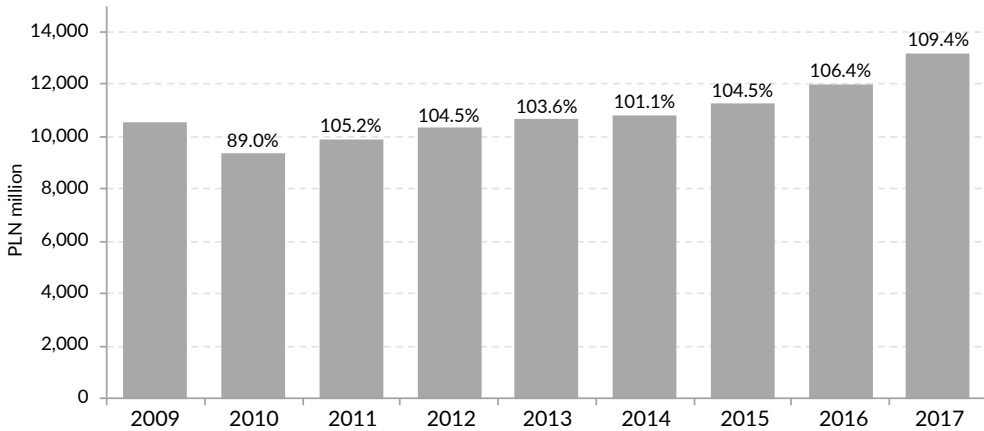
Source: own study based on ZUS data

Attention should be paid to the Fund's revenues (Diagram 1) and its expenditure (Diagram 2) separately. From 2010 to 2014, a relatively slow but systematic increase in the

⁴⁷ Art. 6(1)(4) of the Allowance Act.

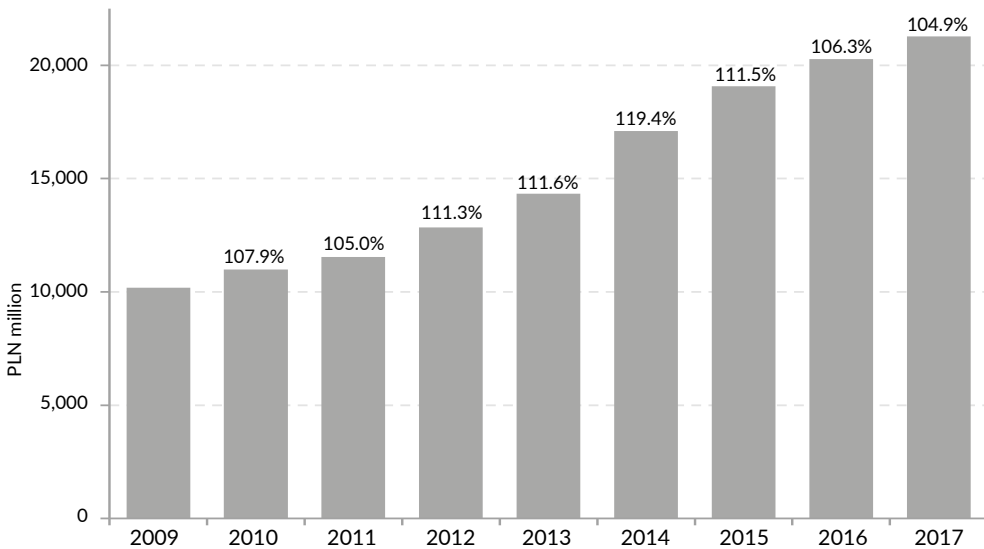
amount of inflows could be observed. In the subsequent period there was stronger growth, and as a result the average annual growth of this item in the years 2010–2017 was at the level of 5%. The gradual increase in inflow from contributions and their derivatives is related to such economic parameters as increases in wages and growing employment in the national economy. Expenditure grew more dynamically. 2014 requires special attention, since expenditure in this year increased by as much as 19% compared to the previous year. Only in the last two years of the decade under discussion did the expenditure level stabilise, and its year-on-year increase amounted to 6.3% in 2016 and 4.9% in 2017 respectively.

Diagram 1. Sickness Fund revenues in the years 2009–2017



Source: own study based on ZUS data

Diagram 2. Sickness Fund expenditure in the years 2009–2017



Source: own study based on ZUS data

Legislative changes having a significant impact on the Sickness Fund's balance

The reasons for the rapid increase in expenditure observed first of all in 2010 and then in 2012–2015 should be seen within changes in the scope of entitlements and the scope of persons entitled to various benefits from the Sickness Fund, which were quite marked in the decade under discussion:

- 1) since 7 July 2008, the assessment basis of contributions and benefits paid from the social insurance has been increased by additional components previously not taken into account⁴⁸ (such as discretionary awards and bonuses),
- 2) since 1 January 2009, the qualifying period to acquire the right to sickness allowance for voluntarily insured persons has been shortened from 180 to 90 days, and the allowance period for pregnant women has been extended from 182 to 270 days,⁴⁹
- 3) from 1 February 2009, the period of sickness allowance payment by the employer has been shortened from 33 to 14 days for persons who have reached the age of 50,⁵⁰
- 4) from 1 January 2010, an additional maternity leave of two weeks has been introduced in the case of the birth of one child and three weeks in the case of the birth of more children,⁵¹
- 5) from 1 January 2010, the right to maternity allowance has been granted to fathers for a period of paternity leave of one week until the child reaches one year of age, and from 1 January 2012, paternity leave has been extended to two weeks,⁵²
- 6) from 1 January 2012, additional maternity leave has been extended to four weeks in the case of the birth of one child and to six weeks in the case of the birth of more children,⁵³
- 7) from 17 June 2013, additional maternity leave has been extended by two weeks, and parental leave of up to 26 weeks was additionally introduced,⁵⁴
- 8) from 14 August 2015, additional entitlements to care allowance in special circumstances have been introduced,⁵⁵

⁴⁸ Pursuant to the judgement of the Constitutional Tribunal of 24 June 2008 (Journal of Laws No. 119, item 771).

⁴⁹ Act of 6 December 2008 amending the Act – Labour Code and some other Acts (Journal of Laws of 2009 No. 237, item 1654).

⁵⁰ Act of 19 December 2008 amending the Act on employment promotion and labour market institutions, and amending certain other Acts (Journal of Laws of 2009 No. 6, item 33).

⁵¹ Announcement of the Minister of Labour and Social Policy of 23 December 1997 on publication of a consolidated text of the Act – Labour Code (Journal of Laws of 1998 No. 21, item 94, as amended), hereinafter referred to as the announcement on publication of a consolidated text of the Act – Labour Code.

⁵² Announcement on the publication of a consolidated text of the Act – Labour Code.

⁵³ Announcement on the publication of a consolidated text of the Act – Labour Code.

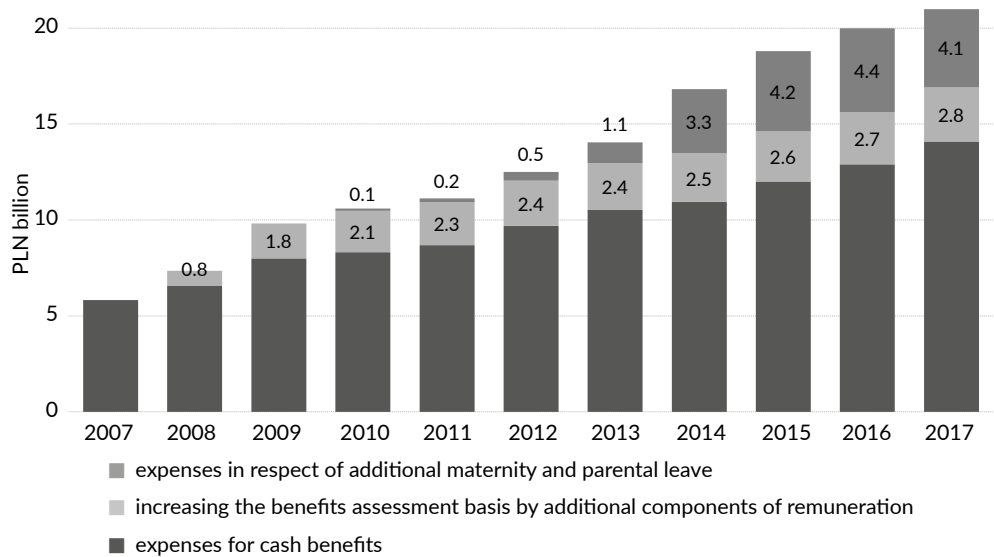
⁵⁴ Act of 28 May 2013 amending the Act – Labour Code and some other Acts (Journal of Laws item 675).

⁵⁵ Act of 15 May 2015 amending the Act on cash social insurance benefits in respect of sickness and maternity and certain other Acts (Journal of Laws item 1066).

9) from 1 January 2016, the additional maternity leave has been included within the parental leave and introduced has been an option of taking advantage of the parental leave of up to 16 weeks until the end of the calendar year in which the child reaches six years of age.⁵⁶

Not all of these changes resulted in a drastic increase in the Sickness Fund expenditure. The most significant changes include an increase in the assessment basis of allowances and other benefits, as well as changes in maternity, paternity and parental leave. Diagram 3 presents the Sickness Fund expenditure with estimated expenses incurred in connection with these changes.

Diagram 3. Sickness Fund expenditure with distinguished expenses resulting from the introduced legal changes (estimated amounts)



Source: own study based on ZUS data

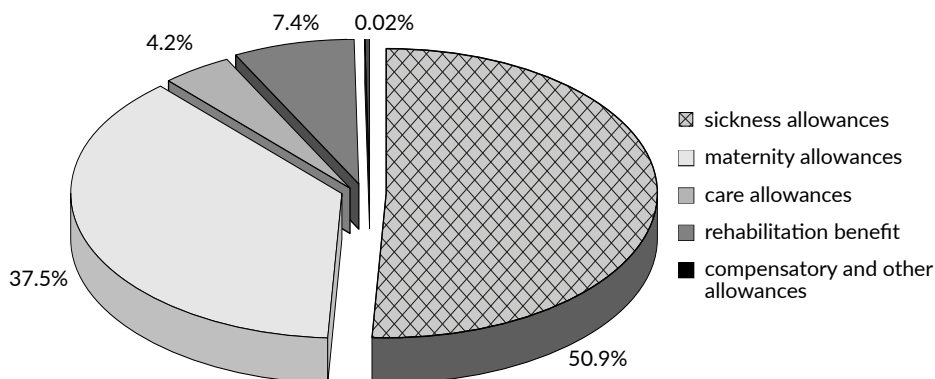
Structure of the Sickness Fund expenditure

Before making a statement of revenues and expenditure of the Sickness Fund and assessing its self-financing, attention should be paid to the Fund’s expenses broken down by individual benefits (Diagram 4). It is worth noting that almost 90% of the Fund’s expenditure is allocated to the payment of sickness allowances and maternity allowances, however, although the share of the mentioned allowances in the total amount of the Fund’s expenditure in each year of the analysed period does not change much, but with introduction of parental leave (from 2014), the share of maternity allowances alone has increased significantly (by about 10%). In the analysed period, care allowances maintained

⁵⁶ Announcement on the publication of consolidated text of the Act – Labour Code.

a level of a 7-8% share in the Sickness Fund expenditure, while the share of rehabilitation benefits ranged from 4 to 5%.

Diagram 4. Structure of the Sickness Fund expenditure in 2017



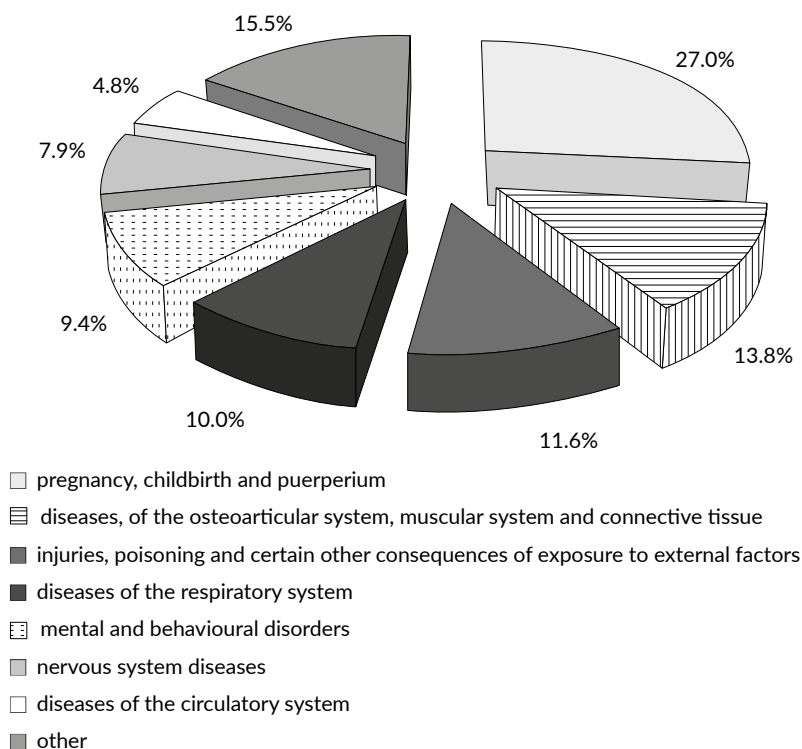
Source: own study based on *Informacja z wykonania planów finansowych FUS, FEP, FRD oraz planu budżetu państwa w części 73 – ZUS za 2017 r.* [Information on the implementation of the financial plans of the Social Insurance Fund, Bridging Pensions Fund, Demographic Reserve Fund and the state budget plan in part 73 – ZUS for 2017], <http://bip.zus.pl/finanse-zus-i-fus/sprawozdania-roczne/informacja-z-wykonania-planow-finansowych-fus-fep-frd-oraz-planu-budzetu-panstwa-w-czesci-73-zus> (online access: 25.10.2019)

As was already mentioned, sickness allowances constitute the largest group of the Fund's expenditure and are paid to insured persons primarily in the event of temporary incapacity for work. Pregnancy, childbirth and puerperium are the dominant "sickness group" in this category – the expenditure in this respect amounted to PLN 4.4 billion⁵⁷ in 2016.⁵⁸ Other places are occupied by such diseases as: diseases of the osteoarticular system, muscular system and connective tissue (PLN 2.2 billion), injuries, poisoning and certain other consequences of exposure to external factors (PLN 1.9 billion), diseases of the respiratory system (PLN 1.6 billion), *etc.* (see Diagram 5). It is worth mentioning that some diseases (*e.g.*, diseases of the osteoarticular system, muscular system and connective tissue or diseases of the nervous system) show a systematic year-on-year increase in terms of days taken off for being sick as a result of the said. In the case of other diseases (*e.g.*, respiratory system diseases) it is difficult to conclude as to the existence of any specific trend.

⁵⁷ Data on expenditure on benefits for specific disease groups come from the study *Wydatki na świadczenia z ubezpieczeń społecznych związane z niezdolnością do pracy 2016 r.* [Expenditure on social insurance benefits related to incapacity for work 2016], compilation E. Karczewicz, A. Kania, Warszawa 2017, <http://www.zus.pl/baza-wiedzy/statystyka/opracowania-tematyczne/wydatki-na-swiaadczenia-z-ubezpiechen-spoecznych-zwiazane-z-niezdolnoscia-do-pracy> (online access: 27.10.2019).

⁵⁸ Data for 2017 as of 31 July 2018 were not yet available.

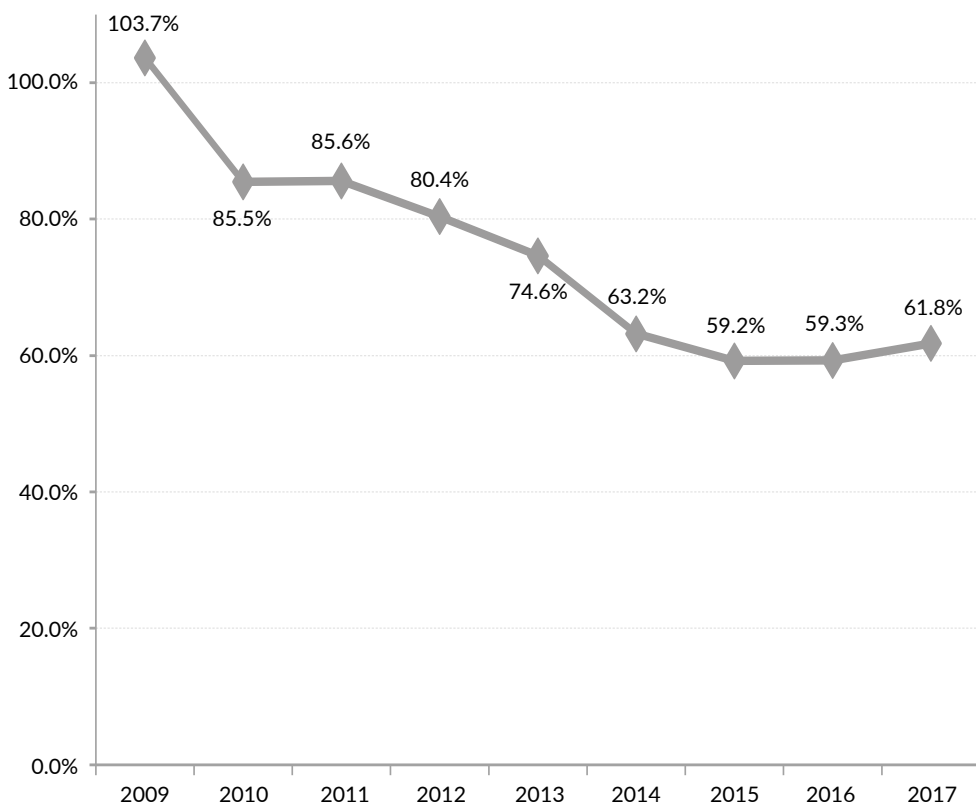
Diagram 5. Structure of expenditure in respect of sickness absenteeism in 2016
(includes expenses financed from the Social Insurance Fund and from enterprises' funds)



Source: own study based on *Wydatki na świadczenia z ubezpieczeń społecznych związane z niezdolnością do pracy 2016 r.* [Expenditure on social insurance benefits related to incapacity for work 2016], compilation E. Karczewicz, A. Kania, <http://www.zus.pl/baza-wiedzy/statystyka/opracowania-tematyczne/wydatki-na-swadczenia-z-ubezpieczen-spoecznych-zwiazane-z-niezdolnoscia-do-pracy> (online access: 25.10.2019)

Analysis of the degree of coverage of fund expenditure by revenues from contributions

In the period under review, only 2009 proved to be the year in which the Fund was self-financing. In subsequent years, the Fund's situation gradually deteriorated – in 2015–2016 its capacity dropped even below 60%. The decreasing level of coverage of expenditure by revenues mainly results from extension of the scope of persons entitled (as described above) in the event of insurance risks materialisation, while maintaining the original rate of the sickness insurance contribution. Fund shortage is covered by the state budget subsidy to the Social Insurance Fund, because, pursuant to Art. 2(3) of the System Act, the state guarantees the solvency of social insurance benefits.

Diagram 6. Sickness Fund performance in the years 2009–2017

Source: own study based on ZUS data

Financing sickness allowance in the social insurance for farmers

Farmers' social insurance is a separate system of social risk protection. The current model was introduced in 1991, *i.e.*, at the beginning of the structural transformation. It was aimed to limit the effects of structural changes in society, including first of all the effects of the implementation of market economy principles within agriculture. Due to the significant fragmentation of agricultural holdings, and thus the limited possibility of bearing social burdens, the legislator has introduced a mixed system of financing farmers' social insurance. Pension insurance is financed from the state budget with a small percentage share of farmers' contributions, paid in a manner characteristic of social protection, and this is an element of the state's agricultural policy. Sickness, accident and maternity insurance is based on a structure typical for social insurance, *i.e.*, on financing short-term benefits from farmers' contributions.

General characteristics of farmers' sickness, accident and maternity insurance

Self-financing is a distinctive feature of farmers' accident, sickness and maternity insurance. The Act of 20 December 1990 on social insurance for farmers⁵⁹ and the statute of the Contribution Fund of Farmers' Social Insurance⁶⁰ do not provide for the possibility of supplementing the Fund's deficit with a state budget subsidy. Pursuant to Art. 77(2) of the Farmers' Social Insurance Act, short-term benefits, with the exception of maternity allowance, are financed from contributions paid to accident, sickness and maternity insurance and from other sources defined in the statute of the Contribution Fund. Pursuant to Art. 3(2) of the statute these are: revenues from the management of acquired real estate and from business activities, *inter alia* consisting in the provision of health care and social assistance services. As an exception, in the event of the Contribution Fund deficit, a loan is taken in the amount necessary to cover the deficit (Art. 77[4] of the Farmers' Social Insurance Act). If it is not possible to repay the loan from the currently accumulated contributions, two options are possible. The first of them is another loan. The second possible option is to increase the sickness, accident and maternity insurance contributions. Pursuant to Art. 8(4) of the Farmers' Social Insurance Act, the President of the Fund announces in the Official Journal of the Republic of Poland "Monitor Polski" the monthly contribution set by the Farmers' Council for one or several subsequent quarters, at least 14 days before the first day of the given quarter. If due to the increase in the contribution some insured persons are not able to pay it or if there are other reasons for doing so, the minister in charge of rural development, at the request of the Farmers' Council, may, by means of a regulation, set a discount in the amount of the contribution, specifying the detailed rules and procedure for its granting.

The amount of sickness allowance for farmers in the context of the Constitutional right to social security

The sickness allowance amount is correlated with the farmers' contribution to short-term insurance. Due to the self-financing of the Contribution Fund,⁶¹ the allowance amount depends on the insured farmers' ability to pay the contribution in a certain amount. The exceptional nature of the construction used in the social insurance for farmers is due to the fact that it is the Farmers' Council (a quasi-self-government of those insured) that adopts a resolution on the amount of the contribution paid in subsequent quarters. For example, the Farmers' Council may increase the contribution, which will result in

⁵⁹ Act of 20 December 1990 on social insurance for farmers (consolidated text: Journal of Laws of 2017, item 2336, as amended), hereinafter: 'The Farmers' Social Insurance Act'.

⁶⁰ Regulation No. 35 of the Minister of Agriculture and Rural Development of 23 December 2008 on the statute of the Contribution Fund of Farmers' Social Insurance (Official Journal of the Ministry of Agriculture and Rural Development No. 30, item 37, as amended).

⁶¹ For more, see J. Wantoch-Rekowski, *System ubezpieczeń społecznych a budżet państwa*, 2014.

a surplus in the Fund, thus allowing for the acquisition of real estate or an increase in benefits, *e.g.*, sickness allowance or a one-off compensation payment. If it is not possible to take a loan or extend it, exceptionally, the Farmers' Council is obliged to set a higher contribution for the subsequent quarter. In the event of a surplus in the Contribution Fund, the Farmers' Council may set a lower contribution than in previous quarters.

The present low contribution rate, affecting the sickness allowance amount, raises doubts. Analysing the sickness allowance evolution, it can be concluded that the primary objective of the legislator was and is to maintain the low level of contributions, which results in the low quality of protection granted to farmers. The contribution to the accident and maternity insurance is determined in a uniform manner for insured persons, irrespective of the area or income of the agricultural holding.⁶² In 2018, the contribution to sickness, accident and maternity insurance amounted to PLN 42.⁶³ Persons entitled only to one-off compensation, pay a contribution of 1/3 of the basic amount. The construction of the flat-rate contribution means that its amount must be determined in a way enabling a farmer covered by compulsory insurance to pay it (it means that it must take into account the economic capacity of the weakest agricultural holdings with an area of 1 conversion hectare to finance the contribution). The uniform contribution means that in sickness and accident insurance, unlike farmers' pension insurance, there is no higher burden imposed on farmers with higher farm areas for the benefit of the smallest agricultural holdings. The introduction of the flat-rate contribution was correlated with sickness allowance, the amount of which does not take into account the farmer's actual lost income. The construction of the flat-rate short-term insurance contribution is a basic barrier to the introduction of differentiated sickness benefits ensuring real protection of the lost income. The sickness allowance amount for each day of incapacity for work in 2018 was PLN 10 (PLN 300 for 30 days of incapacity for work).⁶⁴ It is worth noting that this amount has not changed since 2009.⁶⁵ This means that the allowance amount does not take into account economic factors (*e.g.*, inflation, rising prices or wages). What is more, this amount is lower than the amount determining the minimum subsistence level, and the following analysis of the relationship between the sickness allowance in the Agricultural Social Insurance Fund [Kasa Rolniczego Ubezpieczenia Społecznego, KRUS] and the minimum subsistence level shows the decrease in the level of protection in relation to the poverty level, from which biological degradation of the individual occurs.

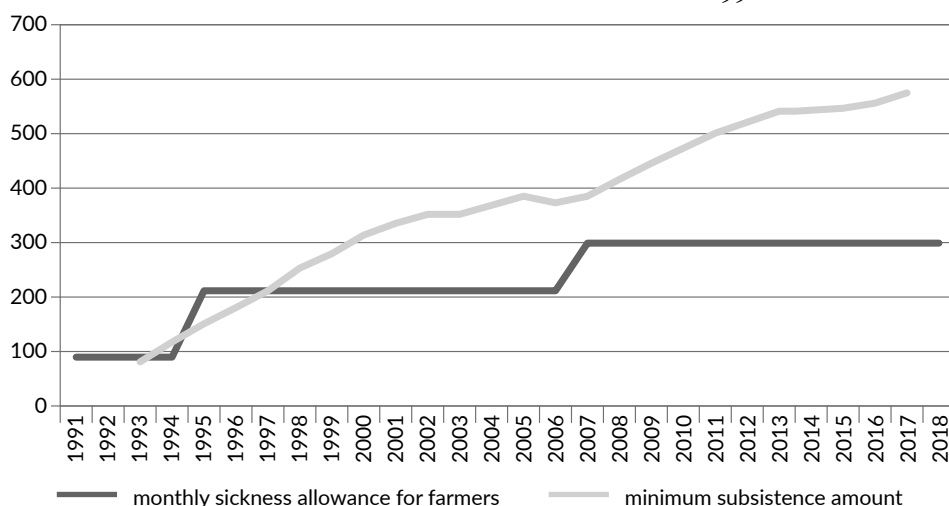
62 In farmers' pension insurance, the amount of the contribution depends on the area of the agricultural holding. Higher contributions are also paid by farmers engaged in non-agricultural business activity.

63 Announcement of the President of the Agricultural Social Insurance Fund of 4 June 2018 on the amount of the monthly contribution for accident, sickness and maternity insurance in the third quarter of 2018 (Official Gazette "Monitor Polski" item 551).

64 Regulation of the Minister of Agriculture and Rural Development of 16 May 2007 on determining the amount of one-off compensation in respect of an accident at agricultural work or agricultural occupational disease and sickness allowance (Journal of Laws of 2015, item 1150, as amended).

65 For more, see E. Jaworska-Spičák, *Zasilek chorobowy dla rolników z perspektywy KRUS*, "Ubezpieczenia w Rolnictwie. Materiały i Studia" 2011, No. 40, p. 85.

Diagram 7. Ratio between the value of the monthly sickness allowance for farmers and the minimum subsistence amount between 1991 and 2018



Source: own study based on data of Institute of Labour and Social Studies [Instytut Pracy i Spraw Socjalnych, IPiSS], *Minimum socjalne i minimum egzystencji*, ed. E. Gimalska, 2013, https://www.ipiss.com.pl/aktualnosci_stale/min%C2%ADi%C2%ADmum-soc%C2%ADjal%C2%ADne-i-min%C2%ADi%C2%ADmum-egzystencji (online access: 25.10.2019) and KRUS, *Wymiar kwartalnych składek*, <https://www.krus.gov.pl/krus/krus-w-liczbach/wymiar-kwartalnych-skladek-na-ubezpieczenie-spoleczne-rolnikow/> (online access: 25.10.2019)

Setting the sickness allowance amount below the minimum subsistence level may also be at odds with the essence of the right to social security as defined in Art. 67(1) of the Constitution. It is emphasised in the subject literature that the prohibition to violate the essence of the right to social security is the impassable limit on any interference with this right.⁶⁶ The legislator (in compliance with the provisions of the Constitution – author’s footnote) is obliged to guarantee a minimum scope of the right to social security corresponding to the Constitutional essence of this right.⁶⁷ In the case law we can find numerous references to the mutual relationship between the insurance benefits amount and the right to social security. In its judgement of 19 December 2012,⁶⁸ the Constitutional Tribunal, while examining compliance with the Constitution of changes to the indexation mechanism, ruled that

the violation of the essence of the right to social security occurs when the legislator determines the amount of benefits below the minimum standard of living, the minimum required for subsistence.

⁶⁶ S. Jarosz-Żukowska, *Komentarz do art. 67 Konstytucji Rzeczypospolitej Polskiej* [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz. Volume II*, ed. L. Garlicki, M. Zubik, Warszawa 2016.

⁶⁷ J. Wantoch-Rekowski, *op. cit.*

⁶⁸ Judgement of the Constitutional Tribunal of 19 December 2012, K 9/12 OTK-A 2012/11/136 (Journal of Laws item 1555).

In turn, in its judgement of 4 November 2015,⁶⁹ while examining the compliance with the Constitution of the provisions governing the payment of pensions from resources accumulated in Open Pension Funds, the Tribunal emphasised that

it is the legislator's obligation to establish and maintain a system that will allow persons incapable of work as a result of old age to receive means enabling their subsistence.

In its judgement of 10 December 2015,⁷⁰ the Court of Appeal in Warsaw emphasised that

the principle of social protection, contained in the aforementioned Art. 67 of the Constitution, requires the regulations governing the social security benefits (specifying, for example, the amount, frequency, indexation, *etc.*) to ensure that the demand for the protection of persons affected by risk is more realistic. Social protection cannot be purely illusory, *e.g.*, due to the low level of benefits.

In turn, the Court of Appeal in Łódź in its judgement of 11 December 2015⁷¹ pointed out that

the statutory regulations must therefore be formed in such a way as to take into account, on the one hand, the existing needs, and on the other hand, the possibility of satisfying them. The limits of these possibilities are defined by other protected Constitutional values.

In accepting the point of view indicated in the case-law, it should be noted that the current amount of sickness allowance for farmers does not ensure a minimum level of protection for insured persons, and thus violates the essence of the right to social security.

Adjustment of the sickness allowance structure to the actual needs of insured farmers

The benefit due to farmers also does not take into account the possibility of substitution for a farmer. In every agricultural holding, the failure to perform specific operations, *e.g.*, necessary spraying or lack of adequate care over livestock during the period of hospitalisation, can substantially reduce the income from a given agricultural holding, and in the event of an incapacity lasting for several months, deprive the holding of income for the subsequent year. For this reason farmers, to ensure the continuity of agricultural production on the holding, either perform work during the period of certified incapacity for work, or make use of informal arrangements, *e.g.*, neighbourhood assistance. It means that there is no legal construction that would

69 Judgement of the Constitutional Tribunal of 4 November 2015, K 1/14 OTK-A 2015/10/163 (Journal of Laws item 1917).

70 Judgement of the Court of Appeal in Warsaw of 10 December 2015, III AUa 2048/14 (LEX No. 2109263).

71 Judgement of the Court of Appeal in Łódź of 11 December 2015, III AUa 1042/15 (LEX No. 1983737).

not only enable the farmer to regain his/her earning capacity (maintenance during the period of incapacity for work or purchase of medicines whose value is often higher than the amount of the allowance), but would also finance the necessary substitution. As emphasised by Ewa Jaworska-Spičák,⁷² in Germany, during the period of a farmer's temporary incapacity for work, agricultural work in his/her holding is performed by persons specially designated to replace him/her during that time. This last proposal could be implemented both under farmers' social insurance and under commercial insurance. The same applies to special branches of agricultural production, where the farmer who is incapable of work takes advantage of the assistance of his/her closest family or has to employ another person who will act as his/her substitute during the period of work incapacity.

Sickness allowance from farmers' social insurance is an exceptional benefit due to the fact it was designed by the legislator as a merger of two benefits existing within the general system: sickness allowance and rehabilitation benefit. As a result, allowance periods in ZUS and KRUS are comparable. The difference is due to the fact that the allowance period in the general insurance is 182 days (26 weeks in accordance with the International Labour Organization (ILO) Convention 102 of 1952), and the same benefit in KRUS is payable for 180 days, without taking into account the period of sickness allowance extension. The sickness allowance is not due for the period of the insured person's stay, at the expense of the Fund, in a health care institution for rehabilitation purposes, after cessation of insurance, as well as during the period of receiving maternity allowance. Exclusion of the right to the benefit in the event of a work incapacity lasting continuously for less than 30 days is questionable in view of the proposal to ensure the feasibility of protection of persons at risk.⁷³ Firstly, such a solution excludes sickness allowance for most diseases (*e.g.*, seasonal infections, minor injuries).⁷⁴ So, the protection covers primarily incapacity for work during pregnancy, the period of recovery and rehabilitation as a result of serious injuries not related to agricultural activity, injuries suffered as a result of an accident at work or an occupational disease. Secondly, the trend of "optimising" the period of sickness appears in agriculture. Being aware that the allowance is granted in the event of an incapacity lasting longer than 30 days, people insured either simulate sickness, or in spite of incapacity cessation, take advantage of medical certificates issued for a period that will enable them to acquire the right to sickness allowance. This problem is also noticeable in general insurance.

⁷² E. Jaworska-Spičák, *op. cit.*, p. 93.

⁷³ The minister in charge of rural development, after consulting the Farmers' Council, may set, by means of a regulation, the amount of the sickness allowance and define those situations in which sickness allowance is granted in the event of an incapacity for work lasting continuously less than 30 days, taking into account the financial condition of the Contribution Fund.

⁷⁴ For more, see D. Puślecki, *Zasilek chorobowy z ubezpieczenia społecznego rolników*, "Ubezpieczenia w Rolnictwie. Materiały i Studia" 2011, No. 39, p. 58.

Proposals

The dilemmas presented give some ground for a number of proposals regarding changes to the guidelines underlying the protection of temporary incapacity for work. Some of them can be found among solutions already employed in the past, others can be introduced from other systems of risk protection, while others have yet to be designed.

Among the previously applied solutions, it is worth mentioning the dependence of the sickness allowance rate on the insurance period, which was introduced under the Act of 1974. People with longer insurance periods should receive sickness allowance set at a higher rate than people with shorter insurance periods. In terms of expenditure on sickness allowances, the 1920 regulation was a practical solution, which ensured the self-financing of benefits from contributions. It would be worth exploring the possibility of setting contributions at a level sufficient to cover expenditure on sickness allowances (see conclusions concerning farmers' insurance). The 1933 solution based on the possibility of introducing periodic restrictions on the duration of the allowance period is also a good option if the number of allowance recipients exceeded a certain ceiling due to mass redundancies. Within the framework of control of sick leaves and their correct use, an interesting solution that could be considered was the introduction of additional sanctions for persons using sick leaves contrary to their intended purpose, *e.g.*, by introducing an additional qualifying period, reducing the sickness allowance rate on the next sick leave, or withdrawing the right to allowance for the first three days on any subsequent sick leave.

At the same time, one should not overlook the issue of deprivation of the right to allowance in the case of work performed during the period of sick leave by a person holding several jobs. The possibility of simultaneous receipt of the sickness allowance and performing a job of work to which this incapacity does not apply is to be considered. When confronting the content of Art. 17(1) of the Allowance Act with the very essence of sickness insurance itself, we should allow the person concerned to perform work if their health condition constitutes an obstacle to them pursuing a completely different profession. To implement this proposal, the legislator should also interfere with the certification of incapacity for work, by introducing an obligation to examine separately the impact of the disease on the ability to perform any work without the possibility of issuing copies of a medical certificate in the event of employment in several places at the same time. And taking into account the realities of the current labour market, and in particular the widespread use of contracts entitling one to voluntary sickness insurance, it is worth considering equalisation and even the shortening of the qualifying period to be covered by this insurance, since commission contracts are generally concluded for a shorter period than are employment contracts.

When assessing the financial situation of the Sickness Fund, it should be noted that the numerous legal changes introduced in the last decade have resulted in a decrease in the Fund's capacity. Introduction of legal regulations resulting in additional benefits for insured persons and the costs incurred in this regard, in such way as not to overlook the need to secure funds for this purpose – is an open question, for discussion primarily among politicians. A very important recommendation to maintain a satisfactory (positive or at least zero) balance for the Sickness Fund is to “tighten up” the sickness allowance system. Activities aimed at detecting and eliminating fraud, such as the introduction of electronic medical certificates (e-ZLAs) or limitation of the basis for the assessment of allowances for persons running a business with a short insurance history, should be continued, and here employing modern analytical tools and methods. It is also worth making comparative analyses between the system of sickness allowances in our country and systems operating in countries where the level of expenditure on these benefits is at a satisfactorily low level, and to look for solutions that could be applied in Poland. An interesting example of relatively low sickness absenteeism is the United Kingdom, where a consistent pro-health policy has been pursued for many years, including financial incentives for employees and employers, education of employers and employees, health prevention, optimisation of access to doctors, promotion of occupational health insurance, safe working conditions, as well as a systematic tightening of the system of sick leaves and allowances.⁷⁵ An analysis of the financial situation of the Sickness Fund shows that measures aimed at improving the balance should be a priority and appropriate steps should be taken as soon as possible to improve the Fund's capacity.

Farmers' sickness insurance requires even more urgent intervention and substantial changes. Self-financing of the Contribution Fund should be considered the greatest asset of the current regulation. The solution whereby the insured persons are obliged to cover the needs of the Fund should remain unchanged, and what is more, it could serve as a model for sickness and accident insurance within the general insurance system. The biggest drawback of the current regulation is the fact that it does not provide the insured persons with basic protection. The low amount of the allowance results in a situation in which some insured persons continue gainful activity, giving up on their benefit. The adopted solution, making the amount of the contribution and benefit independent of the farmer's income, means that for some insured persons, the compensation will amount to a mere few percent of the income lost. The thirty-day period of uninterrupted work incapacity for entitlement to benefits should be also subject to criticism. Exclusion of most sickness events, when incapacity lasts from several to over a dozen days, justifies the thesis that not short-term, but medium- and long-term incapacity for work is covered by insurance. There are also doubts as to the lack of separate regulation in the event

75 J. Gierczyński, *Absencja chorobowa pracujących jako problem ubezpieczeniowy w Polsce i w Wielkiej Brytanii*, “Wiadomości Ubezpieczeniowe” 2014, No. 3.

of accidents at work and occupational diseases. Sickness allowance in the amount of PLN 300 per month means that the insured person one incapable of work will receive a total of PLN 1,800 for a six-month period, which makes it impossible to satisfy even basic needs, while the protection burden is transferred to family members, the local community or the state as a whole.

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1 Wstęp

ARTYKUŁY

- 3 Obywatele Ukrainy w polskim systemie ubezpieczeń społecznych –
Beata Samoraj-Charitonow
-
- 25 Wybrane problemy bezpieczeństwa socjalnego obywateli Ukrainy
w Polsce zapewnianego poza powszechnym systemem ubezpieczeń
społecznych – *Dorota Dzienisiuk*
-
- 39 Sytuacja ekonomiczna Ukraińców w Polsce na przykładzie
województwa opolskiego – *Sabina Kubiciel-Lodzińska*
-
- 59 Problem integracji europejskiej i stosunków z Unią Europejską
w dyskursie publicznym na Ukrainie po rewolucji godności –
Oleksii Polegkyi
-

SPRAWOZDANIA, INFORMACJE, KOMUNIKATY

- 77 Nieformalne stosunki pracy i ich konsekwencje dla pracującej
młodzieży ukraińskiej – *Aleksandra Gayevaya, Ludmila Perevalova*
-
- 95 Realizacja przez Zakład Ubezpieczeń Społecznych polsko-ukraińskiej
umowy o zabezpieczeniu społecznym. Doświadczenia pierwszych lat
stosowania regulacji – *Andrzej Szybkie*
-
- 107 Sprawozdanie z konferencji „Obywatele Ukrainy w polskim systemie
ubezpieczeń społecznych. Aspekty prawne, demograficzne,
ekonomiczne i społeczne” – *Cezary Gołędzinowski*
-
- 119 Wybrane dylematy ubezpieczenia chorobowego: zasiłek chorobowy –
*Danuta Kamińska-Hass, Marcin Krajewski, Katarzyna Mołas,
Karolina Zagozdón*
-

1 Introduction

ARTICLES

-
- 3 Citizens of Ukraine in the Polish social insurance system
Beata Samoraj-Charitonow
-
- 25 Selected problems of social security provided outside the universal social insurance system to Ukrainian citizens residing in Poland
Dorota Dzienisiuk
-
- 39 The economic situation of Ukrainians in Poland on the example of the Opole Voivodeship
Sabina Kubiciel-Lodzińska
-
- 59 The problem of European integration and relations with the European Union in public discourse in Ukraine following the Revolution of Dignity
Oleksii Polegkyi
-

REPORTS, INFORMATION, COMMUNIQUEES

-
- 77 The labor relations of Ukrainian youth
Aleksandra Gayevaya, Ludmila Perevalova
-
- 95 Implementation of the Polish-Ukrainian Agreement on Social Security by the Social Insurance Institution. The experience of the first years of applying this regulation
Andrzej Szybkie
-
- 107 Conference report: "Citizens of Ukraine in the Polish social insurance system. Legal, demographic, economic and social aspects"
Cezary Gołędzinowski
-
- 119 Selected dilemmas of sickness insurance: sickness allowance
Danuta Kamińska-Hass, Marcin Krajewski, Katarzyna Mołas, Karolina Zagozdón
-