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# Social dialogue TOOLKIT

for decent work of migrants  
and refugees in Poland



CASE – Centrum Analiz Społeczno-Ekonomicznych  
CASE – Center for Social and Economic Research

## **“Social dialogue toolkit for decent work of migrants and refugees in Poland”**

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## **MIGRIGHT Project**

The project *MIGRIGHT: Improving social dialogue for decent work of migrants and refugees in Poland* was carried out by the Federation of Polish Entrepreneurs (FPP) as the project leader, the All-Poland Alliance of Trade Unions (OPZZ), Center for Social and Economic Research (CASE) and the Confederation of Norwegian Enterprise (NHO) in 2020–2022. Its objective was to raise the capacity of social partners in Poland to participate in both tripartite and bipartite dialogue through the transfer of best practices and training regarding fostering migrant and refugee workers' rights and ensuring decent working conditions for these groups of workers.

Under the MIGRIGHT project, three expert and consultation meetings were held on the regional level with regard to the situation in Masovia, Lower Silesia and Lublin provinces. They were attended by representatives of organisations participating in social dialogue in Poland, public authorities and other organisations promoting decent work. The meetings did not only serve as a forum for the exchange of opinions, but also helped to determine measures and activities that should and can be undertaken for the improvement of dialogue.

Another activity was four workshop meetings attended by representatives of project partners and other social dialogue institutions, public authorities and non-governmental organisations (NGOs). Participants worked together on a set of guidelines and recommendations regarding co-operation with social dialogue participants.

Representatives of organisations participating in social dialogue in Poland also took part in a study visit to Norway (in a remote form due to pandemic restrictions). Its aim was to become familiar with good practices used in Norway; for this purpose, a series of meetings with social dialogue organisations and public authorities was held. In particular, the participants focused on the possibility of using these practices in Poland.

Results of the aforementioned activities contributed to the preparation of this publication.

The project was supported by Norway through the Norway Grants (2014–2021) under the Social Dialogue – Decent Work programme.

# Foreword

## Why decent work?

According to the most recent data of the International Labour Organisation (ILO), the number of international labour migrants increased from 164 million to 169 million in 2019. This group accounted for one-twentieth of the global labour force and often played an important role in key sectors of economy, such as health care, transport or food processing.

The COVID-19 pandemic highlighted the importance of migrants in economies of target states of migration, also in Poland. At the same time, the pandemic made their situation worse, because it increased the sense of uncertainty in the workplace and underlined even more clearly weaknesses of temporary, informal and unprotected work that is often taken up by this group of persons. Consequently, the issue of decent work returned onto the international agenda. During the annual meeting of the International Monetary Fund (IMF) and the World Bank Group in 2022, Guy Ryder, General Manager of ILO, emphasised the urgent need to support human-centred economic recovery, the foundation of which is decent work.

Meanwhile, because of the persistent high number of COVID-19 cases, higher inflation, Russia's aggression of Ukraine and related financial, fuel and food crises, economic prospects for the year 2022 remain uncertain. We are probably on the brink of another crisis – the crisis of hunger and poverty, which will force further groups of persons to leave the country and look for a job abroad.

The issue of decent work of foreigners should be the subject of public debate also in Poland. Poland has used foreign labour for years. Moreover, it is estimated that 1.5 million persons from Ukraine found shelter in Poland from 24th February 2022, when Russia's aggression of Ukraine began, until the end of May. These were mainly women who – as sole heads of families – had to assume new financial burdens while taking care of children and older relatives. According to government data, 102,000 persons from Ukraine found legal employment till the beginning of May 2022, and nearly half of them did simple jobs. In addition, it is reasonable to assume that many persons decided to work in the informal sector. Are decent working conditions ensured to these persons?

Social dialogue should also seek an answer to this question. The aim of this toolkit is to help social dialogue parties in Poland hold a discussion on the decent work of foreigners and to support the joint elaboration of solutions dedicated to this group of persons. I hope that it fulfils this task.

*Agnieszka Kulesa*

*Vice-President of the Management Board,  
CASE (Center for Social and Economic Research)*



# Introduction

Today Poland is dealing with an unprecedented inflow of migrants and refugees. Within less than a month after the outbreak of the war in Ukraine on 24<sup>th</sup> February 2022, the border with Poland was crossed by over 2 million refugees from that state, who, pursuant to the *Act of 12 March 2022 on assistance to citizens of Ukraine due to a military conflict in the territory of this state* (Journal of Laws 2022 item 583), obtained access to the labour market. However, immigration and refugee status have not been an important subject of public debate in Poland until recently. Policies concerning this phenomenon rarely became a subject of discussion among labour market participants due to the relatively small share of migrants in the Polish labour market until 2014. Thus, the inclusion of migration-related topics in social dialogue is a relatively new phenomenon. It results, on the one hand, from the constantly increasing presence of foreign employees on the Polish labour market and, on the other hand, from the growing demand of employers for their work.

Now we know that, although the growing number of foreign employees on the Polish labour market involves many advantages, the conditions in which some of them work in Poland are not always good. An in-depth discussion on this issue within the scope of social dialogue may prove useful because we believe that the co-operation between social partners is one of the activities that may contribute to ensuring decent work to migrants arriving in Poland. And even if the social dialogue institution has no formal competence with regard to the introduction of certain activities related to migration policy, social dialogue parties and institutions have the adequate tools to initiate relevant discussions or influence the government's proposals.

This was the problem on which the project *MIGRIGHT: Improving social dialogue for decent work of migrants and refugees in Poland* focused. Its ambition was to motivate social partners even more strongly to participate in tripartite and bipartite dialogue in Poland – also through the transfer of good practices from Norway, because it is an example of a state with a richer tradition of social dialogue. *Social dialogue*

*toolkit for decent work of migrants and refugees in Poland* serves as a summary of what has been elaborated during the project. This publication is intended to contribute to the development of a discussion in Poland on the further promotion of social dialogue and the outcomes we want to achieve through this, particularly in the context of the situation of migrants on the labour market.

As an introduction to the topic presented here, Chapter I deals with basic concepts related to social dialogue. It describes social dialogue institutions, the main legal acts regulating this dialogue in Poland, its principles and forms. The starting point for further considerations is a discussion contained in the last section of the chapter, which focuses on the limitations and barriers of effective social dialogue.

During consultation and expert meetings held under the MIGRIGHT project, a few specific problem areas regarding the decent work of migrants emerged. They refer to bureaucratic and lengthy procedures for the legalisation of stay and work, the illegal entrustment and performance of work, forced labour, violations of primary workers' rights and the integration of migrants and refugees on the Polish labour market. These issues are discussed in Chapter II, which deals not only with their specific characteristics, but also possibilities of social dialogue.

Chapter III presents selected good practices applied in Norway with regard to the co-operation of social partners for the purpose of ensuring decent working conditions to migrants and refugees. We start with a short description of social dialogue in Norway and then discuss four case studies, each of which presents an outline of the problem, its solution and evaluation of the results of implementation.

The *Toolkit* ends with a set of four main recommendations for the reinforcement of social dialogue in Poland, the aim of which is to ensure decent working conditions to migrants and refugees. The last chapter

also presents detailed proposals referring directly to problem areas covered by Chapter II.

The contents of this publication are primarily a fruit of co-operation between partners engaged in the project. They are also based on consultations with experts and on opinions expressed by project

participants during three consultation and expert meetings, four workshops and a study visit. The *Toolkit* would not have been created without their active engagement in activities carried out under the project.

## CHAPTER I

# ABC of social dialogue

## 1.1. Concept and goals of social dialogue

The word **dialogue** comes from the Greek *diálogos*<sup>1</sup> (it came into Polish via Latin: *dialogus*) and, according to the dictionary of Polish, means a conversation of at least two persons on a specific topic. Other synonyms are: discussion, conversation, polemic. The term social means: 'referring to society or its part' or 'created by society and being its common property'<sup>2</sup>.

At the first workshop, during the implementation of the MIGRIGHT<sup>3</sup> project, representatives of social partners, state institutions and NGOs acting in the field of migration and refugee issues discussed the concept and goals of dialogue. The most important connotations of workshop participants concerning these issues are presented below.

It must be noticed that **no single accepted definition of social dialogue has been worked out in Poland**. In the field of collective labour agreements and social and economic policy, social dialogue can be regarded as the entirety of mutual relations between trade

unions and employers' organisations, as well as their (bipartite or tripartite) relations with state authorities (the government and its agencies, local government or other state institutions). The subject of social dialogue is the mutual development of professional relations, working conditions, wages, social benefits and other issues of social and economic policy being the subject of interest of all parties and relations between social partners and their mutual obligations. **The dialogue method is a permanent mechanism of reconciliation of opposite interests in social and economic relations**<sup>4</sup>.

1 The noun *logos* means 'word'; the pronoun *diá* means 'through', so *diálogos* means (communication) through words (M. Malinowski, *Dialog [Dialogue]*, 12.07.2021; [www.obcyjezykpolski.pl/emdialog](http://www.obcyjezykpolski.pl/emdialog)). The pronoun *diá* suggests also motion from one point to another, so we can say that 'dialogue means the going-out and return of the word between two or more interlocutors, which means holding a conversation' (Fundacja Opoka, *Znaczenie wyrazu „dialog” [The meaning of 'dialogue']*, 30.01.2017, [www.opoka.org.pl/biblioteka/1/1C/petrus2016\\_dialog\\_01.html](http://www.opoka.org.pl/biblioteka/1/1C/petrus2016_dialog_01.html)); cf. also *Słownik Języka Polskiego [Dictionary of Polish]*, [www.sjp.pl/dialog](http://www.sjp.pl/dialog), (access: 15.06.2022).

2 *Słownik języka polskiego [Dictionary of Polish]*, PWN, [www.sjp.pwn.pl/sjp/spoleczny;2523113.html](http://www.sjp.pwn.pl/sjp/spoleczny;2523113.html), (access: 15.06.2022).

3 The first workshop of the MIGRIGHT project was held on 3<sup>rd</sup> and 4<sup>th</sup> December 2020.

4 Ministry of Family and Social Policy, Department of Social Dialogue and Partnership, *Czym jest dialog społeczny? [What is social dialogue?]*, 20.11.2012, <https://www.gov.pl/web/dialog/czym-jest-dialog-spoeczny>, (access: 15.06.2022).



Currently<sup>5</sup>, social dialogue is a commonly applied term in the field of collective labour agreements in many countries of the world, and it was included in the Treaty of Lisbon and the Treaty of the European Union on the EU level. According to the definition of the **International Labour Organisation**, social dialogue is regarded as all forms of negotiation, consultation and ordinary exchange of information between representatives of the government, employers and employees in issues of social and economic policy. Social dialogue can assume a tripartite form involving the government or a bipartite form in

which only representatives of the labour world and management (or trade unions and employers' organisations) take part. Dialogue can be informal or institutionalised, and it is often a combination of two forms. It can take place on the national, regional or plant level. It can be a cross-industry or sectoral dialogue, or a combination of them<sup>6</sup>.

<sup>5</sup> The publication considers the legal status as on 1<sup>st</sup> April 2022.

<sup>6</sup> International Labour Organization, *Social dialogue*, no data available, [%20%20a](https://www.ilo.org/ifpdial/areas-of-work/social-dialogue/lang-en/index.htm), (access: 15.06.2022).

## 1.2. Legal acts regulating social dialogue in Poland

The primary source of law referring to the idea of social dialogue is the **Constitution of the Republic of Poland**<sup>7</sup>, which recognises social dialogue as one of the constitutional principles of the political system of the Republic of Poland.

'we, the Polish Nation ... establish this Constitution of the Republic of Poland as the basic law for the State, based on respect for freedom and justice, cooperation between the public powers, **social dialogue** as well as on the principle of aiding in the strengthening the powers of citizens and their communities' (*Preamble of the Constitution of the Republic of Poland*)

**Article 12** ensures freedom for the creation and functioning of trades unions, socio-occupational organizations of farmers, societies, citizens' movements, other voluntary associations and foundations.

**Article 20** states that a social market economy, based on the freedom of economic activity, private ownership, and **solidarity, dialogue and cooperation between social partners** shall be the basis of the economic system of the Republic of Poland.

**Article 59** specifies the freedom of association and grants trades unions and employers' organisations the right to bargain and to conclude collective labour agreements and other arrangements. Moreover, it grants trade unions the right to organise strikes and other forms of protest.

According to the case-law of the Constitutional Tribunal, the principle of solidarity, dialogue and co-operation of social partners assumes the concept of the balance of interests of market participants and respect

for their autonomy and creates the **constitutional guarantee of the method of settling disputes by way of negotiation**<sup>8</sup>.

<sup>7</sup> Journal of Laws 1997 No. 78, item 483.

<sup>8</sup> K. Sienkiewicz, *Konstytucyjna zasada dialogu społecznego [The constitutional principle of social dialogue]*, "Prawo dla pracodawcy", 19.01.2015, <https://prawodlapracodawcy.pl/konstytucyjna-zasada-dialogu-spolecznego/>, (access: 15.06.2022).

Individual areas of social dialogue are regulated **in many statutory acts**, the most important of which are:

### 1. Trade Unions Act (1991)<sup>9</sup>

- contains the **definition of the trade union** that is created by a resolution on its establishment passed by at least 10 persons entitled to create trade unions and is subject to the obligation of registration in the National Court Register;
- sets out the principle of independence of a trade union, the principle of equal treatment of all trade unions and the ban on discrimination in employment due to the fact of belonging or not belonging to a trade union;
- sets out the powers of trade unions.

### 2. Employees' Organisations Act (1991)<sup>10</sup>

- contains the definition of the employees' organisation that is created by a resolution on its establishment passed on the founders' assembly by at least 10 employers and is subject to the obligation of registration in the National Court Register;
- sets out the principle of self-governance and independence of an employers' association, a federation or a confederation;
- sets out the powers of a representative organisation of employers.

### 3. Act on Collective Dispute Resolution (1991)<sup>11</sup>

- specifies the subject of collective disputes between employees and the employer that may refer to working conditions, wages, social benefits and the rights and freedom of trade unions;

- specifies methods of collective dispute resolution: negotiations, mediations (their progress and the role of the mediator), arbitration and strikes.

### 4. Act on Informing and Consulting Employees (2006)<sup>12</sup>

- sets out the conditions of informing and consulting employees and the principles of election of an employee council.
- applies to employers conducting business activity and employing at least 50 persons.

### 5. Labour Code Act<sup>13</sup>, Section XI concerning the conclusion of collective labour (plant and supra-plant) agreements.

### 6. Act on the Social Dialogue Council and other social dialogue institutions<sup>14</sup> (2015)

- sets out the goals, tasks, composition, organisations and powers of the Social Dialogue Council and Provincial Social Dialogue Councils<sup>15</sup>.

### 7. Act of 5 April 2002 on European Works Councils<sup>16</sup>

- sets out the rules of creation and functioning of a European works council or the procedure for informing and consulting employees in Community-scale undertakings or groups of undertakings.

### 8. Conventions of the International Labour Organisation ratified by Poland<sup>17</sup>

- **Convention no. 87** (1958) – refers to the freedom of association and the protection of trade union rights, guarantees

<sup>9</sup> *Trade Unions Act of 23 May 1991* (unified text: Journal of Laws 2019, item 263), <http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19910550234/U/D19910234Lj.pdf>, (access: 15.06.2022).

<sup>10</sup> *Employees' Organisations Act of 23 May 1991* (unified text: Journal of Laws 2019, item 1809), <https://eli.gov.pl/api/acts/DU/1991/235/text/U/D19910235Lj.pdf>, (access: 15.06.2022).

<sup>11</sup> *Act of 23 May 1991 on Collective Dispute Resolution* (unified text: Journal of Laws 2020, item 123), <https://eli.gov.pl/api/acts/DU/1991/236/text/U/D19910236Lj.pdf>, (access: 15.06.2022).

<sup>12</sup> *Act of 7 April 2006 on Informing and Consulting Employees* (Journal of Laws 2006 No. 79, item 550; 2008, No. 93, item 584; 2009, No. 97, item 805), <https://eli.gov.pl/api/acts/DU/2006/550/text/U/D20060550Lj.pdf>, (access: 15.06.2022).

<sup>13</sup> *Labour Code Act of 26 June 1974* (Journal of Laws 2020, item 1320, as amended 1), <https://www.pip.gov.pl/pl/f/v/224803/D2020000132001.pdf>, (access: 15.06.2022).

<sup>14</sup> *Act of 24 July 2015 on the Social Dialogue Council and other social dialogue institutions* (Journal of Laws 2015, item 1240).

<sup>15</sup> This was presented more broadly in point 4 of this chapter regarding institutional social dialogue.

<sup>16</sup> *Act of 5 April 2002 on European Works Councils* (Journal of Laws 2019, item 1832).

<sup>17</sup> Ministry of Family and Social Policy, Department of Dialogue and Social Partnership, *Konstytucja RP [Constitution of the Republic of Poland]*, 24.03.2009, <http://dialog.gov.pl/regulacje-prawne/krajowe-akty-prawne/konstytucja-rp/>, (access: 15.06.2022).

employees and employers the right to associate, i.e., to create and join organisations at their own discretion;

- **Convention no. 98** (1958) – refers to the use of rules of organisation and collective bargaining (Journal of Laws 1958 No. 29, item 126) and regulates two different aspects of the freedom of association;

- **Convention no. 144** (1976) – sets out the obligation of institutionalised tripartite consultations between representatives of the government, employers and employees in matters concerning the ILO's activities with regard to work on documents aimed at defining and implementing labour standards.

## 1.3. Parties and levels of social dialogue

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The social dialogue process may involve two parties (bipartite dialogue), three parties (tripartite dialogue) or even more parties (multilateral dialogue)<sup>18</sup>.

**Bipartite** (called also autonomous) **dialogue** is conducted by social partners: trade unions and employers' organisations. Bilateral dialogue usually occurs on the plant level. Most often, however, we deal with **tripartite dialogue** involving three parties:

- **the trade union party**, representing the interests of employees – both members of trade union organisations and other employees of the employer,
- **the employers party**, representing the interests of employers being members of employers' organisations,
- **the central government party**, representing the interests of the state, consisting of representatives of the executive.

If representatives of another type of organisation or institution (e.g., local government, NGOs) take part in the discussion, this is **multilateral dialogue**.

Social dialogue can take place on various levels and, therefore, we can distinguish<sup>19</sup>:

- **international dialogue** – takes place between international organisations of employers and employees, e.g., social dialogue in the European Union that takes place, e.g., via European Economic and Social Committee;
- **domestic dialogue** – is conducted on the central level and implemented via Social Dialogue Council in Poland (tripartite dialogue);
- **industry dialogue** – refers to issues of the specific sector of national economy and is conducted via institutions that are formalised to a different extent – in Poland, most usually via tripartite industry groups (e.g., the Tripartite Industry Group for Airport

<sup>18</sup> Ministry of Family and Social Policy, Department of Social Dialogue and Partnership, *Czym jest dialog społeczny? [What is social dialogue?]*, 20.11.2012, op. cit.

<sup>19</sup> [MonitorowaniePrawa.pl](https://www.monitorowanieprawa.pl), *Czym jest dialog społeczny? [What is social dialogue?]*, no data available, <https://www.monitorowanieprawa.pl/baza/wiedza/sposoby-monitorowania/108-czym-je-st-dialog-spooleczny.html>, (access: 15.06.2022).

Transport and Airport Service or the Tripartite Group for Culture and Media);

- **regional dialogue** – is conducted in a specific region or another unit and refers to the problems of the given area; in Poland, it takes place on the level of provincial social dialogue councils (tripartite dialogue);

- **plant dialogue** – is carried out in the workplace between representatives of employees and the employer, is crucial for the determination of working conditions and wages and the rules prevailing in the specific plant (bipartite dialogue) and takes place without the participation of the central government party or the local government party.

## 1.4. Character and institutions of social dialogue

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Social dialogue can be institutionalised (formal) and non-institutionalised (informal).

### Institutionalised dialogue

Collective negotiations are conducted by institutions, councils or committees specially established for that purpose and operating on the basis of legal acts or adopted agreements. The participation of such institutions is limited to a few most representative trade union organisations and employers' organisations that can have a real influence on behaviours of their members and induce them to comply with the arrangements of the tripartite body<sup>20</sup>.

**The most important social dialogue institutions** in Poland include: the Social Dialogue Council (SDC), Provincial Social Dialogue Councils (PSDC), Tripartite Industry Groups (TIG), the Labour Market Council.

#### – The Social Dialogue Council (SDC)<sup>21</sup>

is the main tripartite dialogue institution on the national level. Established in 2015, it replaced the Tripartite Social and Economic Committee.

Its primary **goals** include, e.g.:

- implementation of the principle of social participation and solidarity with regard to employment relations;
- acting for the improvement of the quality of formulation and implementation of policies and economic and social strategies, as well as the development of social agreement around them by conducting a transparent, substantive and regular dialogue of employees' and employers' organisations and the central government party;
- supporting social dialogue on all levels of local government units.

The Council pursues the above goals, e.g., by:

- expressing opinions and its own position,
- giving opinions on drafts, draft guidelines, bills and draft legal acts,

<sup>20</sup> Ministry of Family and Social Policy, Department of Social Dialogue and Partnership, *Czym jest dialog społeczny? [What is social dialogue?]*, op. cit.

<sup>21</sup> *Act of 24 July 2015 on the Social Dialogue Council and other social dialogue institutions*, op. cit.



- initiating the legislative process according to rules specified in the SDC Act.

**Statutory members of the SDC** are representatives of the central government, representative trade union organisations and representative employers' organisations.

The head of the Council is the chairman, who is alternately a representative of the employees party, the employers party or the central government party. He is appointed by the President of the Republic of Poland and his term lasts one year. His obligations include, e.g., the annual presentation of a report on the Council's activity in the previous year to the Sejm and the Senate and information about the Council's activity for the period of his term.

#### – Provincial Social Dialogue Councils (PSDC)<sup>22</sup>

are regional social dialogue institutions in Poland. Creating and ensuring the functioning of the PSDC is a governmental administration task entrusted to the marshal of the province, who decides to create the PSDC at the request of at least one employers' organisation and at least one employees' organisation. The PSDC is composed of the marshal of the province, representatives of representative trade union organisations, representatives of representative employers' organisations and the head of the province.

The key **competences** of the PSDC include:

- development of its own position and expressing of opinions in matters covered by the scope of tasks of trade unions or employers' organisations falling within the competence of state and local government administration from the territory of the province;
- giving opinions on draft province development strategies and other programmes within the scope covered by tasks of trade

unions and employers' organisations and the preparation of reports on the performance of these tasks;

- consideration of province-range matters that have been submitted by the SDC;
- submission of recommended solutions and legal change proposals to the SDC and public administration bodies;
- consideration of social and economic matters causing a conflict between employers and employees if they are regarded as important for the maintenance of social peace.

#### – Tripartite Industry Groups (TIG)

are institutions of social dialogue on the industry level. The TIG consists of three parties: social partners (trade unions and employers' organisations) representing the industry or sector concerned and representatives of state administration responsible for problems in the industry or sector concerned. Groups operate outside the Social Dialogue Council and deal with problems of industries due to restructuring, progressive privatisation and reorganisation of selected sectors<sup>23</sup>.

#### – The Labour Market Council

is an opinion-making and advisory body for the minister responsible for labour in matters of labour market policy and a decision-making body with regard to the prioritisation of spending funds from the reserve of the National Social Fund.

The Labour Market Council consists of persons appointed by the minister from among representatives of all trade union organisations and representative employers' organisations and one representative of the Joint Commission of the Government and Local Government (the local government party). A permanent representative of NGOs participates in meetings of the Council, too. **Provincial (or county) labour market councils** are opinion-making and advisory bodies of the marshal of the province (or starost) in matters of labour market policy<sup>24</sup>.

<sup>22</sup> Ibidem.

<sup>23</sup> Ministry of Family and Social Policy, Department of Social Dialogue and Partnership, *Czym jest dialog społeczny? [What is social dialogue?]*, op. cit.

<sup>24</sup> *Act of 20 April 2004 on the Promotion of Employment and Labour Market Institutions* (Journal of Laws 2022, item 690).

### Non-institutional dialogue

Can be carried on by concluding collective labour agreements or other collective agreements and consultation and opinion-making processes being the fulfilment of statutory rights of social partner organisations. When carried on due to the threat of social conflicts, it is called **(ad hoc) incidental dialogue**<sup>25</sup>. In such case, it is aimed at solving problems of functioning of the state that are of key importance at the given time and usually ends in the conclusion of an agreement called a pact<sup>26</sup>. It can also take place with the participation of NGOs acting in the public interest and the common good within the scope of civic dialogue.

### Civic dialogue

- **In a broad sense**, social dialogue may encompass also civil dialogue that refers mainly to foundations, associations and other NGOs acting in important social interests and the public interest<sup>27</sup>.
- Relations between social dialogue and civic dialogue are still under discussion, so there is no uniform definition of civic dialogue.

It is not regarded as parallel or complementary towards social dialogue. Its problem area is more varied than in the case of social dialogue. It is also characterised by a lower level of organisation of participants, their dispersion and increasingly weaker institutionalisation of relations with public administration<sup>28</sup>.

- It covers mainly the co-operation between public administration and civic organisations and has become more institutionalised in the last several years.

The rules of this co-operation are regulated by the Act of 24 April 2003 on Public Benefit Activities and Voluntary Work. On its basis, the Council of Public Benefit Activities was created as an opinion-making and advisory body at the Ministry for Labour and Social Policy. In 2010, mechanisms of civic dialogue were reinforced through the introduction of compulsory programs of co-operation between local government units and NGOs, social consultations on acts of local law and co-operation programmes and the possibility of creating public benefit councils on the provincial, county and commune level at the request of NGOs<sup>29</sup>.

25 Ministry of Family and Social Policy, Department of Social Dialogue and Partnership, *Czym jest dialog społeczny? [What is social dialogue?]*, op. cit.

26 R. Towalski, *Nowe otwarcie – nowe szanse dla dialogu [New opening – new opportunities for dialogue]*, in: A. Zybala (ed.), *Polska w dialogu. Tradycje. Zmiany. Porównanie. Perspektywy [Poland in dialogue. Traditions. Changes. Comparison. Prospects]*, Warszawa 2016.

27 Council of Ministers, *Zasady dialogu społecznego. Dokument programowy rządu przyjęty przez Radę Ministrów w dniu 22 października 2002 r. [Rules of social dialogue. The policy paper of the government adopted by the Council of Ministers on 22nd October 2002]*, Warsaw, 22.10.2002.

28 K. Jasiecki, *Sprzężenie między dialogiem społecznym i obywatelskim [Feedback between social and civic dialogue]*, in: A. Zybala (ed.), *Polska w dialogu. Tradycje. Zmiany. Porównanie. Perspektywy [Poland in dialogue. Traditions. Changes. Comparison. Prospects]*, Warszawa 2016.

29 Ibidem.

## 1.5. Rules of social dialogue

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The primary rules of social dialogue that should be followed by all parties to the dialogue at all of its levels are:

- **Independence and balance of dialogue parties**

Employers' and employees' organisations participating in dialogue should be independent of one another and equal before the law. The principle of equal treatment of social partners is derived from the constitutional principle of equality before the law<sup>30</sup>.

- **Trust and compromise**

The parties should express mutual trust and respect and conduct dialogue in good faith. Dialogue should end in a compromise accepted by all involved parties that are ready to comply with agreements reached.

- **Compliance with the law**

Dialogue should concern all matters not regulated unilaterally by the state, and elaborated solutions must be consistent with applicable provisions of law<sup>31</sup>.

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<sup>30</sup> Council of Ministers, *Zasady dialogu społecznego...* [Rules of social dialogue...], op. cit.

However, this principle does not mean that all partners should have equal rights and be treated in an identical manner by public authorities without consideration of legally specified functions that social partners fulfil in public life. Equal rights and obligations concern entities belonging to individual categories of social partners.

<sup>31</sup> Ministry of Family and Social Policy, Department of Social Dialogue and Partnership, *Czym jest dialog społeczny?* [What is social dialogue?], op. cit.

The significance of the above principles, on which every dialogue should be based, was indicated also by participants in the MIGRIGHT project:



In order to reinforce trust between social partners, the workshop participants recommended:



## 1.6. Forms of social dialogue

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The following primary forms of social dialogue are recognised:

- negotiations
- consultations
- giving opinions
- informing

**Negotiations** are the primary method of solving collective disputes between employees and the employer and may refer to working conditions, wages, social benefits and the rights and freedom of trade unions. Their participants are social partners and – on the national level – also the central government party. A majority of negotiations – e.g., concerning wages – take place on the level of plants, and their results are dependent mainly on the power of trade union organisations, including their ability to mobilise efforts<sup>32</sup>. The aim is to reach a compromise that will guarantee social peace. In order to bring about the settlement of the dispute, the employer immediately takes up negotiations and informs the relevant regional labour inspector that a dispute has arisen. Negotiations are concluded by the signature of an agreement by the parties and, in the case of failure to reach agreement, by the preparation of a discrepancy report indicating the positions of the parties<sup>33</sup>. In institutionalised dialogue, collective negotiations are held by councils or commissions established for this purpose.

Participation in collective negotiations is limited to a number of the most representative trade union organisations and employers. Formal agreements constituting a point of reference for collective labour agreements are called base agreements (general agreements). Their arrangements are transferred to lower levels by means of bilateral collective agreements<sup>34</sup>.

The essence of social **consultations** is to learn the perspectives and needs of various actors of social life and to seek together solutions that will help public authorities make decisions fulfilling the principle of the common good to the biggest extent in the given community<sup>35</sup>. On the level of plant dialogue, the conduct of consultations means an exchange of opinions and the undertaking of dialogue between the employer (employing at least 50 persons) and the council of employees. Consultations refer to the number of employees and the employment structure, anticipated changes or activities aimed at maintaining its level and initiatives that can lead to the better organisation of work. They can also refer to forms of employment. It is very important that consultations take place in good faith and with respect for interests of the parties<sup>36</sup>. In civic dialogue, social consultations are one of the forms of civic participation, i.e., the inclusion of citizens in the decision-making process concerning public life. State administration bodies are obliged to consult NGOs about draft legal acts, if the scope of these acts refers to the sphere of statutory activity of the organisation<sup>37</sup>.

32 M. Szymański, *Dialog społeczny w Polsce w opinii przedstawiciela młodego pokolenia. Perspektywa uczestnicząca* [Social dialogue in Poland in the opinion of a representative of the young generation. A participatory perspective], in: K.W. Frieske, I. Zakrzewska, *Dialog społeczny i jego konteksty* [Social dialogue and its contexts], Centrum Partnerstwa Społecznego "Dialog" im. Andrzeja Bączkowskiego, Warszawa 2020.

33 Articles 8 and 9 of the 1991 Act on the Settlement of Collective Disputes, op. cit.

34 R. Towalski, *Nowe otwarcie – nowe szanse dla dialogu* [New opening – new opportunities for dialogue], op. cit.

35 [NGO.pl, Na czym polega współpraca merytoryczna administracji z organizacjami pozarządowymi?](https://poradnik.ngo.pl/na-czym-polega-wspolpraca-merytoryczna-administracji-z-organizacjami-pozarządowymi/) [What is the basis of substantive co-operation between the administration and NGOs?] no available data, [https://poradnik.ngo.pl/na-czym-polega-wspolpraca-merytoryczna-administracji-z-organizacjami-pozarządowymi](https://poradnik.ngo.pl/na-czym-polega-wspolpraca-merytoryczna-administracji-z-organizacjami-pozarządowymi/), (access: 15.06.2022).

36 Article 2 point 2, Article 13 paragraph 1 points 2 and 3, Article 14 paragraph 3 of the Act of 7 April 2016 on Informing and Consulting Employees.

37 Act of 24 April 2003 on Public Benefit Activities and Voluntary Work (Article 5 paragraph 2 point 3).

In the case of **giving opinions**, representatives of state administration take up an initiative in order to become familiar with opinions of trade unions or employers' organisations on the policy of the government. Positions of social partners are not absolutely binding for the government. The rules of giving opinions are usually regulated by provisions of law, which also specify in which matters the government is obliged to obtain an opinion<sup>38</sup>. Trade unions and employers' organisations have the right to give opinions on:

- guidelines for legal acts and draft legal acts within the thematic scope covered by tasks of trade unions or employers' organisations,
- consultation documents and drafts of EU legal acts with regard to matters covered by tasks of trade unions or employers' organisations (representative trade union organisation or employers' organisation).

The elaboration of one's own position and giving opinions on guidelines for draft laws and draft legal acts is one of the main tasks of the Social Dialogue Council and the Provincial Social Dialogue Council.

In a dialogue on the plant level, trade unions, employees' councils and other representative bodies of employees functioning in the given enterprise have the right to **inform**. Informing means providing the council of employees with data in employer-related matters that give insight into the matter<sup>39</sup>. In tripartite dialogue, representatives of state administration provide social partners with information on their own initiative or at the request of parties concerned. The presentation of information does not involve the obligation to hear the position of the party, but in practice it is possible to ask additional questions and hold a short discussion<sup>40</sup>.

## 1.7. Limitations and barriers to effective social dialogue

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In social dialogue, there may be various kinds of limitations and barriers making it difficult, or sometimes even impossible to reach agreement. They have a negative impact on the quality and effectiveness of dialogue.

Systemic, cognitive and communication barriers have been identified on the basis of a study regarding the co-operation of entrepreneurs with the local government administration<sup>41</sup>.

**1. Systemic** barriers include, e.g.:

- legislative barriers in the form of vague legal regulations giving rise to interpretation doubts or their absence;
- an ineffective administration structure characterised, among others, by low efficiency due to technological shortages, an insufficient level of financing or a complicated decision-making process;
- political entanglements occurring mainly on the local level;

38 Ministry of Family and Social Policy, Department of Social Dialogue and Partnership, *Czym jest dialog społeczny? [What is social dialogue?]*, op. cit.

39 *Act of 7 April 2006 on Informing and Consulting Employees.*

40 *Ibidem.*

41 K. Giedrojć, M. Krzyszczok, *Efektywna współpraca administracji i biznesu. Rekomendacje działań [Effective co-operation between administration and businesses. Recommended actions]*, Polska Konfederacja Pracodawców Prywatnych Lewiatan, THINK TANK, 2012.

- the inadequate representation of one of the parties, e.g., a majority of Polish entrepreneurs do not belong to any organisation of employers or chamber of commerce and industry, which makes consultations and dialogue with the business environment more difficult for the administration.

### 2. Cognitive barriers result from such factors as:

- stereotypes and prejudices;
- insufficient preparation of participants for dialogue (shortage of knowledge and experience in conducting dialogue);
- the lack of understanding the rules of mutual activity (e.g., trade union or government organisations do not know and do not understand the rules of business and vice versa).

### 3. Communication barriers include:

- the lack of initiatives or too few initiatives, platforms for the exchange of information, experiences and opinions;
- mutual unwillingness to engage in dialogue;
- weakness of forms of actual dialogue (contacts between the administration and entrepreneurs are superficial because they usually occur at the end of the decision-making process, and the rules of dialogue are determined in advance by officials).

In **institutionalised social dialogue**, common problems for all parties to social dialogue include:

- poor recognisability of the social dialogue institution and its actors,
- the lack of a precise dialogue agenda,
- limited potential of dialogue participants,
- inadequate balance of parties to social dialogue,
- the lack of the base for the dialogue institution,
- violation of the rules of dialogue, including those concerning the course of social consultations,
- the lack of sufficient protection concerning the creation and joining of trade unions<sup>42</sup>.

The aforementioned barriers undoubtedly have a negative impact on the quality and effectiveness of bipartite dialogue in Poland. Its significant problem **seems to lie in the poorly developed system of collective negotiations**, whose regulatory capacities are regarded as minimal<sup>43</sup>.

The scope of use of collective agreements shows the quality of collective negotiations in the given country. Firstly, it depends on the level on which negotiations are held. In countries where negotiations are held on a level encompassing many employers, the range of agreements is the broadest and stable. When the level on which negotiations are held (i.e., in a single enterprise) becomes lower, the scope of impact shrinks. In Poland, negotiations are usually held on the local level or on the enterprise level. Secondly, the high range of negotiations is influenced by the effective use of the mechanism of extension of the collective agreement. In countries where the range of collective agreements is 80% or more, the administrative mechanism of their extension or equivalent institutions are most often used. This means that the agreement applies also to those employers who are not its party or a member of the employers' organisation that signed the agreement. In Poland, **the mechanism of extension of the collective agreement is not used in practice, even though it is legally stipulated (the labour code). In the opinion of trade unions, there is no will to conclude collective agreements and then to extend their provisions onto whole sectors on the part of employers.**

Other factors influencing the low range of negotiations include the weakness of organisation, complicated conditions concerning the termination of the collective agreement, including the "eternity" clause, and the impossibility of using differentiating clauses<sup>44</sup>.

The factors weakening tripartite social dialogue include, e.g.:

- **weakness of the collective negotiation system**

42 M. Szymański, *Dialog społeczny w Polsce w opinii przedstawiciela młodego pokolenia. Perspektywa uczestnicząca* [Social dialogue in Poland in the opinion of a representative of the young generation. A participatory perspective], op. cit.

43 Ibidem, p. 56.

44 Ibidem.



It is one of the fundamental reasons (already mentioned above) for the weakness of social dialogue, including problems of tripartite dialogue. One of the foundations of effective tripartite dialogue is strong bipartite dialogue<sup>45</sup>.

- **non-compliance with the rules of social consultations specified in statutory acts by the central government party**

Social partners complain that consultations are often held in a hurry, with limited time for expressing an opinion or with the omission of this stage, or even the total omission of the governmental procedure through the use of the parliamentary path<sup>46</sup>.

- **the lack of tripartite resolutions passed on the forum of the Social Dialogue Council.**

A vast majority of results of the Social Dialogue Council's works are bipartite resolutions of employers' and employees' organisations. The causative power of joint initiatives of social partners remains limited, because the final decision on the adopted solution proposed to the parliament rests with the central government party, which does not impose obligations on itself, avoiding tripartite resolutions<sup>47</sup>.

- **politicisation of social dialogue**

This phenomenon manifests itself in the transfer of parliamentary and electoral rivalry to tripartite institutions and occurs, among others, in Central and Eastern European states, including Poland. Conflicts arising from this make it impossible to conduct constructive negotiations. Apart from that, the politicisation of social dialogue has a destabilising effect on the possibility of

continuing specific public policies after the election, including compliance with agreements concluded with social partners after the change of the government<sup>48</sup>.

It seems that the biggest barrier to the development of social dialogue lies not in legal regulations, which make it possible for dialogue parties to reach agreement to a lesser or greater extent. However, in the opinion of employers' organisations, the semi-imperative character of the provisions of labour law and the guiding principle of employees' preferential rights discourage employers from conducting negotiations and agreements. Trade unions do not agree with this opinion.

**The most difficult task seems to be a change of the method of thinking about social dialogue and organisations of social partners, as well as a change of the social dialogue culture.**

Therefore, the main challenge is the mutual trust of social partners and the conviction of the causative role of this dialogue. For this purpose, it is necessary to situate social dialogue again in the decision-making process in the state<sup>49</sup>. The **culture and tradition of social dialogue** can largely influence the effectiveness of tripartite institutions. An important obstacle to the effectiveness of these institutions is the culture of protesting against and negating governmental proposals and the dislike for compromise, which can be called the **negative dialogue culture**. Such tradition of social dialogue occurs in Poland. The opposite for the negative dialogue culture is the consensus culture, characterised by the tendency to reach compromise across political divisions and rivalry for members between sister organisations<sup>50</sup>.

45 Ibidem.

46 M. Szymański, *Dialog społeczny w Polsce w opinii przedstawiciela młodego pokolenia...*, [Social dialogue in Poland in the opinion of a representative of the young generation. A participatory perspective], op. cit.

47 Ibidem. In 2015–2019, the Council adopted only two resolutions of all parties.

48 Ibidem.

49 Ibidem.

50 T. G. Grosse, *Od czego zależy jakość dialogu społecznego. Koncepcja modelu państwa administracyjnego i państwa sieciowego na przykładzie instytucji dialogu społecznego* [What the quality of social dialogue depends on. The concept of the model of the administrative state and the network state on the example of social dialogue institutions], Civitas, Warszawa 2017.

The negative dialogue is connected with the 'belief that compromises leading to the conclusion of an agreement are signs of weakness or betrayal of organisational interests. On the other hand, strength is connected with intransigence, the demanding attitude and the spectacular social protest to which government decision-makers yield.' Such culture exists in Poland and results from the tradition of protest against a foreign state established at least since the 18th century. Moreover, in Poland there is a tradition of building civic society not on the principle of co-operation with administration, but in opposition to the state, which is related to a very low level of social trust in state institutions and politicians.

The change consisting in the establishment of the Social Dialogue Council (in place of the Tripartite Economic and Social Commission) may be insufficient to influence the way of thinking about dialogue in general. As some experts suggest, the entire institutional environment needs to be transformed, which would have to go hand in hand with the awareness that **mechanisms of social dialogue can fulfil their role best within the scope of co-ordinated market economy**<sup>51</sup>. The main feature of co-ordinated market economy is the juxtaposition of administration, capital and labour enabled by institutions created for this purpose. By co-operating with social partners, the state interferes in the system of industrial relations. Social partners have a relatively strong position, and collective agreements are concluded on the supra-plant (often national) level. Examples of such solutions should be sought, among others, in Nordic states (see more in Chapter III)<sup>52</sup>.

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51 For more about this, see: P. Ostrowski, *Dialog społeczny w Polsce: dylematy (nie)przystawalności [Social dialogue in Poland: dilemmas of (non-)compatibility]*, in: Anniversary bulletin: 20 years of CPS "Dialog", no. 3/2014, [http://www.cpsdialog.pl/images/KWARTALNIKI/Biuletyn\\_jubileuszowy.pdf](http://www.cpsdialog.pl/images/KWARTALNIKI/Biuletyn_jubileuszowy.pdf), (access: 15.06.2022).

52 Ibidem.

## CHAPTER II

# Selected challenges related to ensuring decent working conditions to migrants and refugees and the role and co-operation of social partners

## 2.1. Concept and areas of decent work

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### 2.1.1. The concept and areas of decent work in the light of international and national documents

The right to decent work is regarded as the fundamental right of every human being. Although there is no uniform definition of decent work, the most important international documents relating to protection of human rights – i.e., the *Universal Declaration of Human Rights* (1948) and the *International Covenant on Economic, Social and Cultural Rights* (1966), ILO conventions, as well as documents on the European and national level – indicate similar areas and factors related to the concept of decent work.

*The Universal Declaration of Human Rights* (Articles 23 and 24)<sup>53</sup> and the *International Covenant on Economic, Social and Cultural Rights* (Article 7) specify the following characteristics of decent work: the right to free choice of employment, just and favourable remuneration ensuring for oneself and one's family an existence worthy of human dignity, the right to form and to join trade unions for the protection of one's interests and the right to rest and leisure.

*The International Covenant on Economic, Social and Cultural Rights* specifies the right to just and favourable conditions of work that consists of: fair wages (i.e., equal remuneration for work of equal value without

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53 *Universal Declaration of Human Rights* of 10 December 1948, <http://www.bb.po.gov.pl/images/Prawa/PNZ/PDPCZ.pdf>, (access: 15.06.2022).

distinction of any kind, particularly with regard to gender), safe and healthy working conditions, equal promotion opportunities, leisure, periodic holidays with pay and remuneration for public holidays<sup>54</sup>.

**Decent work** is defined by the **International Labour Organization (ILO)** as productive work for women and men in conditions of freedom, justice, safety and human dignity. Decent work means opportunities for work that is productive and delivers a fair income, security in the workplace, social protection for employees and their families and better prospects for personal development and social integration.

Moreover, it gives the employee the freedom to organize and participate in the decisions that affect his life and guarantees the equality of opportunity and treatment for all women and men.

On the basis of the above definition, the concept of decent work<sup>55</sup> comprises **four basic pillars**:



<sup>54</sup> *International Covenant on Economic, Social and Cultural Rights* of 19 December 1966 (Journal of Laws of 29 December 1977), (access: 15.06.2022).

<sup>55</sup> For more about this, see: International Labour Organization, *Decent work*, <https://www.ilo.org/global/topics/decent-work/lang-pl/index.htm>, (access: 15.06.2022).

<sup>56</sup> ILO, *Toolkit for Mainstreaming Employment and Decent Work*, 2007, [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---exrel/documents/publication/wcms\\_172609.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---exrel/documents/publication/wcms_172609.pdf), (access: 15.06.2022).

Standards of employees' rights are regulated primarily in eight **fundamental ILO conventions** regarding the elimination of all forms of forced labour (Conventions 29 and 105), effective abolition of child labour (Conventions 138 and 182), elimination of discrimination in employment and occupation (Conventions 100 and 111), freedom of association and effective recognition of the right to collective bargaining (Conventions 87 and 98). Poland has ratified 91 ILO conventions.

The aforementioned goals set out by the ILO were reflected again in the **2030 Agenda for Sustainable Development** adopted at the UN summit in 2015. This document establishes 17 sustainable development goals and related 169 tasks that should be accomplished by 2030. The goal no. 8 is the promotion of sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all people<sup>57</sup>.

The right to decent working conditions is confirmed also by European-level documents, including the *Convention for the Protection of Human Rights and Fundamental Freedoms* (1950), the *European Social Charter* (1961) or the *Charter of Fundamental Rights of the European Union* (2000).

**The European Social Charter** (ratified by Poland in 1997)<sup>58</sup> sets out obligations of the parties with regard to social policy, including full employment, work safety thanks to the high level of protection of employees' rights, the high level of social protection and social cohesion. The first group of rights guaranteed here concerns conditions of employment, such as the right to work, the right to just conditions of work, the right to fair remuneration, non-discrimination in employment, the ban on forced labour, the right to organise, the right to bargain collectively, the right of children and young persons to pro-

tection, maternity protection, the right to vocational guidance and training, the equality of treatment of migrant employees. The second group of rights is related to the ensuring of social cohesion and encompasses, e.g., the right to protection of health, the right to social security and the right to social and medical assistance, the right to benefit from social welfare services, the right of children and young people to protection against physical and moral threats, the right of families to social, legal and economic protection and the right of migrant workers and their families to protection and assistance<sup>59</sup>. The right to **fair remuneration** is exercised by providing workers with a remuneration that will give them and their families a decent standard of living, an increased rate of remuneration for overtime work, equal pay for work of equal value for men and women and a reasonable period of notice for termination of employment<sup>60</sup>.

The scope of rights guaranteed by the **EU Charter of Fundamental Rights**<sup>61</sup> with regard to decent work encompasses, e.g., the freedom to choose an occupation and right to engage in work, workers' right to information and consultation, the right of collective bargaining and action, the right of access to a free placement service, protection in the event of unjustified dismissal, fair and just working conditions (the right to working conditions which respect the worker's health, safety and dignity), the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave, or the prohibition of child labour and protection of young people at work.

57 Ministry of Development, *Agenda 2030 na rzecz zrównoważonego rozwoju – implementacja w Polsce* [2030 Agenda for Sustainable Development – implementation in Poland], no available data, [http://www.un.org.pl/files/170/Agenda2030PL\\_pl-5.pdf](http://www.un.org.pl/files/170/Agenda2030PL_pl-5.pdf), (access: 15.06.2022).

58 *European Social Charter*, <https://lexlege.pl/europejska-karta-spoleczna/>, (access: 15.06.2022).

59 Ministry of Family and Social Policy, *European Social Charter*, 06.05.2020, <https://www.gov.pl/web/rodzina/europejska-karta-spoleczna>, (access: 15.06.2022).

60 Fair remuneration means remuneration accounting for ca. 68% of average remuneration in the country concerned. The exercise of the right to fair remuneration depends on the economic and social situation of the country. When determining its amount, we can take into account the period of employment, the employee's effectiveness or competences. In Poland, the requirement of fair remuneration of the employee is not fulfilled. Minimum remuneration is considered to be fair. Cf. E. Musiałowicz, *Zagadnienie pracy i wynagrodzenia za pracę w Konstytucji RP z 2 kwietnia 1997 r.* [The issue of work and remuneration in the Constitution of the Republic of Poland of 2 April 1997], in: "Przeegląd Prawniczy, Ekonomiczny i Społeczny", 4/2014, pp. 78–88.

61 *The EU Charter of Fundamental Rights, Official Journal of the European Union*, 07.06.2016, (2016/C 202/02), <https://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:12016P/TXT>, (access: 15.06.2022).

In national law, the most important documents relating to decent work is the **Constitution of the Republic of Poland (Chapter II)**<sup>62</sup> and the **Polish Labour Code**<sup>63</sup>, which guarantee fundamental labour rights



#### The right to **fair remuneration**

(the minimum amount of remuneration is determined by the state),

The right to **choose one's work** freely (except for situations when limitations in the choice of work result from statutory requirements)

#### The right to **return to work** after a longer absence at work,

e.g., after unpaid leave, maternity and paternity leaves

#### The right to **holiday and rest**

#### The right to **healthy and safe** working conditions

#### The right to **compensation**

in the case of violation of legal provisions relating to equal treatment and harassment by the employer

#### **Non-discrimination** in the workplace

in respect of sex, age, disability, race, religion, nationality, political belief, trade union membership, ethnic origin, creed, sexual orientation, as well as on grounds of employment for a definite or indefinite period of time, or in full or part-time,

#### The right to **organise**

(to create and join organisations representing workers' interests)

**Equal rights** due to the performance of the same duties, including equal remuneration for the same kind of work,

<sup>62</sup> See footnote 6. <https://www.prezydent.pl/prawo/konstytucja-rp/ii-wolnosci-prawa-i-obowiazki-czlowieka-i-obywatela>, (access: 15.06.2022).

<sup>63</sup> See footnote 12.

### 2.1.2. What is decent work to us?

During the first workshop held under the MIGRIGHT project (on 3<sup>rd</sup> and 4<sup>th</sup> December 2020), representatives of employers' organisations, employees' organisations, state and local government administration bodies and NGOs reflected on how they understand the concept of decent work and what conditions must be fulfilled so that work could be regarded as decent by employees. In the course of the discussion, four contexts of decent work and related associations emerged:

- proper assignment of the workplace and space for employees,
- use of the principle of advantageousness, where social partners determine broader rights for employees than provided for in common minimum standards of decent work (decent work can be interpreted in different ways and, therefore, set a different and higher level of protection than indicated in general legal provisions),
- professional promotion,
- stability of employment,
- proper supervision of working conditions by the state,
- smoothly functioning labour courts,
- clear information regarding rights and obligations at work, compliance with workplace rules accepted by all parties.

## DECENT WORK

### A. legal context ensuring of lawful working conditions

- fair remuneration,
- wages with an adequate level of formal protection,
- proper wages – corresponding to the type of work, additional overtime pay,
- remuneration comparable to wages of other employees in the same or similar job position,
- respect for employees' rights,
- respect for the employee's leisure time, standardised working hours, ensuring of daily and weekly rest,
- granting of holiday leaves and other leaves to which employees are entitled,
- safety at the workplace, OSH training courses,
- social security guaranteed through social insurance,



## B. subjective context

- respect, good treatment,
- personal goods,
- satisfaction with work and the scope of performed tasks,
- professional and personal development opportunities,
- honesty towards the employee, fair treatment by the employer,
- sense of being taken care of, care for the work environment,
- the will to come to work and well-being at work,
- the possibility of being heard and listened to by the employer,
- fulfilment of the employee's expectations.



## C. context of human rights

- equal treatment of employees,
- non-discrimination, prevention of ostracism resulting from differences between employees,
- use of diversity policies,
- drawing the attention of employers to problems of individual minority groups,
- respect for individual and collective rights of employees,
- possibility of reconciling life and work.



## D. context of participation and decision-making in the creation of working conditions

- right of social participation,
- right of association,
- participation in workplace management,
- co-operation with trade unions,
- ensuring the feasibility of tasks assigned to trade unions safeguarding the provision of decent work, including the safety of employment.





However, social reality often differs from what we can find in international and national documents. In the further part of this chapter, we present selected challenges related to ensuring decent working conditions to migrants and refugees. Our analyses focus in particular on the role and co-operation of social partners in efforts to ensure the decent work of migrants. For this reason, the topics brought up by us will be discussed both from the perspective of description of the existing problem and proposals for its solutions and areas of potential or existing co-operation of social partners.

Three regional expert and consultation meetings were held for Masovia, Lower Silesia and Lublin provinces during the MIGRIGHT project. The activities conducted by the Provincial Social Dialogue Councils (PSDC) representing these provinces in 2017–2020 was analysed with regard to issues of employment and the decent work of foreigners in Poland. One of the dominant topics brought up in documents of the PSDC and within the scope of expert & consultation meetings was the problem of bureaucratic and lengthy procedures related to the legalisation of foreigners' stay and work.

## 2.2. Bureaucratic and lengthy procedures for the legalisation of foreigners' stay and work

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### 2.2.1. Description of the problem

Most participants in regional expert and consultation meetings and workshops held under the MIGRIGHT project, particularly representatives of employers' organisations and NGOs, indicated that lengthy procedures regarding the legalisation of foreigners' stay and work are one of the fundamental problems of employers and migrants. This results mainly from the fact that the number of foreigners dynamically increased after 2014, largely due to the undertaking of work in Poland, which led to an increase in the number of applications for legalisation of stay and work in provincial offices (concerning primarily the uniform residence and work permit, including a work permit). The number of employees in office remained on the same level or slightly increased.

Pursuant to Article 35 § 3 of the Code of Administrative Procedure, the handling of a case requiring an investigation should take place not later than within one month, and particularly complex cases should take place not later than within two months from the start date of

the procedure. In practice, however, residence permits or residence and work permits in Poland are issued even after several months in some regions.

The lengthiness of administrative procedures causes many **negative consequences for foreigners** applying for a residence and work permit. The primary consequences include financial problems caused by the lack of employment opportunities and the employer's resignation and withdrawal from the intention to entrust work to a foreigner or the illegal entrustment of such work. Consequently, the **lengthiness of administrative procedures may contribute to an increase of the scale of foreigners' illegal work**. Illegal employment involves violations of employees' rights and the lack of legal protection of migrants. Another negative result of the lengthiness of procedures is the **violation of the right of foreigners to family life and private life**, which is guaranteed by Article 47 of the Constitution of the Republic of Poland and Article 8 of the European Convention of Human Rights. During the procedure, the foreigner must not leave Poland and return to the home country even for a short time, because a stamp in

the passport confirming the submission of an application for a residence permit does not entitle the foreigner to enter the territory of the Republic of Poland again, and applying for a visa is required for this purpose<sup>64</sup>.

The problem of overlengthiness of procedures in foreigners' matters is also indicated by a report of the Supreme Chamber of Control<sup>65</sup>, which presents results of an inspection carried out in 19 entities, including the Office for Foreigners and provincial offices, in 2018. Around 70% of matters were processed in inspected provincial offices in breach of applicable legal provisions<sup>66</sup>. During the inspection, the following **primary reasons for the lengthiness of procedures** were diagnosed:

- human resources insufficient and inadequate to the number and kind of handled matters,
- insufficient funds necessary for the reinforcement of human resources of departments responsible for the service of foreigners,
- the lack of formal customer (foreigner) service rules and procedures and information policy, including rules of communication with foreigners.

In spite of actions undertaken by provincial offices (including the increase of the number of jobs), the situation did not improve in 2019<sup>67</sup>.

In connection with the SARS-CoV-2 virus pandemic, conveniences regarding the legalisation of stay and the performance of work by foreigners in the Republic of Poland were introduced for the period of epidemic threat or status. These conveniences consisted in the pro-

longation of the following under the law until the 30<sup>th</sup> day following the day of cancellation of the epidemic threat/status (i.e., from 14<sup>th</sup> March 2020):

- prolongation of the legal stay of foreigners on the basis of national visas and temporary residence permits that would cease to be valid during the period of the epidemic threat/status – legal residence is prolonged automatically, which does not require a new visa sticker in the passport or the issue of a new residence card; travelling to other states of the Schengen area is not permitted during the prolongation period;
- prolongation of the time-limit for the submission of applications for the legalisation of stay (i.e., for granting a temporary/permanent/long-term residence permit) and for the prolongation of the visa and residence within the scope of visa-free traffic;
- the validity of work permits, seasonal work permits and declarations of entrustment of work to a foreigner that would cease to be valid during the period of the epidemic threat/status.

These solutions were significant due to the temporary suspension of direct customer service by provincial offices and the Office for Foreigners due to the coronavirus epidemic, because foreigners did not have to visit the office in order to obtain new documents. At the end of January 2022, a 60-day time-limit for the arrangement of an administrative case in the first instance and a 90-day time-limit for the consideration of the case by an appeal body were introduced in order to improve residence permit granting procedures<sup>68</sup>.

64 Letter of the Polish Ombudsman of 29<sup>th</sup> December 2020 to the President of the Council of Ministers.

65 Report of the Supreme Chamber of Control, *Przygotowanie administracji publicznej do obsługi cudzoziemców* [Preparation of public administration for the service of foreigners], Warszawa 2019.

66 According to the report of the Supreme Chamber of Control, the longest average duration of procedures for the legalisation of stay and work in 2018 concerned the activity of the Lower Silesian Provincial Office and lasted 328 days (in 2014, it was 66 days).

67 In the Wielkopolska Provincial Office, there were 535 legalisation procedures on the average per one inspector; in the Pomeranian Provincial Office, this number amounted to 686. In the Lower Silesian Provincial Office, the average duration of the procedure increased to 397 days. The average time of consideration of an appeal against the negative decision (of the head of province) by the Office for Foreigners was 419 days. Taking this into consideration, foreigners can wait even above 2 years for the final decision. Cf. "Biuletyn Informacji Publicznej RPO" [Public Information Bulletin of the Ombudsman], *Cudzoziemcy coraz dłużej czekają na legalizację pobytu w Polsce. Adam Bodnar interweniuje u premiera* [Foreigners wait longer for the legalisation of their stay in Poland. Adam Bodnar intervenes with the Prime Minister], 30.12.2020, <https://www.rpo.gov.pl/pl/content/rpo-do-premiera-o-przewleklosci-procedur-wobec-cudzoziemcow>, (access: 15.06.2022).

68 *Act of 17 December 2021 on the amendment of the Foreigners Act and some other acts* (Journal of Laws 2022 item 91; <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20220000091>), (access: 15.06.2022).

## 2.2.2. Proposed solutions

Participants in expert and consultation meetings and workshops under the MIGRIGHT project presented recommendations for the most necessary changes aimed at improving the foreigner employment system that would help reduce the lengthiness of proceedings. Employers and representatives of NGOs<sup>69</sup> indicated mainly the need to **reform the foreigner employment system**<sup>70</sup> to make it more flexible and responsive to the current situation of migrants and the needs of the Polish labour market on the central and regional level.

Suggested solutions:

1. **Increase of employment** in offices legalising foreigners' work (particularly in provincial offices).
2. **Automation and informatisation** of the system of legalisation of foreigners' residence and work, where the system could function fully online without foreigners and employers having to visit offices personally; digitalisation will accelerate procedures and make them transparent and uniform.
3. **Limitation of the number of documents** required in residence and work legalisation procedures, particularly with regard to obtaining a uniform residence and work permit, also in the case of prolongation of the validity of previously granted work permits<sup>71</sup>.

4. **Limitation of the use of the "labour market test"** (the employer's obligation to obtain information from the starost about the lack of possibility of satisfying human resource needs on the basis of registers of unemployed or job-seeking persons or in the case of recruitment organised for the employer), e.g., in the case of all shortage occupations<sup>72</sup>. At the same time, it is worth mentioning that some social partners are sceptical about this solution, because the labour market test is a tool that can prevent social and wage dumping. In their opinion, tests should be reliable and performed efficiently, but they should not be limited or liquidated.

5. **Separation of the migrant-employee relationship with the specific employer** and the introduction of a new flexible form of work permit that would be issued to a foreigner with regard to employment in the given sector, occupation or for the performance of a specific kind of work, thereby making it possible to change the employer and working conditions. Currently all kinds of work permits or residence or work permits are issued in connection with the performance of work for a specific employer. This means that each change of the employer and each change of working conditions (e.g., remuneration, working time, job position, scope of duties) specified in the permit will make it necessary to apply for a new work permit or for a new residence and work permit and, consequently, to institute further administrative proceedings<sup>73</sup>.

69 Association for Legal Intervention, Mój Wybór [My Choice] Association, Ukraina Foundation, Association for the Integration of Multicultural Society, Nomada from Wrocław.

70 According to information passed at one of expert meetings, the Ministry of Family and Social Policy is planning to reform the foreigner employment system, including the better co-ordination of residence and work legalisation procedures, the establishment of one institution responsible for issues of foreigners' work and full digitisation of the system of receiving and handling applications concerning residence and work.

71 Amendments of the *Act of 17 December 2021 on the amendment of the Foreigners Act and some other acts* are aimed at the improvement of procedures for granting temporary residence and work permits to foreigners. They stipulate, e.g., the cancellation of the requirement to submit documents confirming the possession of secured residence (e.g., a lease, lending or property ownership agreement) and a source of stable and regular income sufficient to cover maintenance costs of the foreigner and his dependent family members. On the other hand, according to a new requirement, the amount of remuneration earned by a foreigner must be not lower than minimum, irrespective of the length of working time and the type of legal relationship on the basis of which the foreigner works.

72 According to the document *Polityka migracyjna Polski – diagnoza stanu wyjściowego* [Migration policy: diagnosis of the initial state] (published on 08.01.2021; <https://www.gov.pl/web/mswia/polityka-migracyjna-polski--diagnoza-stanu-wyjsciowego>), exemption from the labour market test was introduced for almost 300 occupations from the middle of 2018. The labour market test has already been liquidated in some cases, e.g., pursuant to Article 88c paragraph 3 of the Act on the Promotion of Employment and Labour Market Institutions (in the case of work permits) and Article 114 paragraph 3 of the Foreigners Act (in the case of a uniform residence and work permit).

73 Pursuant to the *Act of 17 December 2021 on the amendment of the Foreigners Act and some other acts*, the catalogue of circumstances not requiring a change of the existing permit or the issue of a new temporary residence and work permit or a new work permit has been extended. This will be possible in the case of change of the name of the position in which the foreigner works along with maintenance of the scope of his duties and the extension of the working time length along with a proportional increase of remuneration.

6. Introduction of the principle that a **foreigner's work is regarded as legal from the moment of submission of all required documents** regarding the legalisation of work **by the employer** and the signature of relevant agreements with the employee and his registration for social insurance. The receipt of a work permit or a uniform residence and work permit would only confirm the legality of employment that would cease upon the issue of a negative decision. This simplified work legalisation procedure would be unavailable to employers who previously violated applicable provisions of law, including those related to the labour law.

The above proposals were supported also by the Polish Ombudsman, who considers it necessary to adopt a comprehensive and effective approach to the lengthiness of procedures, to take it into consideration on the level of planning the budget policy of the state and to introduce the informatisation of procedures in matters regarding the legalisation of residence and work as a rule<sup>74</sup>.

### 2.2.3. Previous co-operation between social partners

For the purpose of assessing the previous co-operation between social partners, the activity of Provincial Social Dialogue Councils in Masovia, Lower Silesia and Lublin provinces was analysed in view of the fact that expert and consultation meetings were devoted to the situation of foreigners in these three provinces. Documents adopted by some Provincial Social Dialogue Councils indicate that the problem of lengthy procedures in matters of foreigners' residence and work was brought up by social partners to a limited extent within the scope of formal social dialogue structures.

In 2017–2018, the Provincial Social Dialogue Council of the Masovia Province prepared one document<sup>75</sup> in which it referred to the difficult situation in county labour offices having the biggest workload due to the inflow of a very large number of applications for entering statements into records or for seasonal work permits. Labour offices were unable to comply with statutory time-limits for the issue of these documents. In the adopted position, members of the Provincial Social Dialogue Council of the Masovia Province appealed for the introduction of changes making it possible to increase the effectiveness of work of public employment services, including primarily the informatisation of the entire process. In 2020, the Provincial Social Dialogue Council of the Lower Silesia Province worked out one common position<sup>76</sup> in which it appealed for the simplification of the residence and work legalisation procedure for foreigners already staying in Poland due to the COVID-19 epidemic. Social partners proposed the introduction of the possibility of electronic submission of residence applications by foreigners without the foreigner's need to appear personally in the provincial office and the temporary suspension of the obligation to perform the labour market test.

In trying to assess the previous co-operation between social partners within the framework of these social dialogue institutions, we would have to point out the small number of elaborated documents (positions, opinions) regarding the employment of foreigners towards the scale of problems and challenges identified in individual provinces. This situation results from various factors, primarily **barriers to social dialogue** set out in Chapter I, but also the prioritisation of other social or economic issues. In the opinion of some participants of Provincial Social Dialogue Councils, employment issues are handled also by provincial and country labour market councils, with which information is exchanged and co-operation is conducted, mainly with regard to the initiation of employment increase programmes and partnerships.

<sup>74</sup> Letter of the Polish Ombudsman of 29<sup>th</sup> December 2020 to the President of the Council of Ministers.

<sup>75</sup> Position no. 3/18 of 13 June 2018 regarding the change of the foreigner employment procedure applicable from 1 January 2018 under the Act on the Promotion of Employment and Labour Market Institutions.

<sup>76</sup> Position no. 1/2020 of the Presidium of the Provincial Social Dialogue Council of the Lower Silesia Province of 9 April 2020 regarding the legalisation of foreigners' work and stay in connection with the announcement of the epidemic status due to the SARS-CoV-2 virus infection.

One of the reasons for the small number of jointly elaborated documents may be the **low activity of social partners** in reporting problems and challenges faced by foreign workers<sup>77</sup>. In the view of All-Poland Alliance of Trade Unions, the low activity of trade unions may result from limited personnel and financial resources and the low level of their representation in sectors where migrant workers prevail. According to the Federation of Polish Entrepreneurs, we must also remember that foreigners are often perceived as atypical employees, who are employed using flexible forms of work, including placement by temporary employment agencies, and their interests are considered to a smaller extent.

Another obstacle to the effectiveness of pursued dialogue was the **lack of representation of the central government party** at meetings of the Council, which resulted in a delay in the arrangement of the joint document<sup>78</sup>. Participants of expert meetings of the MIGRIGHT project raised the issue of the **lack of representation of social organisations** in works of Provincial Social Dialogue Councils regarding foreigners' issues and suggested considering the possibility

of involving representatives of NGOs in social dialogue under Provincial Social Dialogue Councils<sup>79</sup>.

Another significant barrier that may prevent or hinder social dialogue is the **conflict of interest** existing between the social dialogue parties. During expert meetings and workshops of the MIGRIGHT project, the divergence of interests between the employers party and the employees party and social organisations representing migrants' interests was identified with regard to the **proposal to introduce a new type of permit concerning work in the given sector, profession or the performance of a specific kind of work** instead of a permit concerning work for a specific employer<sup>80</sup>. One of the basic arguments of the employers party against the proposed solution was that the introduction of such a permit would give employees excessive freedom to change the employer even without a justified cause. On the other hand, NGOs supporting migrants perceived this solution as the possibility of changing the employer in the case of violation of fundamental employees' rights by the latter. Representatives of the aforementioned parties raised also other arguments for and against the proposed solution<sup>81</sup>.

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77 Material for discussion for the 1<sup>st</sup> expert and consultation meeting *O godnej pracy migrantów i uchodźców w województwie mazowieckim* [On the decent work of migrants and refugees in the Masovia Province], 26th October 2020.

78 Ibidem.

79 2<sup>nd</sup> expert and consultation meeting *O godnej pracy migrantów i uchodźców w województwie dolnośląskim* [On the decent work of migrants and refugees in the Lower Silesia Province], 14<sup>th</sup> April 2021.

80 Ibidem.

81 Other arguments of the employers party include: exposing the employer to the risk of financial costs and organisational difficulties in the case of sudden resignation from work (due to uncompleted work, loss of orders, ensuring of replacements, engagement of another employee), financial loss connected with "investment" in a migrant employee (e.g., costs of translations, language courses or skill improvement courses) or the lack of predictability and stability of operation of a company where foreigners constitute a significant workforce. On the other hand, according to the employees party, an investment in the employee's development should not be regarded as a loss or an expense. The universality of employment agreements could also be a solution. The arguments expressed by social organisations supporting migrants included the possibility of change of working conditions with the same employer without having to institute a new procedure, the possibility of looking after a new employer in the case of loss of employment or working for a number of employers.

## 2.3. Illegal entrustment of work to foreigners

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### 2.3.1. Description of the problem

The problem of illegal entrustment of work to foreigners may result, to some extent, from the insufficient knowledge of legal provisions by employers and constantly changing and very complicated legal regulations that vary depending on the kind of work or the foreigner's residence status. Moreover, in the case of a majority of changes in working conditions (e.g., the amount of remuneration, job position, working time), the employer (or, in the case of a uniform residence and work permit, the foreigner) should apply for a new permit or a change of the permit. It often happens that the employer employs a foreigner on the assumption that since he already has a visa or a residence and work permit (or a work permit or a statement), this means he can work for every employer. Also, the lengthiness of procedures and the time of waiting for a decision on the legalisation of residence and work often discourage employers from engaging foreigners or result in the illegal employment of the latter<sup>82</sup>. As has already been indicated, excessively complicated procedures as well as the inaction or slowness of offices may contribute to an increase of the scale of the illegal entrustment of work by employers and, consequently, foreigners' illegal work.

It must be noted that the scope of the concept of illegal work entrustment is quite broad, because it encompasses both cases when the foreigner has no relevant documents entitling him to reside or work, when he performs work on other conditions than specified in relevant permits, or when he performs unregistered work (without a written agreement). **Illegal entrustment of work** is defined in Polish law<sup>83</sup> as the entrustment of work to a foreigner:

- not having a valid visa or another document entitling him to stay in the territory of Poland,
- not having a relevant work permit or statement of work entrustment,
- on conditions other than specified in the relevant declaration of entrustment of work to a foreigner, work permit or a temporary residence and work permit (e.g., a smaller number of working hours, lower remuneration or entrustment of work in another position),
- without the conclusion of an employment agreement or a civil law agreement in required form,
- having the basis of residence that excludes the performance of work (e.g., a tourist visa).

It must be remembered that, apart from legal employment (on the basis of a written agreement), a foreigner is also required to have the right of legal residence in Poland. The legal basis allowing employers to employ a foreigner legally is set out in Article 87 of the *Act of 20 April 2004 on the Promotion of Employment and Labour Market Institutions* (e.g., a visa with the right to work, a residence and work permit).

In the further part, there will be a detailed description of legal consequences – both for the employer and for the foreign employee – of the illegal entrustment of work and the illegal performance of work, as well as the scale of this phenomenon based on results of the last in-

82 *Praca nierejestrowana: przyczyny i konsekwencje w cyklu życia. Podręcznik dla trenerów [Unregistered employment: reasons and consequences in the life cycle. Manual for coaches]*, ed. J. Liwiński, Warszawa 2021; available on: [https://case-research.eu/files/?id\\_plik=6668](https://case-research.eu/files/?id_plik=6668).

83 Article 2 paragraph 1 point 22a of the *Act of 20 April 2004 on the Promotion of Employment and Labour Market Institutions* (Journal of Laws 2020, item 1409, 2023, 2369, 2400).

spection by the National Labour Inspectorate and proposed systemic solutions contributing to the limitation of the problem, also as part of co-operation between social partners.

However, it must be remembered that, apart from legal consequences of illegal work (fine, deportation, prohibition of entry into the Schengen area), a foreigner is exposed to a number of other negative consequences of illegal work or work in the informal economy, such as the temporariness (seasonality) of employment, the instability of employment (the risk of sudden loss of the job), the lack of social protection (e.g., in the event of illness or accident at work), the lack of access to free health care, the lack of security for the future (pensions), the lack of possibility of bringing family members to Poland, or even the threat of forced labour<sup>84</sup>.

The entrustment of work to a foreigner involves many **obligations** on the employer's part, **mainly concerning the provision of information**, non-compliance with which may result in civil, administrative or even criminal liability. Most cases of illegal entrustment of work to a foreigner constitute an offence for which the employer may be fined from 1,000 PLN up to 30,000 PLN (Article 1 paragraph 1 of the a/m Act). Another consequence of the illegal employment of a foreigner for the employee will be the refusal to issue new work permits for foreigners (and also the refusal to enter the declaration on entrustment of work to a foreigner into the record of statements). Moreover, the employer is obliged to bear costs of issue and implementation of the decision on the obligation of the foreigner to return (to leave the territory of Poland) if such decision is subject to compulsory implementation<sup>85</sup>.

**Consequences** of the illegal entrustment of work are **borne** not only by employers, but **also foreigners**, who may be liable to:

- a fine (from 20 PLN to 5,000 PLN),<sup>86</sup>

- refusal to grant a residence and work permit (e.g., if the employer has already been lawfully punished for the illegal entrustment of work and, within 2 years after such punishment, was punished for a similar offence again),
- the obligation to leave the territory of Poland and the prohibition of re-entry into the territory of Poland and other states of the Schengen area for a period of 1–3 years<sup>87</sup>.

The responsibility of entities entrusting the performance of work to foreigners is specifically regulated by the **Act of 15 June 2012 on the consequences of the entrustment of work to foreigners staying in the territory of the Republic of Poland contrary to applicable provisions of law**<sup>88</sup>. Entrepreneurs are put under an obligation to request foreigners to present a valid document entitling them to stay in the territory of Poland and to keep a copy of this document for the entire period of work (Articles 2 and 3). Thus, if the entrepreneur fails to notice that the visa of a foreigner ceased to be valid or the foreigner does not have any other valid grounds for stay, the entrepreneur will be fully responsible for the lack of reliable verification of the employee.

The act defines additional prohibited actions related to the entrustment of work to foreigners staying illegally in the territory of Poland. Misdemeanours punishable by a fine or imprisonment include: the employment of many foreigners, the persistent entrustment of work to foreigners in connection with the pursuit of business activity, the employment of a minor (Article 9 paragraph 2). Offences punishable by imprisonment up to 3 years include: the entrustment of work under particularly exploitative working conditions (Article 10) and the employment of a person harmed by the offence referred to in Article 189a § 1 of the *Criminal Code* (offence of human trafficking).

The act provides for the **protection of rights of a foreigner illegally entrusted with work** with regard to the seeking of claims for pay-

84 *Praca nierejestrowana: przyczyny i konsekwencje w cyklu życia. Podręcznik dla trenerów [Unregistered employment: reasons and consequences in the life cycle. Manual for coaches]*, op. cit.

85 Article 337 paragraphs 3 and 3a of the *Foreigners Act of 12 December 2013* (unified text: Journal of Laws 2020, item 35, 2023, 2320, 2369).

86 Article 120 paragraph 2 of the Act of 20 April 2004 on the Promotion of Employment and Labour Market Institutions.

87 Articles 310 and 319.2 of the *Foreigners Act*.

88 *Act of 15 June 2012 on the consequences of the entrustment of work to foreigners staying in the territory of the Republic of Poland contrary to applicable provisions of law* (Journal of Laws 2012, item 769).

ment of overdue remuneration for work. In the case of an employment relationship, it is presumed that this relationship existed for at least 3 months, and in the case of a civil law agreement, it is presumed that the remuneration was agreed upon in three times the amount of minimum remuneration for work (Article 4 paragraphs 1, 2 and 4).

The Border Guard and the National Labour Inspectorate are authorised to check the legality of foreigners' employment. Checking the legality of foreigners' stay in Poland falls within the competence of the Border Guard, the Police and the Customs and Tax Service.

In 2020, labour inspectors performed 4,300 checks of the legality of employment and performance of work by foreigners<sup>89</sup>. **The declaration of illegal work to foreigners was ascertained in 21%** of completed checks<sup>90</sup>. It was found that illegal work had been entrusted to **2,800 foreigners, i.e., almost 15%** out of over 19,300 foreigners from third countries covered by checks. The biggest percentage of illegally employed foreigners comprised persons performing work on the basis of a declaration on the entrustment of work to a foreigner (17.3%)<sup>91</sup>.

**The most frequent violation regarding the legality of employment is the lack of a required work permit** (65% of cases in 2020).

This refers to situations when a foreigner does not have such permit and is not exempt from the obligation to obtain it under separate regulations. It also covers cases when work is provided: 1) before the declaration on the entrustment of work to a foreigner is entered into records, or 2) in favour of an entity other than the one that submitted the statement, or 3) on conditions incompatible with the content of this statement. The performance of work on conditions incompatible with the content of the statement usually concerns: the length of the foreigner's working time (exceeding or non-completion of the

number of hours specified in the statement by foreigners, particularly when work was entrusted on the basis of civil law agreements), the place of work, the kind of agreement concluded with the foreigner (conclusion of a civil law agreement in place of the required employment agreement), the payment of remuneration for work in a lower amount or non-payment of remuneration for completed work<sup>92</sup>.

The biggest number of foreigners entrusted with illegal work was found in entities operating in the following sectors of economy: administration services and support service activities, encompassing also temporary employment agencies (36% of the illegally employed), in the construction sector (25%), in transport and warehouse management (11%) and in industrial processing (9%). In the case of temporary employment agencies, labour inspectors indicate particularly problems regarding the activity of **outsourcing agencies**. These entities often employ a large number of foreigners formally for their own needs; in fact, they have no plants and, in the provision of services to other entities, entrust work to foreigners, e.g., in another province. The use of the outsourcing mechanism constitutes a circumvention of temporary employment regulations in many cases<sup>93</sup>.

Participants in the MIGRIGHT project agree that violations of foreigners' rights, including those resulting in their illegal performance of work, occur more frequently in small enterprises without trade union representatives or when migrants are employed via temporary employment agency or on the basis of outsourcing. A representative of the Regional Labour Inspectorate in Wrocław indicated the **need to improve the regulation of activity and the control of employment and temporary labour agencies, particularly virtual offices** (registered by companies at virtual addresses, often by foreigners themselves, who do not stay in Poland and cannot be contacted directly)<sup>94</sup>.

89 Because of the COVID-19 pandemic, it dropped almost by half towards 2019 (8,400).

90 In 2019 – 20.4%, in 2018 – 18.4%.

91 National Labour Inspectorate, *Sprawozdanie z działalności Państwowej Inspekcji Pracy z 2020 r.* [Report on the activity of the National Labour Inspectorate in 2020], Warszawa 2021, <https://www.pip.gov.pl/pl/f/v/242408/Sprawozdanie%202020.pdf#page=102>, (access: 15.06.2022).

92 Ibidem.

93 Ibidem. Labour inspectors attribute the intensification of the replacement of temporary labour services with outsourcing services to the will to avoid obligations concerning regulated activity based on the provision of employment agency services, including time limitations of temporary employment, the prohibition of entrustment of particularly hazardous work as well as other statutory agency obligations resulting from the Act on the Employment of Temporary Employees and the Act on the Promotion of Employment and Labour Market Institutions.

94 2<sup>nd</sup> expert and consultation meeting *O godnej pracy migrantów i uchodźców w województwie dolnośląskim* [On the decent work of migrants and refugees in the Lower Silesia Province].



The National Labour Inspectorate fulfils tasks related to checking the legality of foreigners' employment in co-operation with heads of provinces, county labour offices and the Social Insurance Institution. If, during a check, the inspector of the National Labour Inspectorate ascertains an offence of illegal work entrustment, he files a request to the court for punishing responsible persons and notifies the relevant head of province and the Border Guard about the violation of the provisions of the Foreigners Act.

During the 2<sup>nd</sup> expert meeting under the MIGRIGHT project, it was highlighted that the foreigner often bears the most severe consequences of the illegal entrustment of work by losing the job and having to leave Poland. Regional labour inspectors should notify the commanding officer of the division of the Border Guard about the revealed fact of illegal entrustment of work by the foreigner, particularly the one that fulfils the premises of obligation of the foreigner to return that are specified in the Foreigners Act<sup>95</sup>. Representatives of NGOs proposed changing this provision in such a way that labour inspectors would not have to report the fact of illegal work to the Border Guard, particularly if the employer is solely guilty of the offence (e.g., when he misled the foreigner, made use of the professional relation or inability to understand the undertaken action properly, thereby causing the foreigner to work illegally).

### 2.3.2. Proposed solutions

Below we present proposed solutions, including those put forward by participants in the MIGRIGHT project, that might help reduce the scale of illegal entrustment of work to foreigners.

1. The preparation of a **comprehensive reform of the foreigner employment system** improving procedures for the legalisation of their stay and work and introducing more flexible solutions. This would, on the one hand, address the changing needs of the labour market and, on the other hand, reduce the risk of poten-

tial violations of employee rights and prevent the illegal entrustment of work to foreigners. It is worth considering, e.g.:

- the introduction of work permits for the given profession or sector in order to give migrants the possibility of changing working conditions or the employer without having to apply for a new work permit;
- a work permit, a uniform residence and work permit or a declaration on the entrustment of work to a foreigner should not contain detailed conditions under which the foreigner may work (e.g., the amount of wages, the kind of agreement, the job position) – currently, during a check of the legality of employment, even very small discrepancies are qualified as illegal employment, but it must also be indicated that, in the case of such solutions, it is important to pay special attention to the prevention of potential abuse through constant monitoring, co-operation and preventive activities of control services;
- the introduction of the protection period for the seeking of a new job in the case of losing a job, e.g., the possibility of further stay on the basis of a special visa.

2. Another proposal from the National Labour Inspectorate is the simplification of the rules of legal employment of foreigners in the territory of Poland, particularly by regulating them in the smallest possible number of legal acts and changing the legal provisions regarding foreigners' working time<sup>96</sup>.

The Federation of Polish Entrepreneurs thinks that there should be the freedom of choice of agreements, but they must be appropriately selected for specific tasks. It is inadmissible to replace the employment agreement with a civil law agreement while retaining conditions of work adequate to employment. However, the existing abuses do not justify limitations in the availability of choice of legal bases of employment, if there is such need resulting from the kind of entrusted tasks, irrespective of whether the employee is a Pole or a foreigner.

95 § 5 paragraph 1 of the *Agreement of the Main Labour Inspector and the Main Commanding Officer of the Border Guard of 10 December 2018 regarding the rules of co-operation of the National Labour Inspectorate and the Border Guard*.

96 National Labour Inspectorate, *Sprawozdanie z działalności Państwowej Inspekcji Pracy z 2020 r.* [Report on the activity of the National Labour Inspectorate in 2020], op. cit.

3. Obtaining financial support for the activity of the National Labour Inspectorate (e.g., to ensure translation services during checks for the purpose of making direct contact with foreigners) and reinforcement of their human resources. Another proposal submitted by representatives of the All-Poland Alliance of Trade Unions is to make it possible for persons not having Polish citizenship to work as a labour inspector (a similar solution functions in Norway).
4. Increasing the preventive activities of the National Labour Inspectorate in order to prevent the illegal employment of foreigners and violations of their labour rights by giving legal advice and information about the legality of employment and the labour law to foreigners and employers.
5. The pursuit of educational-information campaigns by the National Labour Inspectorate in co-operation with social partners and other institutions concerned for the purpose of raising the awareness of employers and employees regarding the rules of employment in compliance with applicable provisions of the labour law<sup>97</sup>. This proposal was particularly highlighted by representatives of the Federation of Polish Entrepreneurs, because frequently changing legal provisions and related interpretation doubts are likely to increase violations of legal regulations.
6. The annulment of the obligation to inform the Border Guard about the illegal performance of work by a foreigner revealed by the National Labour Inspectorate or the introduction of such solution for the purpose of holding the employer responsible, particularly when the employer is solely to blame (e.g., in the case of misleading the foreigner or a suspicion of forced labour). The catalogue of these premises should be clearly specified.
7. The establishment of the obligation to register foreigners for social insurance before allowing them to work and limitation of the possibility of employing foreigners under contracts for specific work that offer the lowest level of protection of working people<sup>98</sup>.
8. The introduction of legal regulations sanctioning the practice of employee outsourcing used for the circumvention of the law, particularly legal provisions concerning temporary work<sup>99</sup>.

### 2.3.3. Previous co-operation between social partners

In 2018, the Provincial Social Dialogue Council of the Masovia Province took up the subject of control activities of labour inspectors regarding the effective verification of the legality of employment of Polish citizens and foreigners. It pointed out the existence of barriers to the effectiveness of checking the legality of employment in the Mazovia Province. One of them concerned **limited possibilities of control of individual farmers** not having the status of an entrepreneur or employer, whose common practice is to employ foreigners under civil law agreements, whereas the second one was the **employment of foreigners by entities registered in virtual offices**, where business activity is not conducted (the registration address of the entity appears only in the National Court Register). In the agreed position, the Provincial Social Dialogue Council recommended the introduction of the obligation to indicate not only the company's registered address, but also its place of business activity, which is connected with the physical location, particularly in production and trade. This postulate has still not been taken into account by the government<sup>100</sup>.

97 Modelled on a nationwide information & educational campaign *Pracuję legalnie [I Work Legally]*, which was addressed to employers and employees and conducted by the National Labour Inspectorate in co-operation with the Social Insurance Company in 2017–2019, [Pracuję legalnie!](http://prawawpracy.pl), no available data, [https://www.prawawpracy.pl/html/kampania\\_info.html](https://www.prawawpracy.pl/html/kampania_info.html), (access: 15.06.2022).

98 National Labour Inspectorate, *Sprawozdanie z działalności Państwowej Inspekcji Pracy z 2020 r.* [Report on the activity of the National Labour Inspectorate in 2020], op. cit.

99 Ibidem.

100 Position no. 4/18 of 13 July 2018 on problems in current control activities of labour inspectors with regard to the effective control of the legality of employment of Polish citizens and foreigners in the Masovia Province. Material for discussion for the 1st expert and consultation meeting under the MIGRIGHT project, 20<sup>th</sup> October 2020.

An example of **good practice** with regard to the co-operation of social partners aimed at the limitation of abuses committed by employment agencies and temporary work agencies (e.g., the illegal entrustment of work) and, consequently, the promotion of decent working conditions, is the **certification program** developed jointly in 2020 by the All-Poland Alliance of Trade Unions as an employees' organisation and the Lewiatan Confederation as an employers' organisation<sup>101</sup>.

The certification program is an innovative project whose idea is to set highest work standards of employment agencies consistent with rules of corporate social responsibility (CSR). The award of the Employee-Friendly Employment Agency certificate means that the given agency has fulfilled high-level criteria with a guarantee of high service level.

In order to obtain such certificate, an agency has to meet a number of requirements, e.g.:

- operate on the Polish market for at least 2 years,
- have no premium and tax payment arrears,
- have no valid court sentence for the violation of employees' rights or due to public-law liabilities,
- have no criminal proceedings related to its activity,
- have a registered office in Poland,
- have relevant regulations,
- be a member of an employment agency organisation or employers' organisation<sup>102</sup>.

Certificates are granted for a period of two years by a jury of six persons<sup>103</sup> on the basis of documents presented by the employment

agency. Evaluation under the certification program encompasses job agency services, temporary work and the employment of foreigners. Certification covers the scope of services actually provided by the given entity. The certificate is granted to employment agencies that have fulfilled the admission criteria and obtained a score of more than 70%.

In 2020, the Federation of Polish Entrepreneurs and the Solidarity Trade Union concluded an agreement on the monitoring of public procurement orders so that funds could not be allocated to companies breaking the law with tacit acceptance from the state and its control institutions that fail to react in a proper way, particularly to the circumvention of the requirement of employing workers under an employment agreement. Social partners proposed that employees performing their tasks be remunerated and employed in accordance with the applicable law in the case of implementation of orders financed by taxpayers.

The illegal entrustment of work to foreigners, due to the far-reaching legal and non-legal consequences for foreign employees and employers, should become the subject of stronger engagement of social partners with regard to the prevention and limitation of the scale of this phenomenon. In particular, the co-operation of social partners would be desirable with regard to the initiation of and lobbying for the aforementioned proposed solutions for the improvement of foreigner residence and work legalisation procedures and the reinforcement of institutional and financial capacities of the National Labour Inspectorate. In addition, social partners could undertake joint actions aimed at raising the awareness of employers and employees regarding the rules of employment in accordance with applicable legal provisions, including the labour law (joint educational-information campaigns in co-operation with other institutions concerned, e.g., the National Labour Inspectorate or the Social Insurance Institution).

<sup>101</sup> [Certyfikacjaagencji.pl](https://www.certyfikacjaagencji.pl/), no data available, <https://www.certyfikacjaagencji.pl/>, (access: 15.06.2022).

<sup>102</sup> Ibidem.

<sup>103</sup> It consists of three experts appointed by the Lewiatan Conference and three experts appointed by the All-Poland Alliance of Trade Unions.

## 2.4. Forced labour

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### 2.4.1. Description of the problem

Human trafficking for forced labour (called modern slavery) is still an important civilisational threat of the 21<sup>st</sup> century in spite of technological development and increasing working standards around the world. According to the definition of the International Labour Organisation<sup>104</sup>, **forced labour or compulsory labour** means any kind of work or service that some person is required to perform under the threat of any penalty and for which the given person has not reported voluntarily. On a global scale, forced labour is the most serious danger for employees of the home service sector (e.g., maids, babysitters) and persons employed in the construction sector, the manufacturing industry, agriculture and fishery<sup>105</sup>.

Official statistical data show the marginal level of this phenomenon in Poland. According to the data of the National Public Prosecutor's Office, the number of victims of human trafficking for forced labour in Poland totalled 101 in 2019 (in 2018, there were 142). However, these data do not reflect the actual scale of the phenomenon, which is very difficult to estimate. According to Global Slavery Index data, around 128,000 persons may have become victims of forced labour in Poland in 2018. The discrepancy between official data and the actual state may result from many factors. A large number of offences remain undetected, because victims of forced labour being migrants often conceal their situation because of shame or fear of consequences that they may face from perpetrators or for fear of deportation if they work illegally. Moreover, in many cases, victims do not realise that their work

bears the hallmarks of forced labour and do not notify any institutions about their situation<sup>106</sup>.

As was agreed upon at the workshop of the MIGRIGHT project, another factor contributing to low statistical data is the inappropriate legal classification of this phenomenon by law enforcement agencies during the conduct of criminal proceedings, which is fostered by the lack of the definition of forced labour. In the Polish Criminal Code, there is only the definition of human trafficking (Article 115 § 22) used for the identification of cases of forced labour. The biggest group of victims of human trafficking comprises persons used for forced labour. Forced labour is often classified as the gross violation of employees' rights. Representatives of judiciary authorities (the police, prosecutors, courts) are insufficiently trained in this respect, and there are few rulings on that subject. Thus, cases are often discontinued or misclassified, which translated into a small number of final judgements for an offence of human trafficking for forced labour. Hence the need to elaborate the definition of forced labour as a separate offence in the criminal code.

A positive tendency is that entrepreneurs perceive the threats of human trafficking and forced labours increasingly often as key business risks that may involve the loss of reputation, business contracts or conflict with the law. However, they often have insufficient knowledge how to recognise cases of forced labour or how to prevent the risk of forced labour with regard to workers employed directly or via subcontractors or temporary labour agencies<sup>107</sup>.

104 Article 2 paragraph 1 of the Convention 29 on Forced or Compulsory Labour adopted in Geneva on 28 June 1930 (Journal of Laws 1959, No. 20, item 122); and pursuant to the 2014 Additional Protocol (Journal of Laws 2017, item 1418).

105 Ministry of Funds and Regional Policy, Polish Institute for Human Rights and Business, *Praca przymusowa. Poradnik: jak ją rozpoznać i jej przeciwdziałać* [Forced labour. Guide: how to recognise and prevent it], Warszawa 2020; <https://pihbr.org/nowa-publicacja-praca-przymusowa-poradnik-jak-ja-rozpoznać-i-jej-przeciwdziałać/>, (access: 15.06.2022).

106 Ibidem.

107 Ibidem.

### 2.4.2. Previous co-operation between social partners

In response to difficulties connected with the recognition and penalisation of forced labour, social organisations engaged in fight against human trafficking and forced labour and the central government party took up the initiative of elaborating the definition of forced labour within the **Working Group on Relations with Persons Providing Work**. The latter is one of the five groups functioning within the Team for Sustainable Development and Corporate Social Responsibility being an auxiliary body of the Minister of Funds and Regional Policy. Its activity was presented during one of the MIGRIGHT workshops as an **example of a good practice of constructive social dialogue**, based on co-operation with a wide group of stakeholders recognising the problem of forced labour from various perspectives and interested in the preparation of joint solutions and tools for the identification and prevention of forced labour. The Group comprised, e.g.,

representatives of NGOs supporting victims of human trafficking, representatives of governmental administration, law enforcement agencies, representatives of employers and employers' organisations, trade unions and representatives of academic circles. It is worth mentioning that the Group was an open and voluntary body, so it could be joined by other entities interested in the issue of forced labour. Co-ordinators of the Group were representatives of the Institute of Business and Human Rights, the Ministry of Justice and the All-Poland Alliance of Trade Unions. Works lasted from 2018 till 2020 and took place online during the pandemic. Formal meetings were held every quarter – altogether, there were 20 meetings of working groups.

The basic arrangements worked out within the Group are: the definition of forced labour, a guide on the identification and prevention of forced labour and the CSR Guide to a *Safe and Sustainable Work Environment*.

According to the definition elaborated by the Group: **forced labour or services** mean the provision of work or services in exploitative conditions that are performed under coercion resulting from violence, a threat, imprisonment or detention, a demand to work off a debt, retention of an identity document, a travel document or a document entitling the foreigner to stay in the territory of Poland, non-payment of remuneration or from another gross violation of employees' rights<sup>108</sup>.

After its adoption by the Group, the definition of forced labour was sent to the Ministry of Justice with recommendation for use in further legislative work.

The guide on the identification and prevention of forced labour contains a set of tools and recommendations that can be used in small and large companies in order to minimise the risk of forced labour. These tools can be used on the level of risk evaluation and prevention, but they will also prove useful in detecting and reacting to this kind of phenomenon. In addition, information leaflets on forced labour have been issued in various languages (Polish, Ukrainian, Russian and

English) to raise the awareness of forced labour and make it easier to report its cases<sup>109</sup>.

The co-operation of so many stakeholders is undoubtedly a very strong point of social dialogue. Apart from that, as some members of the Group notice, it was also a challenge in terms of reconciling various points of view and solving disputable issues. For example, the issue of statistical data concerning victims of human trafficking turned out to be problematic. As opposed to other members of the group, representatives of state administration proposed using official data that did not reflect the actual scale of the phenomenon. In the opinion of employees' organisations (All-Poland Alliance of Trade Un-

<sup>108</sup> Ibidem.

<sup>109</sup> Ibidem.

ions), another challenge was the departure from the essence of the problem, as well as the lengthiness of adopting joint positions and solutions.

**Proposals for further actions of social partners** regarding the identification and prevention of forced labour include:

1. taking actions to implement the results of work of the Working Group on Relations with Persons Providing Work, e.g.:
  - monitoring and initiation of actions for the inclusion of the elaborated definition of forced labour in the Criminal Code,
  - training courses and workshops for representatives of law enforcement agencies (the police, prosecutors, judges) on the identification of cases of forced labour, the promotion of the

guide elaborated by the Group as a tool for the identification and prevention of forced labour.

2. taking actions to increase the knowledge and awareness of employers, social partners and migrants regarding the identification and prevention of forced labour, e.g.:
  - organisation of workshops or meetings for companies, particularly small- and medium-sized enterprises, from industries where the risk of forced labour is the biggest.
  - elaboration of information materials on the central level and their uploading, e.g., onto the website of the ministry responsible for labour (proposals submitted by NGOs and the local government during the 2<sup>nd</sup> expert and consultation meeting),
  - bringing of problems to public attention and popularisation of good practices in the media and via social networks.

## 2.5. Integration of migrants and refugees on the Polish labour market

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### 2.5.1. Description of the problem

The integration of foreigners becomes an increasingly valid issue in Poland, due to a large increase of the number of economic migrants (mainly from Ukraine and Belarus, but also countries of South-Eastern Asia, Central Asia and Southern Caucasus) since 2014 and a growing number of persons seeking international protection from countries affected by military conflicts and civil wars (e.g., Syria, Ukraine, Yemen, Afghanistan) or political persecutions (e.g., Belarus, Tajikistan, Iran).

Although a majority of migrants in Poland work on the basis of a simplified procedure and their migration is usually a short-term and circulatory process, we can also observe on the basis of official statistical

data that every year more and more migrants decide to stay in Poland for a longer time (e.g., on the basis of a residence and work permit) and to settle here (on the basis of a permanent residence permit).

The turning point for further actions aimed at the integration of migrants and refugees is the war in Ukraine that broke out on 24<sup>th</sup> February 2022 and caused over 2 million refugees to cross the Polish border. The war brought challenges regarding the provision of humanitarian aid and integrative support on a scale that Poland had never experienced before. The acceptance of so many refugees poses a serious challenge particularly for the central and local government in terms of providing accommodation, finding an adequate job, access to health services or providing education for children and young people.

Citizens of Ukraine were granted a temporary protection status<sup>110</sup> ensuring the legalisation of stay, assignment of the PESEL number according to simplified rules, cash benefits, free health care, access to the labour market and admission to schools and studies according to simplified rules. Access to the labour market has been made easier for all Ukrainian citizens staying legally in Poland. The only obligation for the employer is to notify the relevant county labour office about the employment of a Ukrainian citizen within 14 days from the start of his/her work. Moreover, citizens of Ukraine may register as unemployed or job-seeking persons and use all forms of help set out in the Act on the Promotion of Employment and Labour Market Institutions (e.g., job agency, vocational training, co-financing of costs of starting their own business, refund of employment, reimbursement of travel and accommodation costs to and from the workplace and a refund of costs of caring for a child under the age of 7 or a dependent person).

Simplified procedures were introduced for the employment of academic teachers, research employees, doctors, dentists, nurses and midwives. Ukrainian citizens are also allowed to conduct business activity according to the same rules that apply to Polish citizens.

In national-level documents, there is **no uniform definition of integration**. According to one of the documents of the Ministry of Labour, Family and Social Policy (responsible for the development of integrative policy in Poland) issued in 2013, 'integration is a complex and dynamic bilateral process engaging both foreigners and the receiving society, the aim of which is the full and equal membership of foreigners in the society of the receiving state. The aim of the integration should be to bring about the possibility of independent functioning of a foreigner in Poland, also on the labour market, and the immigrant's independence of social benefits and assistance'<sup>111</sup>.

The co-operation of public institutions and NGOs under the National Platform of Co-operation for Integration<sup>112</sup> made it possible to distinguish **five basic aspects of foreigners' integration in the public sphere**: the regulated legal status of foreigners' stay, participation in the labour market, social policy, anti-discrimination policy and practices, and participation in public life. They are interrelated, and changes in each of them lead to the reinforcement or weakening of migrants' integration in other areas of life; for example, the legal status of migrants is related to possibilities of their social and economic protection and has an influence on access to public health care. Discrimination can make it impossible for migrants to find a better job and hinder their access to services or prevent their participation in social life<sup>113</sup>.

In spite of a considerable increase of the number of foreigners working in Poland, **no integration policy addressed to economic migrants has been elaborated so far**. According to applicable legislation, only foreigners covered by international protection (who have received the status of refugee or supplementary protection in Poland) and members of their families are entitled to systemic support under an **individual integration programme**. The programme is agreed upon between the county family support centre and the foreigner and specifies the amount, scope and forms of support depending on the life situation of the foreigner and his family and the obligation of both parties. Assistance is granted for a period of maximum 12 months on the basis of the foreigner's application filed to the starost via county family support centre. It encompasses financial support to cover costs of maintenance and Polish language courses and the payment of social insurance premium, social work, specialist (e.g., legal or psychological) counselling, support in contact with labour market institutions, the local environment and NGOs and other necessary ac-

110 Pursuant to the *Act of 12 March 2022 on aid to Ukrainian citizens due to the military conflict in the territory of Ukraine* (Journal of Laws 2022, item 583) implementing the Decision of the EU Council of 4 March 2022 on temporary protection for persons fleeing the territory of Ukraine.

111 The draft document *Polska polityka integracji cudzoziemców – założenia i wytyczne* [Polish foreigner integration policy: assumptions and guidelines] approved by the relevant minister for social protection in 2013. By the decision of the European Committee of the Council of Ministers, this minister is indicated as a body responsible for the co-ordination of Polish foreigner integration policy; <https://archiwum.mriips.gov.pl/archiwum-projekty-aktow-prawnych/archiwum-projekty-programow-i-inne/olskapolitykaintegracjicudzoziemcw-zaoeniaiwytyczne/>, (access: 15.06.2022).

112 The platform was established by the International Organisation for Migration in partnership with the Ministry of the Interior in 2010. Within the scope of its activity, seminars were held, resulting in the elaboration of joint recommendations for the integration policy of Poland.

113 International Organisation for Migration, *Co-operation towards integration. Recommendations for Poland's integration policy*, Warszawa 2012.

tions<sup>114</sup>. Representatives of NGOs and UNHCR emphasise that the one-year period of the programme is not sufficient for refugees to gain a good command of Polish and be prepared for independent living. Moreover, the persons who have received a different form of support (national support), e.g., a tolerated residence permit or a humanitarian residence permit, are not covered by this programme.

The persons who received international protection in Poland, as well as their family members having a residence permit for a specified period, have free access to the labour market and do not need a work permit<sup>115</sup>. This right applies also to persons towards whom the refugee status granting procedure has not ended before the body of first instance upon lapse of 6 months from the submission of the application. These persons may apply to the Head of the Office for Foreigners for the issue of a statement confirming this fact and, on its basis, work without the need to obtain a work permit<sup>116</sup>. However, UNHCR and NGOs emphasise that this solution does not support the integration of refugees, because a large group of them would like to start work earlier than after 6 months from the commencement of the procedure. The lack of such legal possibility often results in the illegal work of persons covered by the ongoing procedure.

The participants in 3<sup>rd</sup> workshop of the MIGRIGHT project<sup>117</sup> pointed out the lack of a cohesive and comprehensive integration strategy on the national level. As they noticed, the attitude to immigration in Poland has stopped at the stage between the perception of foreigners as temporary guestworkers filling in personnel gaps on the Polish labour market and assimilation, i.e., a one-way process assuming their adaptation to life in the receiving state through the adoption of its culture and the abandonment of the culture of their country of origin. However, it must be noticed that there are many different strategies of foreigner integration on the local level developed by local government authorities of larger Polish cities (e.g., Gdańsk, Wrocław, Kraków,

Lublin) in co-operation with social organisations supporting the foreigner integration process.

The participants in the workshop stressed that a **systemic and comprehensive approach to the issue of foreigner integration** would be necessary in Poland. Legal regulations regarding easier access to the labour market focus mainly on migrants from Ukraine and Belarus, which form the biggest group. On the other hand, there is no integration support for migrants and refugees from culturally distant countries, including Arabic-speaking (e.g., Syria, Iraq, Palestine, Egypt) and Asian (India, Bangladesh, Nepal, Pakistan) countries, whose presence becomes increasingly visible in larger cities. The need to **create an integration offer for migrants from culturally distant countries** was indicated also by participants in one of the regional expert & consultation meetings held under the MIGRIGHT project, particularly by employers and representatives of temporary employment agencies<sup>118</sup>.

**The main problems and barriers concerning the integration of foreigners on the labour market** include:

- the lack of regulated legal status of residence of a foreigner (after the end of the visa-free period or the expiration of the visa with the right to work, after the loss of a job, which involves the withdrawal of the work permit and, consequently, the cessation of the premise for legal stay);
- the lack of legal documented employment (a written employment agreement, a civil law agreement);
- the lack of knowledge or insufficient knowledge of Polish as an important barrier in access to employment and in social and economic promotion;

114 Ministry of Family and Social Policy, *Pomoc społeczna dla cudzoziemców. Na jakie wsparcie w Polsce mogą liczyć?* [Social welfare for foreigners. On what support in Poland can they count?], 26.08.2021, <https://www.gov.pl/web/rodzina/pomoc-spoeczna-dla-cudzoziemcow-na-jakie-wsparcie-w-polsce-moga-liczyz>, (access: 15.06.2022).

115 See footnote 23.

116 *Act of 13 June 2003 on the Protection of Foreigners in the Territory of the Republic of Poland* (Journal of Laws 2003 No. 128, item 1176).

117 *The workshop was held on 26th June 2021.*

118 2<sup>nd</sup> expert & consultation meeting *O godnej pracy migrantów i uchodźców w województwie dolnośląskim* [On the decent work of migrants and refugees in the Lower Silesia Province] held on 14<sup>th</sup> April 2021.



- discrimination practices – both at the recruitment and employment stage – mainly due to nationality, colour, religion (experienced in particular by migrants and refugees from culturally diverse countries or following a different religion, e.g., Islam);
- time-consuming and complicated procedures for recognition of foreign diplomas (sometimes even the impossibility of recognition of some diplomas) and migrants' skills;
- work below migrants' qualifications giving no chance for professional promotion and development;
- the lack of mechanisms helping a foreigner to return to the labour market quickly after the loss of a job;
- the limited possibility of use of support from public employment services by foreigners, e.g., with regard to internships or specialist language courses (e.g., due to limitations in the registration of some categories of foreigners as unemployed persons); possibilities of obtaining support in the skill development process are available in county labour offices in the biggest cities and via NGOs in other cities<sup>119</sup>.

### 2.5.2. Proposed solutions

In response to the aforementioned challenges regarding the integration of foreigners on the labour market, we present some proposals of possible solutions and recommendations for the reinforcement of co-operation between social partners in this respect, which were collected also during the implementation of the MIGRIGHT project.

1. The priority is to elaborate a comprehensive and cohesive integration strategy on the national level that includes also the specificity and needs of regions combined with the ideas of immigration policy and challenges of the labour market and considers the needs of various categories of foreigners.

2. It is necessary to create a network of foreigner integration centres, particularly in the regions where most foreigners live and work. The entities engaged in the creation and functioning of centres should include governmental institutions, local government authorities, social partners and NGOs.

The first two pilot **Foreigner Integration Centres** were created in the first quarter of 2022 by the Ministry of Family and Social Policy<sup>120</sup> in Poznań and Opole in partnership with local governments of these provinces. They will conduct integration activities addressed to third party citizens for the purpose of integration with the Polish society. In particular, they should encompass Polish lessons, labour market consultancy, cultural assistance and specialistic (e.g., psychological and legal) advice<sup>121</sup>. It would be desirable if social partners, particularly employers' organisations, were also included in the implementation of integrative actions on the labour market. Along with training institutions and employment agencies, they would participate in the preparation of job offers, the organisation of Polish language course for particular industries and professions and in professional counselling and job agency services.

3. In the case of losing a job, foreigners should have a protection period for seeking a new job (e.g., the possibility of continuing their stay on the basis of a special visa). Such solution would serve as a preventive measure against illegal employment and stay.

119 Department of Analyses and Migration Policy of the Ministry of the Interior and Administration, *Polityka migracyjna Polski – diagnoza stanu wyjściowego [Poland's migration policy: diagnosis of the original state]*, 2020, <https://www.gov.pl/web/mswia/polityka-migracyjna-polski--diagnoza-stanu-wyjsciowego>, (access: 15.06.2022).

120 *Budowanie struktur dla integracji cudzoziemców w Polsce – etap II – pilotaż Centrów Integracji Cudzoziemców [Construction of structures for the integration of foreigners in Poland – Stage 2 – pilotage of Foreigner Integration Centres]*, project co-financed from the National Asylum, Migration and Integration Fund (2017–2020) under the specific goal Integration/Legal Migration (recruitment no. 11-2020/BK-FAMI).

121 Ministry of Family and Social Policy, *Powstana Centrum Integracji Cudzoziemców [Foreigner Integration Centres will come into being]*, 21.10.2021, <https://www.gov.pl/web/rodzina/powstana-centra-integracji-cudzoziemcow>, (access: 15.06.2022). On 21st October 2021, a partner agreement was signed between the Ministry of Family and Social Policy and the Provincial Labour Office in Opole and the Regional Social Policy Centre in Poznań regarding the implementation of the project *Budowanie struktur dla integracji cudzoziemców w Polsce – etap II – pilotaż Centrów Integracji Cudzoziemców [Construction of structures for the integration of foreigners in Poland – Stage 2 – pilotage of Foreigner Integration Centres]* financed from the Asylum, Migration and Intervention Fund.

4. It is important to support the professional development of migrants and their social and economic promotion, e.g., through improvement of procedures for the recognition of foreign diplomas and skills (although this process should not be automatic). It is necessary to engage employers in the creation of these procedures so that they could understand them better. Migrants should have easy access to information about the possibility of recognition of their skills<sup>122</sup>. Simplified procedures would have to be used particularly with regard to the most important groups of highly skilled professions, including medical professions (doctor, dentist, midwife, nurse)<sup>123</sup>.
5. According to recommendations from participants in the MIGRIGHT project, migrants active in social organisations should be included in all forms of co-operation, initiatives and consultations regarding the situation of foreigners on the labour market. They should have the possibility of presenting their opinions, needs and proposals for solutions in matters that concern them directly.

A proposal was also made to invite representatives of organisations supporting migrants and refugees to participate in works of Provincial Social Dialogue Councils with regard to the issue of foreigners on the labour market<sup>124</sup>.

### 2.5.3. Previous co-operation between social partners

Because of the lack of the national integration support system for other groups of foreigners (including economic migrants), integrative

actions are carried out by NGOs in co-operation with bodies of central and local government administration and financed mainly from EU funds – the Asylum, Migration and Integration Fund. These activities include most frequently support in such matters as the legalisation of stay and work, Polish language learning, professional activation and counselling, information campaigns, educational activities addressed to migrants and local communities<sup>125</sup>.

One of the examples of such activities is the co-operation of the Ukraine Foundation with the Lower Silesian Provincial Office under the project *Integracja, adaptacja, akceptacja. Wsparcie obywateli państw trzecich zamieszkałych na Dolnym Śląsku [Integration, adaptation, acceptance. Support for third-country nationals living in Lower Silesia]* (2018–2021). The project was addressed to citizens of third countries staying legally in the territory of Lower Silesia, employers, the education staff and professional groups supporting migrants. Within its scope, an information point for migrants has been created to provide free legal advice concerning the legalisation of stay and work and other information connected with the integration of foreigners (e.g., with regard to job offers, apartment rental, education, health, social issues, establishment of business activity). Since 2020, meetings and training courses have been held for entrepreneurs employing or planning to employ foreigners under the information and educational campaign *Wiem, zatrudniam, zyskuje [I know, I employ, I gain]*<sup>126</sup>.

In the opinion of participants in the MIGRIGHT project, broader co-operation between social partners (entrepreneurs, trade unions, the government) and local government authorities and NGOs is necessary to support the integration of migrants and refugees in Poland. At workshops of the MIGRIGHT project, good practices from Norway were analysed, where an important role in the foreigner integration

122 International Organisation for Migration, *Co-operation towards integration. Recommendations for Poland's integration policy*, op. cit.

123 Department of Analyses and Migration Policy of the Ministry of the Interior and Administration, *Polityka migracyjna Polski – diagnoza stanu wyjściowego [Poland's migration policy: diagnosis of the original state]*, op. cit.

124 2<sup>nd</sup> expert and consultation meeting *O godnej pracy migrantów i uchodźców w województwie dolnośląskim [On the decent work of migrants and refugees in the Lower Silesia Province]* held on 14<sup>th</sup> April 2021.

125 Since 2018, heads of provinces have carried projects under AMIF independently or in co-operation with partners, NGOs, universities and institutions from their territory; Department of Analyses and Migration Policy of the Ministry of the Interior and Administration, *Polityka migracyjna Polski – diagnoza stanu wyjściowego [Poland's migration policy: diagnosis of the original state]*, op. cit.

126 Material for discussion at the meeting *O godnej pracy migrantów i uchodźców w województwie dolnośląskim [On the decent work of migrants and refugees in the Lower Silesia Province]*, Wrocław, 14<sup>th</sup> April 2021.

process is played by social partners, particularly employers and employers' organisations, which put forward a majority of integration-related initiatives and programs<sup>127</sup>.

In Poland, as the participants remarked, social partners in Poland are not active in taking up the issue of foreigners on the labour market in the context of providing them with decent working conditions and supporting integration. Such conclusion can be drawn also from an analysis of documents elaborated by Provincial Social Dialogue Councils of Masovia, Lower Silesia and Lublin Provinces (opinions, positions, minutes of meetings), which indicate that the interest and initiative of social partners (particularly employers' organisations) is limited mainly to issues concerning the acquisition of foreign workers for work and the improvement of foreigner employment procedures.

According to the Federation of Polish Entrepreneurs, the low activity of PSDCs regarding the decent work of foreigners may result from various reasons, e.g., concentration on other priority issues in the field of PSDCs' activity (e.g., concerning support from entrepreneurs during the pandemic period) and the lack of a grassroots initiative from representatives of organisations that, in the FPE's opinion, should be most strongly interested in this subject area, i.e., trade unions or the central government party not bringing up these topics on the forum of PSDCs. There are no obstacles for these topics to be proposed by representatives of social organisations, although they have no formal representation in PSDCs. Moreover, in the FPE's opinion, employers feel the lack of support from the central and local government party regarding the integration of foreigners. They have to organise, on their own, language courses and professional training courses confirming the skills of foreigners who have no proven professional experience. Many activities are dispersed; there is no co-ordination or platform for the exchange of knowledge and good practices. According to information from conversations and meetings with employers in regions, a number of useful and good actions are taken in the form of various initiatives, support programs and strategies. They are, however, insuff-

ciently communicated and distributed. Therefore, the FPE undertook to organise a cycle of regional meetings in order to acquire and share information and to use it for the preparation of a position in foreigner-related matters.

The aspect of financing of foreigner integration costs (e.g., costs of translation of foreigners' documentation, Polish language courses, orientation courses, workshops on discrimination and forced labour for co-workers and employers) was also discussed at the expert & consultation meeting regarding the Lower Silesia Province. Representatives of the employers party thought that costs of foreigners' integration cannot be borne only by employers<sup>128</sup>. According to them, local government authorities and NGOs should support employers and influence the central government to ensure political and legal conditions for the more effective integration of foreigners.

In connection with the massive influx of Ukrainian citizens caused by the outbreak of the war on 24<sup>th</sup> February 2022, social partners engaged spontaneously in humanitarian aid and integrative activities on the labour market. One of the examples can be the co-operation of the Federation of Polish Entrepreneurs with the Aktywizacja Bez Granic [Activation Without Borders] Foundation – these organisations jointly implement an occupational integration program ensuring practical aid to refugees in finding a job in Poland. For this purpose, the FPE launched also a special infoline for job seekers<sup>129</sup> that organises accommodation, provides material and psychological aid and supports daily care for children. In its position, the FPE favourably evaluated legislative solutions regarding aid to refugees from Ukraine, particularly the opening of access to the Polish labour market without unnecessary formal requirements. Many other organisations also engaged in joint activities: Employers of the Republic of Poland, Corporate Connections, BNI Polska, the Polish Business Roundtable, the Lewiatan Confederation, Business Centre Club Employers' Association and the Polish–Ukrainian Chamber of Commerce. Associated organisations provide accommodation, transport, legal support, translations

127 Good practices from Norway are presented in Chapter III.

128 It must be remembered, however, that a work permit, a seasonal permit or a declaration on the entrustment of work to a foreigner are issued for the purpose of working for a specific employer. The employers' postulate would be justified if employers agreed to the proposal for the introduction of work permits in the given sector or profession.

129 Federation of Polish Entrepreneurs, <https://www.federacja.przedsiębiorcow.pl/>, (access: 15.06.2022).

for refugees and companies that can offer jobs. Employers' organisations encourage entrepreneurs to report free jobs, particularly for women, and offer help in the completion of all formalities concerning the employer's contact with an employee. Job offer databases contain job offers for seamstresses, programmers, contact centre employees for the service of customers in Ukrainian, in catering and hotel trade. A reception point was created at the border in Przemyśl. In the same place, the Personnel Service recruitment bus is stationed to provide Ukrainian citizens with detailed information in Ukrainian regarding the labour market, employment procedures and job offers. A round-the-clock infoline in Ukrainian and Polish has also been launched<sup>130</sup>.

Since the beginning of the war in Ukraine, the All-Poland Alliance of Trade Unions has run an information-consultation point and psychological support (with an infoline) for refugees from Ukraine in Ukrainian and Polish. Holiday resorts belonging to the All-Poland Alliance of Trade Unions and the Polish Teachers' Union accepted refugees, offering them accommodation and round-the-clock meals. On the basis of the agreement with the Federation of Trade Unions of Ukraine, thanks to funds raised on a special account, the All-Poland Alliance of Trade Unions donated material aid for refugees staying in western Ukraine. The All-Poland Alliance of Trade Unions co-ordinated also the provision of material aid from trade unions from Spain and Italy. In addition, the *Unions Help Refugees* campaign has been launched in social media<sup>131</sup>.

In the FPE's opinion, although new laws and regulations provide broad access to the Polish labour market for refugees, there are no concrete incentives to create additional jobs, which is very significant in the context of a large number of people flowing into Poland. Thanks to the general availability of jobs, refugees would not be dependent only on social support, and the high level of employment among them would support the state budget and public finance with additional receipts from premiums and taxes, which would be important due to the huge costs of aid activities. Therefore, it would

be reasonable to extend incentives for employment, e.g., in the sector of care services, both in childcare and in caring for dependent elderly persons and persons with disabilities. These incentives would be in the form of tax preference and extension of the scope of possibilities of employing these persons on the basis of activation agreements under which the budget of the state finances the premiums of the employed to the level of 50% of minimum wage (as in the case of Polish employees), with the reduction of non-wage labour costs. All preferential solutions should be identical towards Polish and Ukrainian employees to avoid the formation of divisions. It is also necessary to provide proper institutional care to Ukrainian children. This is of key importance from the perspective of making social and professional activity possible for their parents, mainly mothers. The new adopted regulations make it easier to create special nurseries and children's clubs. These conveniences, however, are reduced to the relaxation of requirements regarding accommodation and the number of children per one caregiver. However, the relatively high requirements set for caregivers have not been relaxed. Consequently, the care system under development may prove inefficient due to the shortage of caregivers fulfilling statutory requirements.

Currently, the urgent challenge is to organise comprehensive and systemic aid for refugees from Ukraine who decided to stay in Poland in different parts of the country. In order to be more effective, this aid requires greater decentralisation and should be entrusted, along with financing from the special fund and the budget, to city authorities, which are able to help Ukrainians more effectively in the local environment in consortiums with other levels of local government, NGOs, employers and employment agencies<sup>132</sup>.

We can only hope that the recently gained experience of co-operation across divisions and the co-operation of social partners, NGOs, local and central government authorities start an in-depth discussion and the development of social dialogue for the integration of migrants and refugees in Poland. It is an area that shows a high potential

130 TVN24 Biznes, *Zebraли miliony na pomoc uchodźcom. „Apelujemy o wpłaty i dołączanie do akcji”* [They raised millions to help refugees 'We call for payments and joining the campaign'], 08.03.2022, <https://tvn24.pl/biznes/z-kraju/pomoc-dla-uchodzcow-z-ukrainy-przedsiobiorcy-organizuja-pomoc-5627726>, (access: 15.06.2022).

131 See more extensively: <https://www.facebook.com/UnionsHelpRefugees>.

132 Dziennik Gazeta Prawna, *Jak pomagać Ukraińcom? Pora na profesjonalną i systemową pomoc* [How to help Ukrainians? Time for professional and systemic aid], 08.03.2022, <https://www.gazeta-prawna.pl/wiadomosci/kraj/artykuly/837481.jak-pomagac-ukraincom-pora-na-profesjonalna-i-systemowa-pomoc.html>, (access: 15.06.2022).

in the identification of joint goals and actions and the overcoming of existing barriers in social dialogue.

## 2.6. Violation of fundamental labour rights and social rights

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### 2.6.1. Description of the problem

According to Polish law, foreigners working legally in Poland have the same rights as Polish employees. Employers are obliged to provide them with at least minimum remuneration, if work is entrusted under an employment agreement or a contract for specific work, to register them for social and health insurance within 7 days from the first day of work, to pay adequate premiums to the Social Insurance Company every month and to comply with the provisions of the labour code, including the ban on discrimination in the workplace.

Issues of providing decent working conditions to foreigners and the violation of their fundamental labour and social rights by employers were brought up at expert & consultation meetings and during workshops of the MIGRIGHT project.

The most frequent violations, confirmed also by annual inspection reports of the National Labour Inspectorate, concern: non-compliance with the provisions concerning the payment of remuneration and other benefits, the provisions concerning working time, the obligation to conclude a written agreement, the conclusion of civil law

agreements if employment has the specific features of employment relationship, allowing foreigners to work without a required medical examination and occupational safety and health (OSH) training courses and the evaluation of occupational risk<sup>133</sup>.

#### **Non-compliance with the obligation to conclude a written agreement**

The employer is obliged to conclude a written agreement with a foreigner irrespective of the kind of agreement and, at an earlier date, to present its translation into a language comprehensible to the foreigner<sup>134</sup>.

The entrustment of work without a written agreement often occurs in service and construction sectors. Work in the grey zone involves very limited access to medical care, which becomes problematic in the case of accidents at work. In some cases, employees are sent to Ukraine for the purpose of avoiding costs of medical care and remuneration<sup>135</sup>. Another sector in which written agreements are rarely concluded is the sector of home and care services. Cleaning, caring for children or sick and elderly people or housekeeping are often the

133 National Labour Inspectorate, *Sprawozdanie z działalności Państwowej Inspekcji Pracy z 2020 r.* [Report on the activity of the National Labour Inspectorate in 2020], op. cit.

134 Vortal of Public Employment Services, Ministry of Family and Social Policy, *Obowiązki pracodawcy [Employer's obligations]*, 10.02.2022, <https://psz.praca.gov.pl/dla-pracodawcow-i-przedsiębiorcow/zatrudnianie-cudzoziemcow/obowiazki-pracodawcy/>, (access: 15.06.2022).

135 M. Keryk, *Praca w Polsce: naruszenie praw pracowniczych imigrantów z Ukrainy zatrudnionych w budownictwie i sektorze usług [Work in Poland: violation of labour rights of immigrants from Ukraine employed in building and service sectors]*, Nasz Wybór Foundation, Warszawa 2018.

first works of Ukrainian women in Poland and the main source of income for low-skilled and elderly women or the women who cannot find a job in their learned profession. The shortcomings of work in this sector include the lack of official employment and social benefits, much room for exploitation on the part of employers and the instability of employment<sup>136</sup>.

There are still cases in which a part of remuneration is paid to the employee under the table; which results in officially low wages that have a negative effect on the amount of social benefits.

### Abusive use of civil law agreements

The kind of agreement should be adapted to the type of work. The conclusion of a civil law agreement in cases when an employment agreement should be concluded is a violation of the provisions of the labour law and is punishable by a fine. The entrustment of work under civil law agreements, particularly within a simplified procedure, concerns a large number of foreigners.

Civil law agreements are concluded with many persons working on the basis of statements, even though the kind of tasks entrusted to them, the manner, time and place of performance qualifies them for the category of employees and an employment agreement should be concluded with them. Civil law agreements are dominant in agriculture, and they are also concluded, though less frequently, in transport, catering and hotel industry. In the light of law, it should be called discrimination, because such form of employment does not correspond to reality and also deprives foreigners of employee privileges specified in the labour code. The cyclic conclusion of civil law agreements in the situation of an actual long-term employment relationship deprives employees of the right to standardised working hours and hol-

iday, which can have a negative impact particularly on the family life of female migrants<sup>137</sup>.

In the last few years, things have improved due to a decrease in the number of contracts for specific work, which involved lowest costs of employment for the employer and the lowest level of protection of the employee's rights. The type of agreement offered most often to employers working on the basis of statements is a contract for specific work, but employment agreements are concluded, too, the latter starting to prevail in the case of work permits.

In 2018, another kind of civil law agreement appeared in the case of seasonal work in agriculture: an **auxiliary harvesting work agreement**. On the one hand, this kind of agreement is perceived as an attempt to reduce work in the grey zone of farmers' helpers and the number of contracts for specific work, which do not reflect the character of auxiliary harvesting work and do not provide any insurance. In the case of an auxiliary harvesting work agreement, the farmer's helper is legally subject to accident, sickness and maternity insurance within the scope of rights to one-time compensation due to permanent or long-term damage to health or death as a result of an accident during agricultural work or a farmer's occupational disease. On the other hand, trade unions claim that, although the act provides for sickness and accident insurance, it does not introduce provisions of law protecting employees from accidents and damage to health, which may increase in scale due to low-wage work without time restrictions and OSH training. Moreover, the minimum hourly rate does not apply in the case of an auxiliary harvesting work agreement. Another problem indicated by labour inspectors is the lack of possibility of taking effective control actions towards individual farmers<sup>138</sup>.

136 Report *Ukrainki w Warszawie* [Ukrainian women in Warsaw], being part of the general report *Sytuacja Warszawianek. Raport z badań jakościowych* [The situation of Warsaw women. Qualitative research report] under the program implemented by the Warsaw City Office, Warszawa 2020, <https://www.um.warszawa.pl/aktualnosci/sytuacja-warszawianek-raport-z-bada-jako-ciowych>, (access: 20.10.2020).

137 Research Eye, *Ukrainki w Warszawie* [Ukrainian women in Warsaw], op. cit.

138 The Council of the All-Poland Alliance of Trade Unions of the Masovia Province highlights that seasonal workers do not have a standardised working time and, consequently, the right to holiday, and cannot count on the minimum hourly rate and safe working conditions, because they are not covered by OSH regulations, *Farmer.pl, OPZZ krytycznie o ustawie dotyczącej pomocy przy zbiorach* [The All-Poland Alliance of Trade Unions critical about the Act regarding auxiliary harvesting work], 15.05.2018, <https://www.farmer.pl/prawo/przepisy-i-regulacje/opzz-krytycznie-o-ustawie-dot-pomocy-przy-zbiorach.78493.html> (access: 15.06.2022).

### **Violations regarding the payment of remuneration and other benefits**

Every year the biggest number of violations detected by the National Labour Inspectorate with regard to compliance with the labour law concerns the payment of remuneration and other benefits resulting from the employment relationship.

Non-payment of remuneration or failure to pay remuneration on terms specified in the agreement – both via temporary employment agencies and direct employers – occurs most often in the construction sector. This is generally connected with the fact that companies for which migrants work are usually subcontractors and if the customer is in default with payment, the entire chain of subcontractors has a problem with the payment of remuneration to employees. Some employers do not pay remuneration for the last months of work in the hope that employees would not have enough time to seek their rights due to the approaching date of expiration of the visa with the right to work and the necessity of departure from Poland<sup>139</sup>. In the catering sector, particularly in the case of simple auxiliary works, e.g., in restaurants (washing the dishes, cutting vegetables), remuneration is often not paid for the trial period<sup>140</sup>. In the case of violation of rights by the employer, a majority of migrants decide to change their employer or seek informal support among friends working in Poland in a migrant society, often with the use of social media. Only in the case of serious violations, such as the lack of payment of remuneration, do they decide to request an intervention from the National Labour Inspectorate. Fears of reporting for help to the National Labour Inspectorate result from the fact that migrants associate this institution mainly with control rights regarding the legality of stay and work<sup>141</sup>.

### **Admission of foreigners to work without a required medical examination or without OSH training**

The admission of foreigners to work without a required medical examination or without OSH training occurs particularly often in the case of workers employed by temporary employment agencies. Although, in accordance with the law, it is the employer's obligation to provide employees with training courses in OSH regulations, the issue of responsibility is blurred in practice and some employers entrust the performance of training courses to agencies that do not always carry them out.

According to current laws and regulations, an entity entrusting work to a foreigner is obliged to present to him only agreements in a language comprehensible to the foreigner under which the foreigner will perform work. This obligation does not encompass other documents, including OSH instructions, information about conditions of employment and work regulations. This issue plays a significant role, e.g., in the construction sector.

### **Violations concerning working time**

This aspect of control does not encompass migrants working under civil law agreements, because the law does not regulate the (maximum) working time of persons with whom a civil law agreement has been concluded. As a consequence of this, the working time is determined by employers at their own discretion. On the one hand, work on a longer time basis is favourable for migrants primarily concerned about the possibility of the highest earnings within the shortest time, but on the other hand, it may affect their health or even pose a threat to their lives, as an overworked and tired worker is more likely to have an accident at work.

Because of the will to earn more and faster, most migrants from Ukraine accept a longer than statutory working time (10–12 hours

139 M. Keryk, *Praca w Polsce: naruszenie praw pracowniczych imigrantów z Ukrainy zatrudnionych w budownictwie i sektorze usług* [Work in Poland: violation of labour rights of immigrants from Ukraine employed in building and service sectors], op. cit.

140 Ibidem.

141 Ibidem.

per day) and work for 6 days a week. Sometimes, however, employers force employees to work for 14 or more hours a day in difficult conditions<sup>142</sup>. Such situations often occur in agriculture during seasonal works depending on weather conditions, when it is necessary to complete work within a relatively short time.

A common problem is still foreigners' work on terms inconsistent with registered declarations on the entrustment of work or work permits with regard to the number of working days, generally resulting in the ascertainment of the illegal entrustment of work<sup>143</sup>. An entity entrusting work to foreigners under civil law agreements often does not provide employment for the number of hours required in accordance with the work permit (or statement) or entrusts work to foreigners, considerably exceeding this number of hours. Another problem lies in the determination of the actual number of hours worked by a person working under a contract for specific work, because the law stipulates the obligation to record working hours only with regard to persons working under contracts for specific work and service agreements<sup>144</sup>.

## Discrimination

According to the provisions of the Labour Code, employees should be treated on equal terms with regard to the establishment and termination of an employment relationship, conditions of employment, promotion and access to training courses for the improvement of professional skills, particularly regardless of sex, age, disability, race, religion, nationality, political beliefs, trade union affiliation, ethnic origin, denomination, sexual orientation, employment for a definite or indefinite period, employment on a full- or part-time basis<sup>145</sup>.

Discrimination experienced by migrants working on the basis of a simplified procedure is reflected, e.g., by the fact that agreements in-

compatible with the character and manner of performance of entrusted work (civil law agreements instead of employment agreements) are concluded with them more often than with Polish employees, for a longer average weekly working time in a comparable job position and in the same sector of economy and lower remuneration for the same working time unit in a comparable job position and in the same sector of economy. The biggest differences between foreigners and Poles in terms of employment under a written agreement occur in agriculture. Large differences exist also in the construction, trade and, to a smaller extent, processing sectors. The situation of migrants and Poles does not differ considerably only in transport<sup>146</sup>.

Discrimination practices towards migrants are used not only with regard to the amount of remuneration, but also with regard to access to training courses or professional promotion, often as signs of indirect discrimination. Foreign employees are usually treated on equal terms with Polish employees in all aspects of working conditions (remuneration, working time, holidays, etc.) in larger companies and in places where trade unions are active. The biggest violations of migrants' rights take place in small enterprises without trade union representatives or when migrants are employed via temporary employment agency or on the basis of outsourcing<sup>147</sup>.

Female migrants experience **intersectional discrimination** on the labour market in respect of sex and nationality, irrespective of the kind of employment. Discriminatory behaviours of employers are usually reflected by the refusal to employ mothers or to grant a leave, non-conclusion of employment agreements guaranteeing rights to benefits and in the privileged treatment of Polish citizens towards female migrants (e.g., a better work schedule, leaves for a child). Issues of vertical segregation related to gender equality on the labour market (a glass ceiling or wage inequalities between women and men)

142 Ibidem.

143 National Labour Inspectorate, *Sprawozdanie z działalności Państwowej Inspekcji Pracy z 2020 r.* [Report on the activity of the National Labour Inspectorate in 2020], op. cit.

144 Ibidem.

145 Article 18<sup>3a</sup> § 1, of the Journal of Laws 2020, item 1320, Announcement of the Marshal of the Sejm of the Republic of Poland of 18 June 2020 on the announcement of the uniform text of the Labour Code Act.

146 *Substytucja i dyskryminacja na polskim rynku pracy w sytuacji nasilonej imigracji* [Substitution and discrimination on the Polish labour market in a situation of increased immigration], op. cit.

147 Expert and consultation meeting *O godnej pracy migrantów i uchodźców w województwie dolnośląskim* [On the decent work of migrants and refugees in the Lower Silesia Province] held on 14th April 2021.



are not the main problems of female migrants. The basic problem is horizontal segregation, which results from the specificity of industries in which they take up employment and the kind of performed work. Female migrants work in feminised industries with the lowest earnings and a low social status (domestic help, child care, simple jobs in catering or shops). Women earn less than their partners do and are economically dependent on them<sup>148</sup>.

### **Violations committed by employment agencies, including temporary employment agencies**

Many companies decide to entrust the recruitment process, the legalisation of stay and work and the formal employment of foreigners to employment agencies, including temporary employment agencies. However, employment by temporary employment agencies may involve a broader scale of violations of migrants' rights. The division of duties and responsibilities with regard to compliance with employee rights between two employers – i.e., a temporary employment agency and the user's employer – is often perceived by migrants as imprecise and making it difficult to seek their rights.

According to annual inspections of the National Labour Inspectorate, the biggest scale of violations is detected in entities operating in the field of administration services and supporting activities, which encompass also temporary employment agencies, and in the building sector<sup>149</sup>.

The most frequent violations of the Act on Temporary Employees concern the lack of written agreement on the rules of co-operation and conditions of temporary work between the agency and the employer (user) and failure to inform the employer about the content of arrangements between the agency and the employer (user) on the conditions of providing work, including remuneration. As in the case of control of direct employers, irregularities concerning the payment

of remuneration and other benefits due in respect of the employment relationship and the conclusion of civil law agreements, although employment has characteristic features of an employment relationship.

Another example of violations of migrants' rights by employment agencies is the illegal charging of fees for their services, particularly in the case of smaller agencies. Some fees assume the form of a deposit, and their role is to guarantee that the employee will turn up in the workplace of the employer (user). Part of agencies practice the deduction of fees for the apartment and utilities, meals or working clothes from monthly remuneration without prior arrangement with the employee. According to the National Labour Inspectorate, such deduction is legal only when it has been agreed upon with the employee and stipulated in the agreement beforehand<sup>150</sup>.

### **2.6.2. Proposed solutions**

During the implementation of the MIGRIGHT project, particularly at regional expert and consultation meetings and workshops, proposals for possible solutions regarding the prevention and limitation of the scale of violations of foreigners' rights on the labour market were collected, including:

- Employment of foreigners only under employment agreements and the civil law agreements covered by the obligation of social insurance, including accident insurance (i.e., excluding contracts for specific work)<sup>151</sup>, and the improvement of control effectiveness for the limitation of the scale of non-compliance.
- Introduction of legal provisions obliging an entity entrusting work to a foreigner to provide the latter with documents concerning the undertaking and performance of work (except the employment agreement) in a language comprehensible to him,

148 Research Eye, *Ukrainki w Warszawie [Ukrainian women in Warsaw]*, op. cit.

149 National Labour Inspectorate, *Sprawozdanie z działalności Państwowej Inspekcji Pracy z 2020 r. [Report on the activity of the National Labour Inspectorate in 2020]*, op. cit.

150 M. Keryk, *Praca w Polsce: naruszenie praw pracowniczych imigrantów z Ukrainy zatrudnionych w budownictwie i sektorze usług [Work in Poland: violation of labour rights of immigrants from Ukraine employed in building and service sectors]*, op. cit.

151 Ibidem.

e.g., OSH instructions, information about conditions of employment or work regulations<sup>152</sup>.

- Improvement of foreigners' safety in the workplace, e.g., through the organisation of OSH training courses in languages comprehensible to foreigners.
- Increasing the awareness and knowledge of employers about the issue of discrimination, e.g., through the organisation of workshops regarding the identification and prevention of discrimination<sup>153</sup> (a proposal from representatives of social organisations).
- Creation of co-operation platforms: establishment of broader co-operation between employers and training institutions, recruitment and consultation agencies and social organisations engaged in social dialogue and labour market issues in order to provide support and explain disputable and doubtful issues. Actions of employers, particularly microentrepreneurs and small enterprises, resulting in the violation of legal provisions sometimes arise out of ignorance or difficulties in the correct interpretation of complicated regulations or the impossibility of obtaining specific information and instructions. Thus, employers also expect professional support, explanations and advice in employment issues in order to conduct their business activity more easily.
- Extension of the catalogue of entities under the control of the National Labour Inspectorate through inclusion of natural persons not being entrepreneurs that provide illegal job agency services and often collect high charges<sup>154</sup>.
- Proper preparation of job offers and recruitment forms where it is possible to highlight individual needs of applying foreigners.

- Possibility of the assistant's (or supervisor's) participation in the recruitment process for the clarification of all doubts, particularly the understanding of communicated contents, carrying out the recruitment process in an adequate accessible manner.
- Preparation of recruitment departments for the handling of application procedures (external or intra-company procedures) with the use of relevant techniques, tools and procedures so that the employment of foreigners would no longer be a barrier.
- Organisation of work-related thematic courses by employers in order to maintain or improve professional and language skills required in the given job position.

The modern labour market poses many challenges, involving the need to update current knowledge and acquire new knowledge, even for the performance of uncomplicated activities. As a result of the development of the service sector and the dominance of the customer's role, the importance of interpersonal skills, self-presentation and effective coping with unusual situations continues to increase, which requires learning certain behaviours strange to foreigners with a difficult culture, mindset and customs. Training courses increase the employee's awareness and self-esteem in the work environment. They support the broader inclusion of migrants in various forms of continuous training. The priority is that they be organised by labour market institutions, particularly county labour offices, employment agencies, NGOs engaged in professional activation, educational system institutions (vocational and continuous training centres), with the participation of employers specifying their requirements and needs and offering employment. Tripartite training agreements can be concluded to ensure the maximum satisfaction of each entity with the service.

- Conducting training courses and meetings with the participation of experts (representatives of NGOs) providing support to foreigners for the purpose of development of social relations,

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152 Ibidem.

153 Ibidem.

154 Ibidem.

integration with the crew and a change of the mindset of Polish and foreign employees and the nearest environment.

Apart from that, the provision of support to migrants should not be associated with problems and lost time, but with a joint investment. It should be a way of reducing ignorance, reluctance or even prejudice.

- Counteracting of stereotypes in the workplace.  
It is necessary to highlight the role of information & educational programs and campaigns inspired and adopted by employers to fight against the stereotypical approach to foreigners, because cultural stigmatisation is deeply rooted in social awareness and acquires a particularly pejorative sense towards the strange and the unknown.
- Popularisation and initiation of employees' voluntary work by employers that supports integration with foreigners and builds the awareness of NGOs acting for them.  
It supports the development of social sensitivity, gives the feeling of professional satisfaction, increases teamwork skills and builds dialogue. Voluntary projects are also catalysts of innovation. Employees' voluntary work usually does not require any financial outlays on the part of the enterprise, but carefully thought-out and planned actions that support employees' participation. NGOs can be useful in the identification of social needs, as well as the employer's possibilities resulting from its condition, organisational culture and the needs and expectations of migrants and Polish employees.
- The use of benchmarking in work: the implementation of innovative management concepts based on best practices by employers and the creative discovery of successes of domestic and foreign competitors having more experience in the employment of foreigners.

- Elaboration of standards (codes) of co-operation with foreigners by employers within the scope of diversity policy; adoption of an unconventional approach to personnel management, creation of a climate of tolerance and respect for differences, elaboration of rules of conduct in consideration of positions of the parties (employees, trade unions), appointment of a person with the mission of good will.
- Use of an audit by employers and acquisition of a certificate of institutions or organisations dealing with foreigners' issues.  
The employer's consent to the performance of a social audit is a sign of maturity and the will to check and understand the strengths and weaknesses that can be verified and assessed thanks to the audit and, consequently, propose remedies to support the provision of decent work and the development of social dialogue.

### 2.6.3. Previous co-operation between social partners

From 2017 until the middle of 2020, the Provincial Social Dialogue Council of the Masovia Province adopted only two documents regarding foreigners' work<sup>155</sup>. One of the documents<sup>156</sup> referred to problems concerning the control activities of labour inspectors as to the legality of employment of Polish citizens and foreigners. The Provincial Social Dialogue Council indicated the existence of two main barriers to the effectiveness of employment legality checks:

- limited possibilities of control of individual farmers not having the status of an entrepreneur or employer, whose common practice is to employ foreigners under civil law agreements;
- employment of foreigners by entities registered in virtual offices, where business activity is not conducted (the registration address of the entity appears only in the National Court Register).

155 Material for discussion at the meeting *O godnej pracy migrantów i uchodźców w województwie mazowieckim* [On the decent work of migrants and refugees in the Masovia Province], Wrocław, 26th October 2020.

156 Position no. 4/18 of 13 June 2018

In connection with these problems, the Provincial Social Dialogue Council proposed:

- the introduction of the obligation to indicate the company's place of business activity that is connected with its physical location, particularly in production and trade, irrespective of the company's registered address.
- the elaboration of solutions on the national level on the basis of IT systems enabling the exchange of data between the National Labour Inspectorate and services and institutions performing tasks related to the NLI's supervisory activities.

Taking into account the small number (2) of documents elaborated by the Provincial Social Dialogue Council of the Masovia Province and the lack of such initiatives on the part of Provincial Social Dialogue Councils of the Lower Silesia Province and of the Lublin Province (in 2017–2020), we can conclude that issues concerning the provision of decent working conditions to foreigners and the violation of their fun-

damental labour rights do not fall within the main sphere of interests of social partners on the institutional level.

The catalogue of violations of foreigners' rights at work does not differ considerably from violations of rights of Polish employees (e.g., non-compliance with provisions concerning the payment of remuneration, working time, the conclusion of civil law agreements in cases when employment has the specific features of employment relationship, or allowing foreigners to work without a required medical examination and OSH training courses). Nevertheless, these irregularities occur much more frequently towards foreigners, whose situation is more difficult because they do not know their fundamental rights due to the language barrier and, therefore, have limited access to knowledge in respect of legal regulations. For this reason, in order to improve the situation, it would be desirable for social partners to adopt, to the maximum possible extent, joint information-educational activities addressed both to employers (particularly small enterprises and temporary employment agencies) and to foreigners so that they could be more aware of their rights.

## CHAPTER III

# Good practices applied in Norway with regard to the co-operation of social partners for ensuring decent working conditions for migrants and refugees

## 3.1. Short description of social dialogue in Norway

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Social dialogue and tripartism are characteristic features of the Scandinavian model of work. It is based on the assumption that social partners may not agree on all solutions, but they recognise the importance of co-operation. The measures under implementation are voluntary, based on trust and, if necessary, supported by governmental facilities and policies.

### 3.1.1. History

The beginnings of social dialogue in Norway date back to the turn of the 20th century, when the Norwegian Confederation of Trade Unions (LO, 1899) and the Confederation of Trade Unions (NAF, 1900; currently NHO) were founded, and Norway started a transformation from agricultural economy to industrial economy. The then-adopted Labour Disputes Act (1915) introduced a number of institutions (e.g., compulsory mediation before strikes or the institution of the labour court) that have been pillars of social dialogue in Norway until today. Important milestones of social dialogue in Norway were also quick ratifications

of relevant conventions of the International Labour Organisation<sup>157</sup> or the basic agreement negotiated and signed by trade unions and the NAF in 1935 to tighten their co-operation. The strength of social dialogue in Norway lies in its long-year tradition, particularly because both the LO and NHO still play an important role in them in spite of the emergence of other trade unions and employers' organisations.

### 3.1.2. Key actors and institutions

In Norway, there are four main trade union federations bringing together 93% of employees belonging to trade unions<sup>158</sup>:

- Norwegian Confederation of Trade Unions (LO): 24% of employees, 49% of employees belonging to a trade union,
- Confederation of Trade Unions (Union): 10% of employees, 21% of employees belonging to a trade union,
- Confederation of Trade Unions (YS): 6% of employees, 12% of employees belonging to a trade union,
- Federation of Norwegian Professional Associations (Akademikerne): 5% of employees, 11% of employees belonging to a trade union.

Almost one half of the working population in Norway (49% in 2017) belongs to a trade union<sup>159</sup>. The biggest organisation representing foreign workers, including workers from Poland, is *Solidaritets Norge Ekte Fagforening*.

In 2017, around 70% of workers in the private sector were employed in enterprises being members of one of employers' associations<sup>160</sup>. The biggest employers' organisations in Norway are:

- NHO,
- Virke (private service sector),
- Spekter (independent state-owned enterprises),
- KS (local and regional authorities).

It is worth noting that tripartite co-operation on the central level is based on the assumption that the representation of both employees and employers is democratic, which requires high representativeness and broad membership. At the same time, Norway can boast a strong tradition of local tradition and joint decisions – according to NHO's research, 90% of companies benefited from the co-operation of trade unions and the management on the workplace level<sup>161</sup>.

In Norway, there is a political tradition of involving interested social partners directly in councils and commissions preparing new policies in the field of pension and wage formation, the work environment, the development of skills, inclusiveness and diversity on the labour market. The most important governmental institutions established specially for the facilitation of tripartite co-operation are:

- Government's Contact Commission for Wage Settlement,
- Technical Calculation Committee for Wage Settlement (TBU),
- Advisory Committee for the Labour and Pension Market.

<sup>157</sup> On the freedom of association and the protection of trade union rights in 1948; on the right to organise and collective negotiations in 1949; employees' representatives in 1971; a tripartite consultation convention (international labour standards) in 1976; on employment relationships (public service) in 1978; collective negotiations in 1981.

<sup>158</sup> K. Nergaard, *Organisasjonsgrader, tariffavtaledekning og arbeidskonflikter 2018/2019*, Fafo, 2020, 10332.pdf ([fafo.no](http://fafo.no)), (access: 15/06/2022).

<sup>159</sup> *Ibidem*.

<sup>160</sup> *Ibidem*.

<sup>161</sup> Trade Union of Workers of the Copper Industry, *Norms and principles of social dialogue applicable in Norway, social dialogue in Norway in a new epidemic-related context*, 2020, [http://www.zzppm-poprawa-dialogu-spolcznego.pl/?get\\_file=2](http://www.zzppm-poprawa-dialogu-spolcznego.pl/?get_file=2), (access: 15.06.2022).

### 3.1.3. Key problem areas

The key problem areas where partners co-operate within the scope of social dialogue include:

- co-ordinated wage negotiations,
- tripartite commissions,
- social protection,

- gender equality and work on a part-time basis,
- standards of the work environment.

In connection with intensifying migration movements in some – most sensitive – sectors of the labour market, problems arise with regard to unstable and unregulated employment, unfair employers, inadequate working conditions and the low safety of work. Facing these challenges is crucial to the further development of social dialogue in Norway.

## 3.2. *Case study I:* Fast track to the labour market for newly arrived refugees

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### 3.2.1. Context

As many other countries in Europe, Norway experienced a surge in arrival of refugees in the summer and fall of 2015. In total, 31 145 applications for asylum were registered in Norway in 2015 (in comparison, the number for 2014 was 11 480).

Concurrently, the drop in the oil price in 2014 had struck the Norwegian economy hard. Norway, having a big oil industry, found itself in a situation with low economic activity, resulting in a high unemployment rate. From March 2014 to November 2015, the unemployment rate went from around 3,5 to 4,8%.

For Norway, this substantial number in arrival of refugees posed a challenge in the short run, in terms of administrative burden, registrations, and finding sufficient accommodation at the reception centers.

In the mid to long run, the challenge would be how to manage a proper integration of the newly arrived refugees into the Norwegian society. Being an active member in the labour market is important for integration, but with lower economic activity and increased unemployment, it could be a challenge to support newly arrived refugees into the labour market.

Consequently, the Confederation of Norwegian Enterprise (NHO) and the Norwegian Confederation of Trade Unions (LO), which are the largest employers' and workers' organisations in Norway, sent a joint letter to the Prime minister's office addressing the extraordinary situation in the labour market. The letter was sent in December 2015 and signed by the executive director of NHO and the head of LO. The content of the letter was discussed by officials in the two organisations with responsibility for employment and labour policy. In the letter, reference was made to the current recession in the economy and the refugee situation. The message was that both organisations wanted to con-

tribute to develop policies to increase the employment rate and that this should also include measures targeting the refugee population.

The letter included two main suggestions:

- Firstly, labour market measures should apply to all groups in need of assistance to enter the labour market – and special treatment should not be given to any specific group. And secondly, there was a need to bolster labour market measures, such as work placement and temporary wage subsidy.
- In the letter, the two organisations called for further discussions to find common solutions in the context of the established institutions for tripartite dialogue. The joint letter is an example of the cooperation between the workers and the employers to work for policies that can ensure high employment, supporting the sustainability of the Norwegian welfare model.

Based on the suggestion in the letter to discuss solutions in the context of tripartite dialogue, the letter and the issues it entailed were discussed in the tripartite body 'The Advisory Committee on Labour Market and Pension Issues'. This Committee is comprised of the Ministry and Minister of Labour and representatives of the social partners. The committee meets on a regular basis to discuss relevant issues related to employment and labour. All the main employers' and workers' organisations in Norway are represented in the committee. The committee is normally attended by the head of each organisation or the organisations' directors for employment and labour.

The issue of the refugee situation was discussed by the Committee at a meeting in late fall of 2015 and again in February 2016.

The meeting in the Committee in February 2016 led to the decision to establish a working group to assess measures that would help newly arrived refugees enter the labour market and to develop a report on "refugees and work". The working group was led by the administrative chief of the Ministry of Labour and had representatives from all the organisations (social partners) who are members of the Committee. In addition, a secretariate helped with the writing of the report. The secretariate consisted of officials from the Ministries of Labour, Jus-

tice and Education and the Public Employment Service. The working group met 5 times between February and May 2016. The final report was published by the Government in May 2016. The report and the discussions in the Committee also resulted in a tripartite declaration (by the members of the Committee) on 31 May 2016 on cooperation regarding integrating refugees into the labour market.

### 3.2.2. Solution

The tripartite declaration was based on two principles:

1. Measures should be consistent with sustainability of the Norwegian welfare model.
2. Efforts should be put on skills mapping and skills development for employment and to avoid developing a "low wage track" into the labour market.

One of the outcomes of the tripartite declaration and the report on refugees and work was the establishment of the so-called "fast track to employment" programme for refugees in the summer 2016. The programme would target newly arrived refugees as well as those who had already been in Norway for a while. Funding for the programme was available through resources from the Public Employment Service (NAV).

The programme was developed in collaboration between representatives from the social partners and NAV. The representatives from the social partners were the organisations' directors for employment and labour policy.

The outline and methodology of the fast-track programme was already set out in the above-mentioned report 'Refugees and work'.

NAV worked along two lines: assisting unemployed to find employment and assisting employers to recruit people with the required skills. The fact that NAV already had established collaboration with employers was important for the effectiveness of the fast track to employment programme for refugees.



### Responsibilities of NAV and the social partners in the fast-track programme:

NAV:

3. Collaborated with the municipalities and their 'introductory programme' for newly arrived refugees<sup>162</sup>. NAV would (with the support of the responsible officials for the introductory programme) meet the participants of the introductory programme and help map the individuals' skills and match them with demands in the Norwegian labour market. Participants in the introductory programme (eligible only to refugees who have been granted asylum) can participate in the fast-track programme. One of the main criteria to participate is that the person already has relevant tertiary/vocational education.
4. Cooperated with NHO and NHO's member companies to find job opportunities for individuals in the introductory programme.
5. Offered wage subsidies and/or mentoring to employers to compensate for lower productivity during the first 6-12 months of work placements. Mentoring would be done by officials from NAV who were specialists in labour market inclusion, and they would provide support to the companies in terms of understanding the relevant rules and regulations and provide support if the companies needed assistance.

Social partners:

- Contributed to creating more and varied work placement opportunities, and to gaining relevant work experience and employment by refugees. The employers provided work placement opportunities and the trade unions provided information about the fast-track programme to local trade union representatives.

- Provided information about the fast-track programme and relevant measures for securing a faster transition to employment.

NAV and NHO collaborated on a campaign to increase awareness on the fast-track programme. The campaign took place in 4 selected cities across Norway<sup>163</sup>, where there already was a specific focus on labour market integration of refugees.

The target group was participants in the introductory programmes. Local NAV offices and the NHOs regional offices collaborated on the campaign. Based on the selection of candidates done by NAV, NHO provided information to member companies on the fast-track programme and potential candidates. A certain number of candidates was selected based on the campaign and received valuable work placement training and/or employment in companies. The jobs were found mainly in companies which needed employees with vocational training, such as construction, painting, and catering/restaurants. After initial assessments, NAV had a list of 10-20 potential candidates in each of the cities – eventually, a total of 38 employees were hired.

Several municipalities are still using this model based on the fast-track programme, and in most instances, they also collaborate with public educational institutions. The fast-track programme is a national programme, but it is not necessarily used by all municipalities across Norway. Since the initial launching of the fast-track programme, the model has been further developed by NAV and the Directorate for Immigration and Integration. The candidates receive a vocational training, combined with work placement training at a relevant company. Normally, after a 2-year period they graduate with a vocational training certificate issued by the public vocational training institute and continue to work in the company where they did their work placement or applied for jobs in other companies.

<sup>162</sup> The introductory programme for newly arrived refugees is a compulsory programme lasting up to 2 years, including language training, learning about how the Norwegian society functions, and skills mapping and development.

<sup>163</sup> Drammen, Fredrikstad, Bodø, Bergen.

### 3.2.3. Evaluation

The fast-track programme enhanced the collaboration between NAV and NHO and provided valuable experience in labour market integration of people with a refugee background. The programme proved that the introductory programme for refugees could be a recruitment opportunity for employers. Further, an assessment and skills mapping at an early stage of the introductory programme is essential. Mapping of skills of the potential employees and a close collaboration between NAV and the employers are important success factors, including the support provided by NAV such as mentoring and/or wage subsidy. The importance of the collaboration between the employers' and workers' organisations to secure support for the programme among companies and trade union representatives is also relevant.

The fast-track programme has continued (with responsibility of NAV and the municipalities) after the initial launch between NAV and the social partners, and the campaign by NAV and NHO. An evaluation of the programme was done in 2017 by researchers from the Norwegian University of Tromsø. The researchers concluded that there were some challenges in terms of collaboration among relevant institutions and

understanding of roles and responsibilities, including responsibilities between officials working at NAV and the local (municipality level) officials in charge of the introductory programme. NAV is responsible for skills mapping and for facilitating labour market measures such as apprenticeship, wage subsidies, and contact with potential employers. The local officials in charge of the introductory programme are in charge of training modules such as language training. The challenges in terms of roles and responsibilities between NAV officials and the officials in charge of the introductory programme, was partially due to the lack of a step-by-step guide on how to implement the fast-track programme. Hence, this led to confusion in terms of who the beneficiaries should be, and whether NAV or the local municipality was in charge of initiating the fast-track programme. This also led to a relatively low number of people who could benefit from the programme.

Based on the evaluations of the programme, NAV and the Directorate for Immigration (IMDi) developed specific recommendations to the municipalities on how to implement the fast-track programme. In the process they also received inputs from municipalities and local NAV officials who had participated in the initial fast-track programme.

## 3.3. **Case study II:** Labour market inclusion for those in need of assistance in the labour market, including immigrants

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### 3.3.1. Context

Labour market inclusion is a priority for the Norwegian government, as part of the overall employment strategy. The aim of this is threefold: (i) to reduce the employer's threshold to hire, (ii) to further de-

velop and strengthen the services related to employment and mental health, and (iii) to improve opportunities for assisted qualification and training.

Funding for this purpose is provided in the annual state budget. The target group is people who need special assistance in finding employment. The labour market participation rate in Norway is at around 70%. At the same time there is a substantial number of people struggling to find work and who have been inactive in the labour market for a substantial amount of time. This group was estimated at around 180 000 in June 2019. The struggle to find employment is linked with several factors, such as a lack of skills, physical impairment, etc. Further, there are challenges related to employment discrimination, which can make it additionally difficult to find employment for people with, for example, physical impairment or a migrant background.

Since 2019, a formal collaboration on labour market inclusion for people needing assistance has been in place between the NAV and the social partners. The target groups for this scheme are the following: (i) immigrants from countries outside of Europe, (ii) people under 30 years old, (iii) people with a gap in their CV, (iv) physical impairment, and (v) young people who did not graduate from high school. Most of the immigrants coming from third countries have arrived to Norway as asylum seekers. This is a diverse group, which spans from highly skilled people to people with little or no formal education. For those of them with little formal education, assistance programmes for labour market inclusion can provide support in securing employment.

NHO has been engaged in projects on labour market inclusion since the 1990s and has gained valuable experience. Most importantly, this has helped to identify the most important aspects on the side of the employer for a successful labour market inclusion. This includes the significance of starting the recruitment process by identifying the demands for labour and skills needs of the employer and match this with a candidate with the relevant skills set. Hence, labour market inclusion of people in need of assistance, may have a greater chance of succeeding if the recruitment is based on the companies' need for labour. Previously, government-run projects often began with identifying the candidate and then looking for a company to match it with the candidate.

NHO established a recruitment project called "the Ripples in the water" in 2012. Through the project, a methodology was developed with the aim to (i) help companies map their skills needs and (ii) identify candidates with the required skills. The aim of the project was to support labour market inclusion for people who struggled to find work, and at the same time the companies involved in the project could hire employees which they would probably not have recruited otherwise. In this way, they could also contribute to corporate social responsibility.

The "Ripples in the water" project also collaborated with NAV. The developed methodology improved the collaboration between NAV, NHO and the companies participating in the project. One important step was the collaboration with a dedicated focal point in NAV. This helped in terms of undertaking skills mapping of the candidates and identifying the available support mechanisms. This included labour market measures such as work placement schemes and wage subsidy. These labour market measures eased the initial risk of employing people who would need additional support in their employment. NHO also promoted the project through various media channels, as well as through an annual award to a company who had been part of the "Ripples in the water" project, and shown social responsibility. The award helped to spread awareness about the project, as well as to showcase the award-winning company.

### 3.3.2. Solution

Based on the experience of NHO, as well as other employers' and workers' organisations, and the government's aim to include more people in the labour market, a national programme for labour market inclusion was established in 2019. This was done through formal meetings between the Minister of Labour and the heads of the employers' organisations and trade unions. Based on the government's priority on labour market inclusion, the Minister asked the social partners for their in-puts and suggestions on how to establish a formal collaboration with NAV and other relevant actors. The collaboration was established in 2019 and is still on-going. Funding for the project is provided by the government through the annual state budget, as part of the government's overall aim of enhancing labour market inclusion.

The national programme was established through pilot projects in three regions (Oslo, Vestland and Trøndelag), with dedicated steering committees for each region (with representatives from NAV and the social partners). The social partners at national level contribute through establishing contact between their representatives at local level in the regions where the pilots are implemented. They also provide information on the demand for labour in the various sectors, inform their members about the project, and promote it at various regional and national arenas.

The national programme focuses on the following main areas:

- Skills training and work placement training.
- Building on experiences from previous labour market inclusion programmes.
- Recruitment based on the skills needs of the employers.
- Providing a better match between the candidates and labour demand as well as the needs of the employers.
- Reduction of the initial recruitment risk of the employer by using the measures and tools available from NAV, such as wage subsidy (which can be provided for up to 1 year).
- Improving knowledge of NAV and their service providers on the labour market and the needs of the employers as regards the labour market inclusion (in both private and public companies).
- Improving knowledge of employers on measures to facilitate labour market inclusion.

Project managers are appointed by NAV as well as by the social partners. NHO provides support by recruiting companies to the project and providing information about the project via media campaigns. The campaigns are targeting potential companies as well as providing information to the wider public about the importance of labour market inclusion.

The social partners support the identification of economic sectors and companies which can participate in the project. The trade unions provide information about the project to local trade union representatives and inform them about how they can support the project at their workplace, for example, through encouraging their employer to be part of the programme and providing support to candidates once they have been recruited through the programme.

As of May 2021, 50 companies, primarily in the private sector, have signed agreements to be part of the project. This includes the service sectors such as hotels and restaurants, food and beverage industry, security and guard services, tourism and hospitality, and carpentry. Each company has a dedicated contact person from NAV with whom it collaborates. The contact person is familiar with the needs of the company in terms of skills and stays in close contact with it. The contact person may also assist the company with announcement of vacancies. The selected candidate will get a dedicated supervisor from NAV or the service provider. The service provider is a private company specialised on labour market inclusion. The selection of the candidates is done by NAV, among people formally registered by NAV as job seekers and with a need of special assistance to find and keep employment.

Among immigrants from third countries coming to Norway, it is common to register at NAV and seek its support to find employment. This is linked to the fact that in most cases they were enrolled in the two-year mandatory inception programme, after they first arrived in Norway and were granted asylum. They also seek the support of NAV for skills recognition, development and job searching.

## **Project outline**

### **– Mapping**

It begins with meeting initiated by contact person from NAV with the company who signed an agreement to be part of the project. Then, skills needs and future labour needs in the company are identified. This information is registered at NAV and/or the service provider.

#### – Identifying candidates

NAV contact person identifies possible candidates, based on the skills needs of the company. Relevant candidates and their CVs are registered as possible beneficiaries of the project. The contact person from NAV will then present relevant candidates to the company, based on the registered CVs. The company selects the person it found qualified. Supervisor from NAV or the service provider will provide support to the selected candidate during his/her work placement. The contact person from NAV will provide support to the company during the work placement too.

#### – Skills development

For those candidates who need skills development before work placement (such as language training) or as a part of the work placement. The aim is that the skills development is geared towards the skills needs of the companies participating in the project. The trainings are organised by NAV and/or the service provider. In the cases where this

involves skills development at the workplace, the employer also has a role in providing necessary training to the candidate.

### 3.3.3. Evaluation

The project started in 2019, and many activities had to be put on hold due to the COVID-19 pandemic. Thus far, however, the project has had an impact on developing and testing out the models for labour market inclusion. This includes the model of collaborating closely with the companies who participate in the project. This helped NAV to improve its understanding of the recruitment needs of companies in the private sector, which contributes to a better match between the candidates identified by NAV and the companies. The understanding among the companies of the type of support they can get from NAV in terms of recruiting candidates also improved, including the recruitment of people with an immigrant background.

## 3.4. *Case study III:* Tripartite sectoral programmes for decent working conditions

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### 3.4.1. Context

The tripartite sectoral programmes were developed to mobilise concerted efforts by government, employers' and workers' organisations to document and address challenges related to working conditions, safety and health in specific sectors.

The programmes are targeting sectors where there have been documented challenges concerning working conditions, safety and health, social dumping, and undeclared work. There are currently four programmes: in the sectors of cleaning, freight and leisure transport, res-

taurants and catering, and car wash and repairs. The overall goal is to secure decent working conditions in the sector.

After the EU enlargement in 2004 and increased labour immigration to Norway, there were concerns regarding working conditions and social dumping in certain sectors. As a follow-up to the declaration from the government, in 2010 the Federation of Norwegian Industries and the United Federation of Trade Unions wrote to the Ministry of Labour and Social Affairs and encouraged the government to initiate these tripartite sectoral programmes.

### 3.4.2. Solution

Following the letter sent by the social partners to the Ministry in 2010, the Minister of Labour invited the social partners to the meetings in the fall of 2010 and spring of 2011. These meetings aimed at discussing the set-up and content of such programmes, the sectors to be covered, as well as the need to conduct research to map the current situation in the respective sectors. The research would help to establish a baseline assessment and to agree on the specific challenges. The baseline informed the objectives of the programmes and the required measures.

To ensure a follow-up mechanism at the central level, the tripartite sectoral programmes were included under the auspices of the Committee on labour and pension in 2012. This tripartite committee meets several times a year and is the formal forum between the Minister of Labour and the representatives of the main employers' and workers' organisations in Norway. The committee should receive updates and results from the sectoral programmes, discuss the status of the programmes, and the need for the inclusion of any new measures.

The tripartite sectoral programmes were also included as a central initiative when the national strategy to combat undeclared work was first launched in 2015.

The purpose of the tripartite sectoral programmes is to mobilise employers' and workers' organisations as well as the authorities, to jointly document and address the identified challenges in the sectors. This also includes issues related to undeclared work and social dumping.

Funding for the projects is provided by the state budget. Since 2014, the Labour Inspectorate has led and coordinated the activities of the programmes. This entails that the Inspectorate heads the secretariate for the programmes and is the primary representative of the authorities in the collaboration. The Ministry of Labour has an observer status in this collaboration. The Inspectorate is also in charge of the budget and will distribute funds to the other participating partners if or when needed. The group normally meets 4-6 times a year. Whenever necessary, smaller working groups are established to work on specific tasks. Activities are discussed based on the existing knowledge as well as the expertise available in the organisations. The programmes proceed with the measures on which there is common agreement in the group.

TRIPARTITE SECTORAL PROGRAMME	STARTING DATE	MEMBERS	OBSERVERS	KNOWLEDGE BASE
Cleaning	Established in 2010	Employers' and workers' organisations representing the sector, the Labour Inspectorate	Ministry of Labour and Social Affairs	Reports (2011 and 2012) based on research done in the sector by the social science research foundation Fafo
Restaurants and catering	Established in 2013	Employers' and workers' organisations representing the sector, the Norwegian Association of Local and Regional Authorities, the Labour Inspectorate	Ministry of Labour and Social Affairs	Reports (2014) based on research done in the sector by the social science research foundation Fafo
Transportation sector (freight and leisure)	Established in 2013	Employers' and workers' organisations representing the sector, the Labour Inspectorate, the Norwegian Public Roads Administration	Ministry of Labour and Social Affairs and Ministry of Transport	Reports (2013 and 2014) based on research done in the sector by the social science research foundation Fafo and the Norwegian Centre for Transport Research
Car wash, repairs, and maintenance	Established in 2018	Employers' and workers' organisations representing the sector, the Labour Inspectorate, the Norwegian Public Roads Administration	Ministry of Labour and Social Affairs and Ministry of Transport	Reports (2020) based on research done in the sector by the analytical group Economics Norway

### Overall objectives of the sectoral programmes

1. Monitor the situation in the sector
2. Identify and analyse relevant challenges in the sector
3. Initiate measures based on the identified challenges
4. Develop information campaigns

### The main categories of activities undertaken by the programmes can be summed up as follows:

1. Information and communication, including information campaigns
2. Contributions to laws and regulations
3. Competence and knowledge development
4. Collaboration with other relevant actors

## Examples of results from the programmes

### – Cleaning sector

- Accreditation system for cleaning companies to secure professionalism and decent working conditions. All cleaning companies must be accredited (by the Labour Inspectorate) before they can operate. It is also prohibited for private and public consumers to procure cleaning services from non-accredited cleaning companies.
- Extension of the collective agreement to cover the whole sector, to secure decent (minimum) wages for employees.
- Introduction of the Occupational safety and health (OSH) cards which should be used by all employees. These cards are issued by the Labour Inspectorate. The card identifies the employee and the company, and helps to prevent undeclared work and poor working conditions.
- Information campaigns towards procurers in the private and public sectors, focusing on the importance of purchasing services from certified cleaning companies.
- Language courses in Norwegian for employees working in the cleaning sector.
- E-learning course on how to start and run a cleaning company.
- Collaboration with the national service centre for foreign workers (a collaboration between the tax authority, police, and labour inspectorate) to provide information to migrant workers in the cleaning sector regarding their rights and obligations, and information about relevant regulations and labour law.

### – Transportation sector

- Information and communication campaigns, with a particular focus on foreign drivers and companies. A campaign developed in 2016, called “The Truck Driver’s mother”, focussed on foreign transportation companies and their employees operating in Norway. The aim of the campaign was to inform about Norwegian rules and regulations, and workers’ rights. The campaign, including a film, was made available in several languages.

- Workshops on occupational safety and health, with the aim of providing the transportation companies with relevant knowledge around regulations regarding OSH, working hours and wages (wages regulated by extended collective agreements).
- Seminars on Norwegian rules and regulations, and workers’ rights for companies in Bulgaria and Lithuania operating in Norway, as well as for employers’ and workers’ organisations.
- A manual on relevant laws and regulations for transportation procurers.

### – Car industry

- Particular focus on training and information towards migrant workers in the sector.
- Research on working conditions in the car wash and repairs sector highlighted problems with rogue and criminal actors who undermine laws and regulations. The challenges were greatest among companies within manual car washing / car care, workshop services and the replacement and storage of tires.
- Developing an accreditation system for the sector, which could help to improve working conditions, make it easier for consumers to choose law-abiding companies and help the authorities to get an overview of the various companies in the sector.
- The programme planned a campaign aiming at consumers who buy services such as manual car wash and workshop services. The aim of the campaign is to help consumers in identifying and buying services from companies who abide by relevant laws and regulations.

## 3.4.3. Evaluation

An evaluation done in 2020 states that the programmes are seen as beneficial by the participating organisations. The participants in the programmes show ownership and enthusiasm for the projects, and the participation from the organisations has been consistent over the years. Many of the participants dedicate a substantial amount of time to the collaboration, preparation and execution of the various activities and measures.



The collaboration between the social partners is particularly important and helps in building trust and common understanding. The results stemming from the programmes were important for improving working conditions in the respective sectors and, among other things, for an increased understanding of the importance of providing information and support to migrant workers. The evaluation also shows that the collaboration with the authorities, and in particular the Labour Inspectorate, has been crucial for the implementation of the measures.

Finally, the evaluation shows that there is room to standardise the approach of the programmes and strengthen the reporting of results to the Committee on labour and pension (it was suggested that the work of the programmes should be made a yearly point on the agenda of the Committee). It was also suggested that the programmes would benefit from more detailed strategies and action plans, which would make it easier to measure results of the various activities.

## 3.5. **Case study IV:** The impact of international workforce on working environment and safety in the construction sector

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### 3.5.1. **Context**

OSH is an important aspect of Norwegian workplace life. The construction sector is among the land-based industries in Norway with the most occupational fatalities. A review of data stemming from the National Monitoring of Working Environment and Health and the Inspectorates done by the Norwegian Labour Inspectorate and the National Institute of Occupational Health in Norway (STAMI) shows that construction companies have almost two times higher risk of occupational fatalities than the average of all industries. Compared to international research which shows that the risk of occupational accidents is higher among foreign workers, Norwegian research is less conclusive on this issue. Norwegian statistics do not provide a clear answer to the question of whether foreign workers face a higher risk of occupational injury than Norwegian workers, but the literature shows that a significant proportion of employers believe that the use of foreign workers can impact the frequency of dangerous situations.

The Norwegian construction sector has in the last decades, and especially in the period following the EU expansion, seen a growing proportion of foreign labour. Despite OSH and productivity being important topics related to labour migration and internationalisation of the Norwegian labour market, few research projects have been carried out with a focus on working environment and working practices.

Consequently, the Federation of Norwegian Construction Industries (BNL) initiated the project “Multicultural workplaces in the construction industry - challenges and opportunities”. The project was implemented in 2016-2017. The overall purpose of the project was to help organisations and companies in the construction sector to conduct targeted measures to improve performance and productivity through improved working environment, cooperation, and increased safety. The goal of the project was to produce new knowledge about opportunities and challenges related to an international workforce as well as raising awareness of cultural differences.

The starting point for the project was to look at the following issues:

1. What are the typical characteristics, strengths and challenges related to safety and working environment at multicultural workplaces in the construction sector?
2. What are possible consequences related to, among others:
  - Communication and interaction between various actors?
  - Management and follow-up at the workplace?
3. How can a safe, healthy, and inclusive work environment be developed, and improved at multicultural workplaces?

### 3.5.2. Solution

A research project to map OSH and multicultural workplaces was conducted, using both qualitative and quantitative methods. The owner of the project was the BNL and a steering committee with representatives from member companies was put in place.

The research was done among the BNL's member companies, and by using the following methods: case studies/interviews, participant observation, and a questionnaire. Interviews were done among migrant workers, Norwegian workers, and people in management positions in the companies. The questionnaire was developed based on the interviews and the participant observation which took place over 3 weeks at two construction sites. Before the questionnaire was issued, representatives from the steering committee reviewed the questionnaire and provided feedback. The questionnaire targeted the employers in the construction sector (member companies of the BNL), as the aim was to identify the need for, and good examples of, relevant methods and tools in the sector.

The research included the following elements as having a possible impact on workplace safety: laws and regulations in the sector, employment conditions (full time or temporary, directly hired by the company or hired through a recruitment agency), skill levels and language competency, cultural differences and workplace practices, management of a multicultural team.

### The results of the study were, among others, as follows:

There is a great variation in the extent of foreign labour in companies and projects in the construction industry. In some projects, most workers come from Eastern Europe, whereas other projects have few or no foreign employees. The study showed that there are different experiences related to foreign labour both among managers and employees in the industry. Some experience differences between Norwegian and foreign workers when it comes to the quality of their work, their work ethics and focus on safety, whereas others do not find these differences to be significant. When asked to describe features that constitute a good working environment, employees and managers that were interviewed in the study emphasised good communication, honesty, inclusion, and openness. Potential gains that were discussed related to the employment of foreign (and especially Eastern European) workers often revolved around workforce flexibility, with focus on working hours and good working efforts. The potential in utilising knowledge and experience among foreign employees was, however, to a lesser degree realised.

In terms of challenges, most managers and employees pointed to the importance of language problems. Others pointed out that safety related attitude may be different among foreign workers, but they also stated that this often improves after a while, when the workers have been in Norway for some time and are more familiarised with the Norwegian regulations and workplace practices. There were few examples among the informants in the study of situations in which challenges related to language or culture had negatively impacted safety. A larger number of managers and employees had experienced some misunderstandings related to linguistic or cultural differences that led to construction errors or disagreements at work. Challenges due to language complicate communication and the possibility of getting to know one another, which in turn directly affects the working environment. Further, the study showed that both language and culture can be a challenge for managers, as messages must be communicated in such a way that they are understood by all workers, and cultural aspects can influence how leadership should be carried out.

Various measures intended to promote good multicultural workplaces were identified in the study. Examples include measures to improve

managers' understanding of cultural differences, adapting leadership style, as well as making conscious decisions regarding organisation of the work, such as putting together teams of workers. Common measures related to employees include language courses and skills development.

### 3.5.3. Evaluation

Conclusions drawn from the study in the construction sector:

- The more experience managers have with a foreign workforce, the less sceptical they are to foreign workers in general.
- The potential for benefitting from knowledge and workplace practices from foreign employees is to a small degree realised.
- Employment conditions are of greater importance than nationality when it comes to challenges related to multicultural workplaces.
- The study could not conclude that foreign workers are involved in more occupational accidents than Norwegian workers.
- Challenges related to language and culture impacted work performance and working environment more than they impacted safety issues.
- It takes time to build relations and common understanding. To maintain safety and working environment at multicultural workplaces, time is an important factor.
- Most of the measures identified in the study were of a short-term nature and would handle challenges right there and then, whereas few measures aimed at improving long-term conditions.

Additional sources of information:

- National Institute of Occupational Health in Norway (STAMI): <https://stami.no/en/>
- Letter of intent government and social partners regarding a more inclusive working life: <https://www.regjeringen.no/contentassets/fc3b4fed90b146499b90947491c846ad/the-ia-agreement-20192022.pdf>
- Letter of intent in Polish: <https://www.regjeringen.no/contentassets/fc3b4fed90b146499b90947491c846ad/ia-avtalen-polsk-20192022.pdf>

## CHAPTER IV.

# Recommendations for the reinforcement of social dialogue in Poland aimed at ensuring decent working conditions for migrants and refugees

## 4.1. Introduction

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This chapter serves as a summary of what has been elaborated during the implementation of the MIGRIGHT project. It is an evaluation made by the CASE's experts on the basis of results of analyses drawing upon observations, consultations and collected materials. At the same time, it is an attempt to go beyond the existing state towards recommendations for the future. We would like it to serve as a starting point for a discussion on social dialogue in Poland, its condition, scope and outcomes that we want to achieve through this dialogue and on migrants as actors playing an increasingly important role on the labour market, on decent conditions that should be associated with this work and on means of providing them.

This chapter consists of three parts. The first part includes general recommendations concerning social dialogue between partners. Here we highlight the need to determine, on the one hand, the scope of co-operation that should be covered by this dialogue and, on the other hand, the real possibility of partners' influence on social reality. We suggest trying to abandon thinking in terms of bipartite dialogue in favour of actual tripartite dialogue with the active and engaged central government and non-government party. We also encourage the use of experiences of other states and good practices elaborated in other contexts, for example in Norway. In the second part, we refer in a summarised form to more detailed recommendations concerning directly the topics brought up in Chapter II: forced labour and inte-

gration. The chapter ends in a summary serving as a sort of appeal. In this summary, we appeal for the reconsideration of profits and costs resulting from engagement in social dialogue while believing that the continuation and development of co-operation between social partners is the right path not only to ensuring decent work to migrants arriving in Poland, but also to a broader social change with regard to the labour market.

When preparing recommendations and the summary presented in this chapter, we relied mainly on opinions expressed by participants in the project at its various stages (four workshops and consultation meetings held in 2021–2022), experts' opinions and representatives of

partners engaged in the project (All-Poland Alliance of Trade Unions, Federation of Polish Entrepreneurs, NHO). These opinions were not always unanimous. The presence of various viewpoints is, however, a foundation of dialogue – a conversation becomes pointless where everyone agrees with each other. Therefore, we hope that the recommendations presented by us are not regarded as specific challenges and plans accepted by everybody. They can, however, help elevate social dialogue in Poland to a higher level. They should become starting points for discussion and topics for reflection – both on a common scale and inside one's own circle – or even disputes that may result in creative thinking and positive changes.

## 4.2. **Recommendation I:** reconsideration of the scope of co-operation of social partners, the possibility of their influence on dialogue and, consequently, the limits of their responsibility

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Whenever we undertake any kind of activity, it is very important for us to know what we have to do and what may result from this. This is, however, particularly significant in the case of group activities. In such cases, there is a danger that both the activity itself, its content, scope or goal, are understood differently by every participant in the process. In the context of social dialogue, these conclusions must refer to the process participants (and, therefore, the inclusion of the central government party and social organisations – see Recommendation II), their involvement, but also – and this is what we intend to focus most strongly on – the limits of their responsibility for the outcomes of dialogue.

It is **the acceptance of responsibility for the result of the process that sets the difference between a joint action and a parallel action**. During the activities that occurred under the MIGRIGHT project, there was a lack of consensus, on the one hand, on the scope of social dialogue and, on the other hand, on responsibility for its outcomes.

For example: a majority of participants in regional expert and consultation meetings and workshops held under the MIGRIGHT project indicated that lengthy procedures regarding the legalisation of foreigners' stay and work are one of the fundamental problems related to the functioning of migrants on the labour market. This opinion was expressed in particular by representatives of employers' organisations and NGOs. Bringing up this topic in the context of social dialogue al-

lows us to presume that they assume the possibility of influence of social partners on the functioning of administration. However, the All-Poland Alliance of Trade Unions clearly states that the improvement of the lengthiness of administrative procedures is not the role of social dialogue, and social partners have a minor influence or no influence on administration. In this case, the scope of co-operation and the possibility of potential influence are not defined by all participants in the process in the same way.

Such position of representatives of the All-Poland Alliance of Trade Unions, indicating that a number of issues remains outside the scope or – even more frequently – possibility of influence of social dialogue, is justified mainly by the low activity of the central government party. In their opinion, only the state can fight against the lengthiness of administrative procedures in any way. The role of social partners is to indicate problems and specialist solutions. Thus, the co-operation between social partners (both on the level of Provincial Social Dialogue Councils and bilateral co-operation on the national level) is good and currently does not require any further reinforcement or support, although there are topics for which there is a huge diversity of opinions.

Some social partners recognise that recommendations formulated by employees and employers should be implemented by the government and exercised properly by administration. Such an approach proves the narrow setting of borders of one's own responsibility by some parties to social dialogue. Their role is to reach agreement, and then the government should carry out their proposals for solutions. Although the central government party obviously most often has the biggest causative power with regard to solving problems brought up by social partners, the statement that it is solely responsible for the outcomes of dialogue questions the reasonableness of the entire process. If social dialogue is the joint effort of employees, employers and the central government party (or maybe also other parties, as we suggest in *Recommendation II*), the approach of these parties that is

limited only to their own recommendations of actions and waiting for their implementation turns this dialogue from a joint action into a parallel action.

Moreover, it is unclear what role social partners would attribute to themselves and what role they would attribute to the central government party. Sometimes, as in the case of migrants' forced work, the action of partners is indicated as the one to be carried out in the first place (preparation of recommendation), and the role of administration should be limited only to the implementation of proposed ideas. In other cases, partners declare that their hands are tied because the government has not taken actions expected by everyone, e.g., failing to elaborate the comprehensive migration policy of Poland, which prevents social dialogue with regard to the integration of migrants.

Here, we would like to appeal for the reconsideration of the form of social dialogue, particularly the relation between bilateral and trilateral dialogue. Of course, the All-Poland Alliance of Trade Unions is right to indicate that the key to success lies in activity on the part of the central government party, and the lack of will to implement elaborated recommendations means that the dialogue may become fruitless. However, we realise that an appeal to the central government party for stronger engagement in the social dialogue process and for the introduction of agreed-upon solutions in social life is probably a voice crying in the wilderness.

Nevertheless, some changes can often be introduced also without the participation of the government party (at least on the central level), which is illustrated, e.g., by actions of NGOs (see *Recommendation II*) or examples from other states (see *Recommendation III*). We think that the social dialogue process in Poland could benefit from the alertness of social partners to such areas and activities that do not require the participation of the government party.

### 4.3. **Recommendation II:** turning bipartite dialogue into tripartite and multilateral dialogue

Reflections on social dialogue and its possible definitions are stated in Chapter I. In the course of work on this chapter, it turned out that, contrary to what might seem, there was no agreed joint position between partners in this matter. For example, the issue of relations between social dialogue and civic dialogue, i.e., the issue of participation of NGOs in this process, remains controversial. As far as the perspective of the MIGRIGHT project is concerned, representatives of NGOs took part in our expert and workshop meetings to the same extent that representatives of employees' organisations, employers' organisations or public administration did, and their voice in the matter of migrants' decent work is equally important.

On the basis of the opinion of social partners, we can conclude that social dialogue is primarily institutionalised bipartite and tripartite dialogue, but, on the other hand, many arrangements are made on the plant level by employers and employees' representatives, which was not analysed profoundly under the project. Nevertheless, the co-operation of NGOs with the central government party (e.g. heads of provinces), the local government party or social partners under various projects, often financed from EU funds, is simply a fact. The initiative and activity of social organisations is dominant particularly in the topic being the basis of this toolkit: the provision of decent working conditions for migrants and refugees. These organisations often play a supportive and auxiliary role when the activities of the state are insufficient (or sometimes even absent), for example, with regard to the integration of economic migrants.

Expert meetings, workshops and the analysis of documents adopted by Provincial Social Dialogue Councils that are held under the

MIGRIGHT project in selected three provinces have shown that the co-operation of main social partners – employers' organisations and employees' organisations – is limited with regard to the decent work of migrants. It is often reduced to proposals regarding conveniences in the acquisition of new foreign employees and the simplification of foreigner employment procedures. Thus, the reality is that **civic dialogue on the decent work of migrants is more developed than social dialogue sensu stricto, and NGOs actually became one of the broadly understood social partners.**

Therefore, it seems necessary to reflect again on who and how should be included in the dialogue process. There is no doubt that the good co-operation of social organisations with the central government party, local governments, employers' organisations and employees' organisations can favour the implementation of activities supporting foreigners on the labour market. Similar recommendations flow also from other projects regarding migrants' rights on the labour market. One of the examples can be the project *BARMIG – The Bargaining for Working Conditions and Social Rights of Migrant Workers in Central East European Countries*, in which one of the three basic policy recommendations read as follows: 'social partners (e.g. employer organizations) should cooperate more with CSOs, and build capacities to articulate the interests of different labour market actors'<sup>164</sup>. In this toolkit, we have collected some examples of such co-operation and good practices of joint actions and have included them in Chapter III, referring them to various issues of migrants' decent work.

164 K. Podgórska, *Policy Brief – Polska [Policy Brief – Poland]*, Uniwersytet Marii Curie-Skłodowskiej w Lublinie, no data available, <https://phavi.umcs.pl/at/attachments/2021/1201/160328-policy-brief-poland-polish.pdf> (access: 15.06.2022).

## 4.4. **Recommendation III:** the integration of migrants and refugees as a key area for social dialogue

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As has been highlighted in Chapter II, a majority of programs and actions concerning the integration of migrants and refugees are carried out by NGOs, also in co-operation with local or central administration bodies (heads of provinces). Because of the lack of the national migrant integration support mechanism, social organisations have actually become the key entities initiating and implementing integration programs by means of EU funds. However, with a view to a large increase in the number of economic migrants in Poland over the last few years, the massive influx of Ukrainian refugees due to the ongoing war and related challenges on the labour market and in other areas, we propose:

- active engagement of social partners (both the employees party and the employers party), along with NGOs and local governments (e.g., within Foreigner Integration Centres), initiation and performance of actions for the integration of foreigners;
- joint activities of social partners aimed at the prevention and counteracting of practices hindering the integration process through knowledge transfer and good practices;
- inclusion of migrants present in social organisations, employees' organisations and employers' organisations in consultations regarding the situation of foreigners on the labour market to enable them to present their opinions, needs and proposals for solutions in matters concerning them directly, and inclusion of migrants in initiatives and the planning and implementation of integration programs on the local and central level.

The proposal concerning the reinforcement of co-operation between social partners with regard to the integration of migrants and refugees from Poland is becoming even more current in the context

of challenges connected with the massive influx of refugees from Ukraine caused by Russia's invasion of this country. In order to be more effective in the medium and long term, aid and integration activities require the creation of a platform for systematic co-operation and good co-ordination between the central government, local governments, entrepreneurs, trade unions and NGOs.

The most urgent needs and, consequently, challenges include: ensuring the availability of lodgings for a longer period (or places in centres intended for long-term residents), finding a job adequate to migrants' possibilities (most of them are women with children, who will not be able to work on a full-time basis), and providing access to the health care system and education for children and young people.

Within the scope of such co-operation, employers' organisations and employment agencies associated in them would be responsible for intermediation in finding jobs for refugees, encouraging entrepreneurs to report job vacancies and help in translations and the arrangement of all formalities concerning the legalisation of stay and work.

It would be desirable for employers' and entrepreneurs' organisations to co-operate with county labour offices, e.g., with regard to providing offices with information about job offers, mapping and verification of refugees' competence and skills, as well as the organisation of skill-improving vocational training and courses. On the other hand, trade unions as organisations closest to employees could provide refugees not only with advice regarding labour law, but also with language learning, welfare, legal or logistic support. While performing the above tasks, employers' and employees' organisations could co-operate with NGOs, making use of their expert base and long-term experience in the support of migrant and refugee integration processes.



## 4.5. ***Recommendation IV:*** encouragement to accept good practices

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The starting point for this toolkit and the MIGRIGHT project is dialogue in the general (not only social) sense. The exchange of experience between various kinds of organisations operating in different countries can also be a sort of dialogue. Many of these organisations have long-year experience encompassing both successful and failed activities. It is worth making use of these experiences by following successful examples and learning from others' mistakes.

It is no coincidence that the MIGRIGHT project was implemented in co-operation between partners from Poland (All-Poland Alliance of Trade Unions and Federation of Polish Entrepreneurs) and Norway (NHO). The goal was to increase the capacity of social partners to participate in tripartite and bipartite dialogue in Poland also through the transfer of good practices from Norway. Social dialogue and tripartism are characteristic features of the Scandinavian model of work, and implemented solutions bring measurable results.

This is why we encourage all social partners, as well as the central government party, to make use of good practices worked out in countries with a richer tradition of social dialogue. We realise that the transfer of others' experience to Polish reality is not easy. There are differences regarding the extent of representation (both of employees and of employers), the tradition of co-operation and the involvement of the central government party in the dialogue process. For this reason, we stress that the use of good practices is not tantamount to their simple transfer from one legal and cultural context to another. It is necessary for all parties to dialogue to act together in order to adapt these solutions to Polish reality – the problems that we face and the conditions in which we have to act.

We also call for continuous co-operation with the Norwegian party established during the MIGRIGHT project and further actions for the improvement of social dialogue and the situation of migrants on the labour market in Poland.

## 4.6. ***Detailed recommendations***

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In the course of activities conducted under the MIGRIGHT project, a few specific problem areas regarding the decent work of migrants emerged. They are presented in Chapter II, where we focus not only on possible social dialogue in this matter, but also on these issues as such. Here, we would like to present more detailed recommendations that refer to bureaucratic and lengthy procedures for the legalisation

of stay and work, the illegal entrustment and performance of work, forced labour, violations of primary workers' rights and the integration of migrants and refugees on the Polish labour market.

With regard to the **identification, prevention and counteracting** of forced labour, we can distinguish the following proposals for further actions of social partners:

- lobbying for the inclusion of the adopted definition of forced labour in the Criminal Code;
- training courses and workshops for representatives of law enforcement agencies (the police, prosecutors, judges) on the identification of cases of forced labour;
- taking actions to increase the knowledge and awareness of employers, social partners and migrants regarding the identification and prevention of forced labour;
- organisation of workshops and meetings for companies, particularly small- and medium-sized enterprises, from industries where the risk of forced labour is the biggest;
- preparation of information materials on the central level and their uploading, e.g., onto the website of the ministry in charge of labour.

With regard to the **acceleration and debureaucratisation of procedures for the legalisation of stay and work**, we suggest:

- proposals for legislative changes including the simplification of procedures for the legalisation of foreigners' stay and work;
- proposals for changes regarding the automation and informatisation of procedures for the legalisation of foreigners' stay and work;

- elaboration, implementation and monitoring of internal reporting procedures – both by employees and by employers – with regard to emerging problems of foreign employees concerning the legalisation of stay and work.

It must be stressed here that the role of social dialogue is not to improve the lengthiness of administrative procedures, and the influence of social partners on the functioning of administration is minor or none. In this area, the state has the biggest role to play and the implementation of existing recommendations falls within the scope of its tasks.

With regard to the **prevention and counteracting of violations of fundamental labour rights and the illegal entrustment and performance of work**, social partners can act by:

- taking actions aimed at the improvement of the situation in the entities that lack the sufficient representation of the employees party and the employers party, i.e., small enterprises and employment agencies, particularly virtual offices;
- co-operating with specialistic administration bodies (National Labour Inspectorate, Border Guard) on the national and regional level within and outside the scope of institutionalised social dialogue;
- taking actions for the effective transfer of knowledge about labour rights to employees and employers;
- preparing certification programs, rankings and competitions.

The above list of detailed recommendations is obviously not a closed catalogue. To read more about individual problems, see Chapter II.

# Conclusion

As can be seen on the basis of problems indicated in Chapter II, good practices from Chapter III and recommendations contained in the last part of the study, social dialogue in Poland is not an ideal process. However, the co-operation of social partners can bring many advantages, also – but not only – from the perspective of issues of migrants' decent work.

Engagement in dialogue requires some kind of devotion on the partners' part. Moreover, it often involves the need for compromise – for resignation from some proposals put forward by the party concerned. Thus, the last suggestion included in our toolkit is a proposal for reassessment of costs and profits resulting from social dialogue.

After all, allowing for different opinions and the elaboration of solutions in the deliberative mode involves certain costs – the faults of this process that can be reduced, but never fully eliminated. The subject-matter of the dialogue becomes “blurred”, the time and effort of participants is sometimes taken over by marginal issues and digres-

sions, which results in the lengthiness of working out joint positions and solutions. This is a natural thing, and although these problems are not likely to disappear, we think that social dialogue should not be disregarded as a method of co-operation.

This dialogue brings also profits that, in our view, compensate for the aforementioned costs and bring some added value. Jointly elaborated solutions are more accurate and subject to lower risk of error, and their implementation is simpler and more effective than in the case of solutions imposed by the central government party. At the same time, some outcomes of this co-operation go beyond the delivery of proposals for public administration and constitute independent actions that can have a real impact on the improvement of the situation in many problem areas.

This is why we encourage social partners to continue and develop this co-operation, also – but not only – on the basis of this toolkit.

# Glossary

**Acculturation** – encompasses the phenomena that occur when groups of individuals with various cultures come into continuous and direct contact that results in changes in original cultural models of one or both groups<sup>165</sup>. In other words, it is a cultural change initiated by a combination of two or more autonomous cultural systems<sup>166</sup>.

**Assimilation** – occurs when individuals adopt cultural norms of the dominant or receiving culture instead of their original culture. It is a gradual process, within which the minority group assumes behaviour models of the majority group or receiving society and eventually becomes absorbed by it<sup>167</sup>.

**Foreigner** – in Poland, it is everyone who does not have Polish citizenship<sup>168</sup>; thus, foreigners are both citizens of EU/EEA countries and citizens of third countries, refugees or persons covered by a different form of international or national protection and stateless persons.

**Social dialogue** – see Chapter I, Section 1.1. *Concept, goals and role of social dialogue*.

**Discrimination** – see Chapter II, Section 2.6. *Violation of fundamental labour rights and social rights*.

**Decent work** – see Chapter II, sections: 2.1.1. *The concept and areas of decent work in the light of international and national documents*; 2.1.2. *What is decent work to us?*

**Integration** – occurs when individuals are able to adopt cultural norms of the dominant or receiving culture while maintaining their original culture.<sup>169</sup> It is a two-way process of mutual adaptation between migrants and societies in which they live. It consists in the inclusion of migrants in social, economic, cultural and political life of the receiving society. It involves a range of mutual obligations for migrants and the society and encompasses other related terms, such as social integration and social cohesion<sup>170</sup>.

**Uniform residence and work permit** – the decision of the relevant authority entitling the foreigner to stay and work in the territory of the Republic of Poland on conditions specified in the Act and in this decision. In contrast to a work permit, but similarly to a residence permit, the foreigner is a party to the administrative procedure in the case of a uniform permit<sup>171</sup>.

**Circular migration** – the repetition of legal migration by the same person between two or more countries<sup>172</sup>.

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165 R. Redfield, R. Linton, M.J. Herskovits, (1936), *Memorandum for the study of acculturation*, *American anthropologist*, 38(1), 149–152.

166 H.G. Barnett, B. Siegel, E. Vogt, J. Watson (1954), *Acculturation: an exploratory formulation the social science research council summer seminar on acculturation*, 1953, *American Anthropologist*, 56(6), 973–1002.

167 J.W. Berry, (1992). *Acculturation and adaptation in a new society*, *International migration*, 30.

168 *Foreigners Act of 12 December 2013*; *Journal of Laws 2013*, item 1650.

169 J.W. Berry, (1992), *Acculturation and adaptation in a new society*, *International migration*, 30.

170 International Organization for Migration (IOM); <https://www.iom.int/key-migration-terms>, (access: 15.06.2022).

171 *Announcement of the Marshal of the Sejm of the Republic of Poland of 22 November 2019 regarding the announcement of the uniform text of the Foreigners Act*, *Journal of Laws 2020*, item 35; <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20200000035>, (access: 15.06.2022).

172 EU; On circular migration and mobility partnerships between the European Union and third countries; <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2007:0248:FIN>, (access: 15.06.2022).

**Long-term migration** – refers to a person who changes his/her country of residence for a period of at least 12 months<sup>173</sup>.

**Short-term migration** – refers to departures longer than 3 months, but shorter than 12 months<sup>174</sup>.

**Migrant** – a person who leaves his/her place of residence, either within the country or by exceeding the international border, temporarily or permanently for various reasons<sup>175</sup>.

**International migrant** – a person who changes his/her country of residence, i.e., the place of his/her usual stay (i.e., where he/she lives and spends most of his/her time). This term encompasses both economic migrants and forced migrants, or refugees (see *refugee*; see *economic migrant*); it is used mainly for distinguishing between international migrants and internal migrants (e.g., forced migrants within the Russian Federation).

**Economic migrant** – a person who leaves his/her country of origin only for economic reasons for the purpose of seeking the improvement of his/her living conditions<sup>176</sup>.

**Supplementary protection** – a form of international protection granted to a foreigner who does not meet the requirements for being granted the status of refugee and whose return to the country of origin may expose him/her to the actual risk of suffering serious harm through: 1) a death or execution sentence, 2) tortures, inhumane or humiliating treatment or punishment, 3) a serious and individualised threat to life or health resulting from the common use of violence towards the civil population in the situation of an international or inter-

nal military conflict and, because of this risk, he/she cannot or does not want to benefit from protection in the country of origin<sup>177</sup>.

**Declaration on the entrustment of work** – the document that allows citizens of Armenia, Belarus, Georgia, Moldova, Russia and Ukraine to work legally in Poland under a simplified procedure, if the employment period does not exceed 24 months and work to be performed by the foreigner does not concern seasonal work that will require a permit<sup>178</sup>.

**Forced labour** – see Chapter II, Section 2.4. *Forced labour*.

**Status of refugee** – a form of international protection granted to a foreigner who meets the requirements set out in the convention relating to the status of refugees (see *refugee*). The status of refugee is granted in Poland also to a minor child of the foreigner who obtained the status of refugee in the Republic of Poland that was born in that territory.

**Refugee** – a person who, due to the justified fear of being persecuted due to his/her race, religion, nationality, political beliefs or affiliation with a specific social group, was forced to leave his/her country of origin and, because of these fears, cannot or does not want to benefit from protection in his/her country<sup>179</sup>.

**Residence permit** – the decision of the relevant authority entitling the foreigner to stay in the territory of the Republic of Poland on conditions specified in the Act and in this decision. A foreigner planning to stay in Poland for longer than 3 months may apply for a temporary residence permit. A temporary residence permit is granted for a max-

173 Organisation for Economic Co-operation and Development (OECD); <https://stats.oecd.org/glossary/detail.asp?ID=1562>, (access: 15.06.2022).

174 Organisation for Economic Co-operation and Development (OECD); <https://stats.oecd.org/glossary/detail.asp?ID=2457>, (access: 15.06.2022).

175 International Organization for Migration (IOM), <https://www.iom.int/about-migration>, (access: 15.06.2022).

176 UNHCR Master Glossary of Terms, 2006, <https://www.refworld.org/docid/42ce7d444.html>, (access: 15.06.2022).

177 *Announcement of the Marshal of the Sejm of the Republic of Poland of 18 May 2021 regarding the announcement of the uniform text of the Act on granting protection to foreigners in the territory of the Republic of Poland*, Journal of Laws 2021, item 1108.

178 *Announcement of the Marshal of the Sejm of the Republic of Poland of 18 May 2021 regarding the announcement of the uniform text of the Act on the promotion of employment and labour market institutions*, Journal of Laws 2021, item 1100, as amended; <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20210001100>, (access: 15.06.2022).

179 *Convention Relating to the Status of Refugees, drawn up in Geneva on 28 July 1951*; Journal of Laws 1991, No. 119, item 515; <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu19911190515> (access: 15.06.2022).

imum period of 3 years. A permanent residence permit is granted for an indefinite period<sup>180</sup>.

**Work permit** – the decision of the relevant authority entitling the foreigner to work in the territory of the Republic of Poland on conditions specified in the Act and in this decision. Every foreigner who is not

exempt under the law from the obligation to have a permission to work in Poland and wants to take up employment in the territory of the Republic of Poland has to possess a relevant permit. The employer is a party to the administrative procedure, which means that the application for a permit is filed by the employer intending to employ a foreigner, not by the foreigner<sup>181</sup>.

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180 *Announcement of the Marshal of the Sejm of the Republic of Poland of 22 November 2019 regarding the announcement of the uniform text of the Foreigners Act*, Journal of Laws 2020, item 35.

181 *Announcement of the Marshal of the Sejm of the Republic of Poland of 18 May 2021 regarding the announcement of the uniform text of the Act on the promotion of employment and labour market institutions*, op. cit.; Central Statistical Office, *Pojęcia stosowane w statystyce publicznej* [Terms used in public statistics], <https://stat.gov.pl/metainformacje/slownik-pojec/pojecia-stosowane-w-statystyce-publicznej/3485,pojecie.html>. (access: 15.06.2022).



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