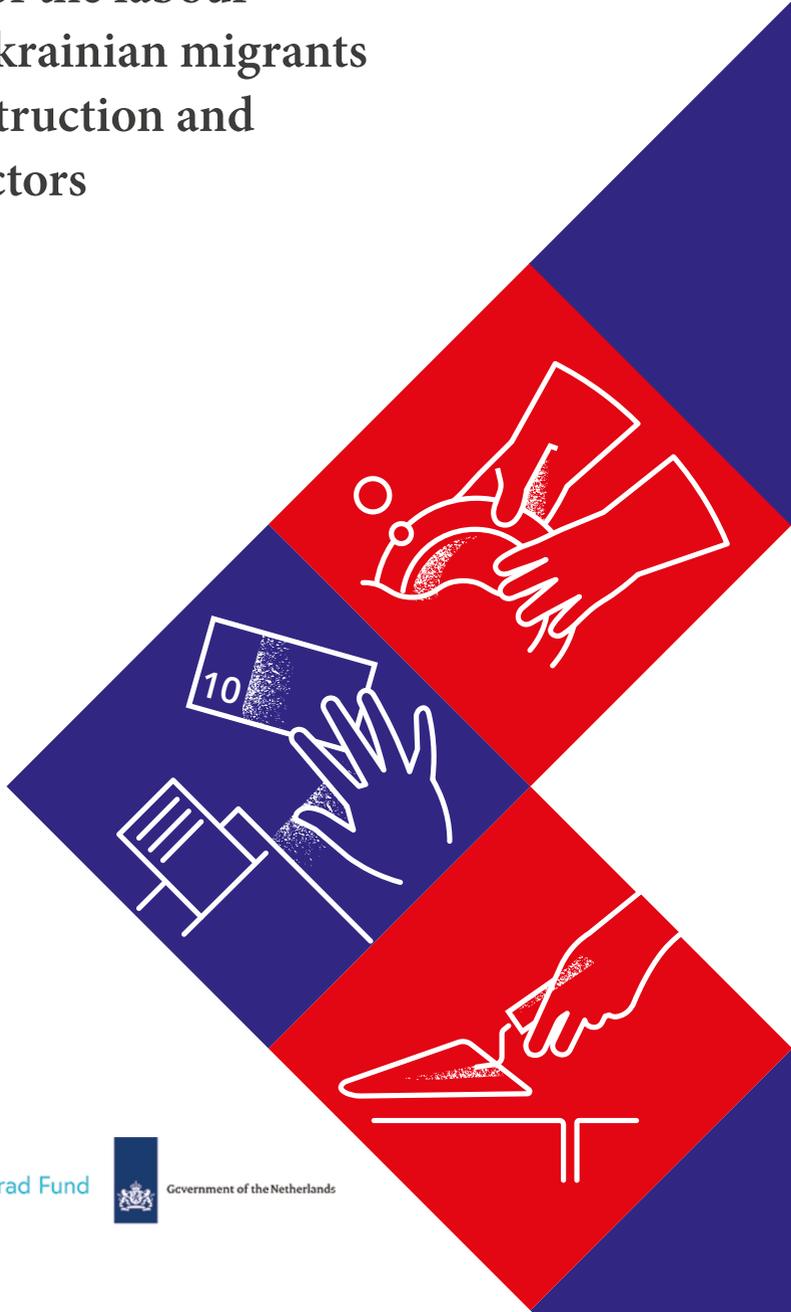


Working in Poland: violations of the labour rights of Ukrainian migrants in the construction and services sectors

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About project

“Towards stronger transnational labour enforcement cooperation on labour migration” (STRONGLAB) project is funded by the International Visegrad Fund and the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

STRONGLAB’s activities analyse patterns of labour migration and rights violations of migrant workers in the V4 countries with a focus on Ukraine as a sending country. We aim to provide up-to-date information on labour rights violations and intermediary practices and suggest possible remedies. Furthermore, the project aims to strengthen cooperation and experience sharing among labour inspections, NGOs and other actors providing assistance to migrant workers to strengthen protection and enforcement of labour rights.

The project consortium includes Multicultural Center Prague (Czech Republic), Fundacja “Nasz Wybór” (Poland), Centrum pre výskum etnicity a kultúry (Slovakia), Anblokk Kultúra- és Társadalomtudományi Egyesület (Hungary) and Charitable Foundation “Zaporuka” (Ukraine).

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Executive summary

Problem

The aim of this report is to analyse the construction and services sectors (restaurant workers, hotel cleaners, bus and taxi drivers) and the shady role of intermediary practices in the recruiting of Ukrainian migrant workers that often leads to their exploitation in Poland and other EU countries. The report will also address the issue of posted workers, but in the context of “fake” posting organized by the intermediaries.

Research was conducted from May – October 2017 and included: desk research; analysis of media articles; collection of statistical data; sending requests for information to state institutions; monitoring of social media for job announcements and migrants’ complaints regarding working conditions; consultations with experts; and structured interviews with stakeholders and Ukrainian migrants. In total 14 interviews and 1 unstructured group discussion were conducted in Warsaw.

Context

Ukrainians come to Poland mainly as temporary migrants, and are employed both through temporary work agencies (TWA) and directly. In 2016 migrants from third countries worked mainly in administrative and support services (work for TWA, services, cleaning – 26 %), manufacturing (21 %) and construction (19 %). The State Labour Inspectorate (PIP) stated that irregular employment of migrants also occurred in these sectors.

The majority of Ukrainians accessed the Polish labour market using the simplified procedure known as the *Declaration of intent to employ foreigners* (*Oświadczenia o zamiarze powierzenia wykonywania pracy cudzoziemco-*

wi), which the Polish government implemented in 2006.¹ Polish employers could employ foreigners for up to 6 months in a 12-month period without the need for a work permit. Ukrainians received approximately 1.2 million of these declarations in 2016, involving work for TWA, in agriculture, construction and manufacturing. The demand for labour in Poland and the economic crisis in Ukraine resulted in an increase of short-term migration to Poland and other EU states using Polish documents. In 2016 Ukrainian citizens received 1 360 000 visas, an increase of one quarter since 2015, and 1 262 845 declarations.

Employment through Intermediaries

Most migrants interviewed had used the services of intermediaries to help them find a job, submit visa documents or provide documents to legalise their stay when already in Poland. The majority of intermediaries (large companies and unregistered intermediaries) cooperate with their agents (individuals, agencies or their offices) in Ukraine in providing workers. Poland is experiencing a rapid growth in agencies, especially of TWA. There were 6081 agencies in 2015, 7386 in 2016 and 8 646 agencies by 20 October 2017. 1.2 million people (both Poles and foreigners) found jobs through agencies in 2015, with 799 727 of these being temporary employment.

Most common irregular practices of intermediaries

- Job-finding fees. The charge for arranging a job starts from 100 euros, depending on the types of documents prepared.
- Payment for jobs in the form of a deposit to the agency for the worker to appear at the workplace.
- Deducting sums from salaries for housing or other expenses.
- Contracts only in Polish, with no translation provided. Low awareness

¹ The new law came into force on 1 January 2018 by which declarations of intent were replaced with two types of documents: declaration of employment and seasonal work permits. Since this research was conducted in 2017, thus the analysis refers to the state of affairs before the change of law.

among migrant workers regarding their labour rights, and a reluctance to read contracts.

- Blackmailing of migrant workers using their desire to prolong their work in Poland and legalize their residence.
- Recruitment for fake jobs and the sale of permits for visas.
- Limited training in workplace health and safety.
- Posting of migrant workers to other EU countries occurs irregularly, since only 1682 Ukrainians received form A1, meaning legal employment with social security taxes paid.

Main violations at the workplace

- Work without a work contract.
- The types of work contracts are not the right ones for the work migrants do. Often they should be employment contracts instead of civil law contracts.
- Medical care is not provided, since many Ukrainian migrants work in the grey zone or have civil law contracts that provide no medical care.
- Extensive working hours.
- Non-payment of wages by both intermediaries and direct employers, or non-payment of wages for the final months of employment. Employers abuse migrants' need to return home before their visa expires.
- Unpaid trial periods.
- Deduction of housing and other costs from salary.

Employment rights enforcement and resistance

The state institutions that deal with the legality of employment and the enforcement of migrants' labour rights, such as the State Labour Inspectorate, the Border Guard and the Polish Social Insurance Institute, mainly check whether migrants are legally employed and legally resident, and if they are found to be working or residing illegally, issue them with fines and/or deportation notices. These institutions are thus perceived by migrants as con-

trolling institutions, and not as providing support in cases of problems with employers. If Ukrainians are dissatisfied with an employer for violating labour rights or having improper working conditions, they manifest it by changing employer. In general, they demonstrate a low level of awareness of the institutions and trade unions that provide support or could intervene in the event of violations of their rights, and they have little trust in them.

Main conclusions and recommendations

Short-term work permits (Declarations of intent) for foreigners in Poland are characterized by widespread fraudulent practices. This procedure allows fast access to the labour market for migrants who are needed on the Polish labour market, but because of its limitations it is open to abuse. Polish governments still believe that they need to limit access to the labour market by implementing various restrictions and procedures, despite the economy's great need of labour, which has increased over the past few years. In Poland, work permits of whatever type are given for only one job, one employer and with a fixed salary. This practice substantially limits the employer's flexibility in employing migrants and the migrant worker's flexibility in changing jobs.

It is possible to note alliances between employer and employees in abusing short-term work permits in various ways and avoiding legal employment in order to maximize benefits. As a consequence, however, it is mainly migrants who pay the costs of irregular work by being fined or deported. It also happens that an employer violates their rights, but being irregularly employed they have limited possibilities of pursuing their rights.

The Polish authorities should therefore consider simplifying the bureaucratic proceedings connected with the issuing of work and residence permits to foreigners. Violations of the short-term work permits system could be limited and grey-zone employment diminished if: 1) work permits for for-

eigners were issued to foreigners with a right to work in a particular sector of the economy, and not just for a particular employer in a fixed job; 2) work permits were abolished, or the current list of professions where permits are not needed were replaced by a list of professions where work permits are needed; 3) self-employment for foreigners (with all types of residence documents) were introduced, with fixed taxes paid for a certain period regardless of the number of employers they work for. Such solutions could diminish the shadow economy in migrant employment and bring additional taxes into the economy, especially from the construction, services, cleaning, and domestic care sectors.

Migrants have a limited number of social actors that can defend their interests, and low awareness of their rights. Thus, migrants in general rely on informal institutions such as their network of acquaintances. It is mainly civic organisations who support migrants in the event of problems, and who raise awareness. Migrants feel threatened by the State Labour Inspectorate due to its authority to monitor the legality of employment, regardless of the fact that they may also receive some support from the Inspectorate. So far, trade unions, especially Ukrainian ones, do not exist on the migrants' radar in terms of organizations that can provide support and protection. Thus, many violations of labour rights and malpractices by intermediaries are not acted on by the authorities.

There is a need to increase migrant workers' awareness of their rights by means of information campaigns organized by the state, public institutions, trade unions and civic organizations. These campaigns should be broadcast via social media and institutions in Poland and Ukraine. Such awareness campaigns require cooperation between Polish and Ukrainian authorities. Trade unions should make workers more aware of what unions can do to defend their rights and encourage migrants to join them, since they have legal means of protecting workers.

Introduction

Ukrainians come to Poland mainly as temporary migrants, and are employed both through temporary work agencies (TWA) and directly. In 2016 migrants from third countries worked mainly in administrative and support services (work for TWA, services, cleaning – 26 %), manufacturing (21%) and construction (19 %). The State Labour Inspectorate (PIP) in its annual report for 2016 stated that irregular employment of migrants mainly occurred in the following sectors: administrative and support services – 27.4% of all cases (cleaning, employment by TWA etc.); construction (27.2 %) and trade and renovation (21.3%²). An expert from the Ukrainian House in Warsaw to whom migrants come with complaints said that most complaints regarding irregularities came from workers in services and construction.

Recent years have seen an institutionalization of temporary employment and a rapid increase in the number of TWA, which became the main employer of migrants. The reason is economic growth in Poland and a lack of workers, especially in manufacturing. Companies prefer to use workers employed by work agencies instead of direct employment because it gives them flexibility in running their business, and workers when they need them, without the need to go through the complicated bureaucratic processes of legalising migrants' work and residence status.

The aim of this report is to analyse the construction and services sector (restaurant workers, hotel cleaners, bus and taxi drivers) and the shady role of intermediary practices in recruiting Ukrainian migrant workers that often leads to their exploitation both in Poland and other EU countries. The report will also address the issue of posted workers, but in the context of “fake” posting organized by the intermediaries.³

² Sprawozdanie z działalności Państwowej Inspekcji Pracy w 2016 roku. [Report from activity of State Labour Inspection in 2016] Warsaw 2017. P. 96-97.

³ See also: Izabela Czerniejewska, Pracownicy bez granic. Raport krajowy. Polska [Workers without borders. National Report. Poland]. Analizy, Raporty, Ekspertyzy 3/2014. Warsaw 2014.

Methodology

The period of research was May – October 2017. This research included: desk research using literature and reports on the topic; analysis of media articles on violations of migrants' labour rights; collection of statistical data; sending requests for information to state institutions (Social Security Institution and State Labour Inspection); monitoring social media for job announcements and migrants' complaints regarding working conditions; consultations with experts; and structured interviews with stakeholders and Ukrainian migrants. Interviews were held with representatives of the State Labour Inspectorate, the Consultation Centre in the Ukrainian House in Warsaw, the Intersectoral Trade Union of Ukrainian Workers in Poland, three representatives of work agencies, and nine Ukrainian migrants from the focus sectors. In total 14 interviews and 1 unstructured group discussion were conducted. The research also takes into account informal conversations on working conditions with migrants. Research was conducted in Warsaw and describes the state of affairs in 2017, although data from previous years is also provided.

Patterns of migration to Poland

The migration of Ukrainians to Poland started in the 1990s as border trade and later transformed into short-term and long-term migration. From the beginning, Ukrainians were the predominant group among the migrants. After 2014 the migration intensified, with the beginning of Russian-Ukrainian war in the Donbas and with the economic crisis caused by the war.⁴ The growing demand among Ukrainians for better-paid jobs met with relatively easy access to the Polish labour market for temporary workers, demand for

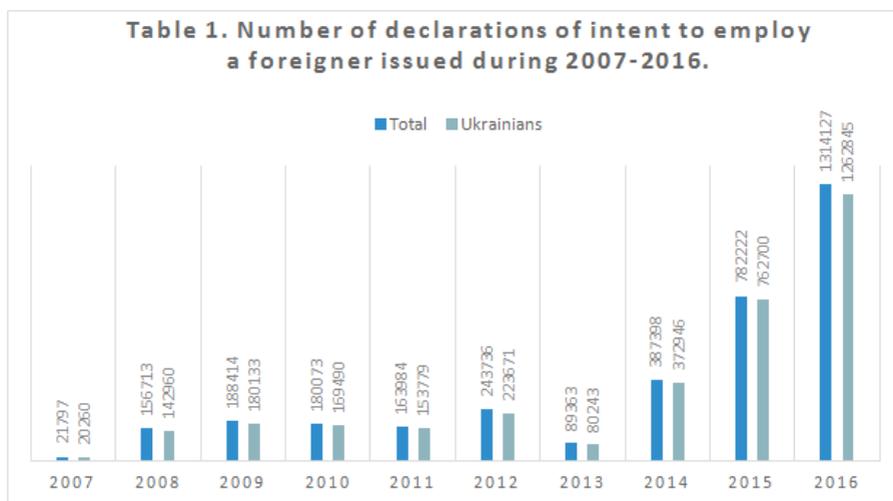
⁴ More on Ukrainian migration to Poland after 2014 in: Iza Chmielewska, Grzegorz Dobroczyk, Jan Puzyńkiewicz. Obywatele Ukrainy pracujący w Polsce – raport z badania. Badanie zrealizowane w 2015 r. [Ukrainian Citizens Working in Poland – Report From Research. Research conducted in 2015]. Warsaw, National Bank of Poland, 2016.

workers from Polish employers and the closeness of the border. This resulted in an increase in the number of intermediaries, both formal and informal, who provide workers for Polish employers, or migrants with documents allowing them to access the Polish labour market. Intermediaries increased the use of Polish short-term work permits to send Ukrainians to work in European Union countries, often irregularly and in a fragile legal situation.

Most Ukrainians accessed the Polish labour market using the simplified procedure that is the Declarations of intent to employ foreigners (*Oświadczenia o zamiarze powierzenia wykonywania pracy cudzoziemcowi*), which the Polish government implemented in 2006.⁵ Polish employers can employ foreigners for up to 6 months in a 12-month period without the need to apply for a work permit. This procedure applies to citizens of the EU Eastern Partnership countries.

⁵ The following laws regulated foreigners' access to the labour market: Poland/ Dz. U. z 2008 r., Nr 69, poz. 415, z póź. zm. [Journal of Laws of 2008 No.69, item 415 with amendments that followed] (20 April 2004), Poland/Dz.U. 2006 nr 156 poz. 1116 [Journal of Laws of 2006 No 156, item 1116] (30 August 2006); Poland/ Dz.U. 2007 nr 120 poz. 824 [Journal of Laws of 2007 No. 120, item 824] (27 June 2007); Poland/ Dz.U. 2008 nr 17 poz. 106 [Journal of Laws of 2008 No. 17, item 106] (29 January 2008); Poland/ Dz.U. 2009 nr 21 poz. 114 [Journal of Laws of 2009 No.21, item 114] (01 June 2010); Poland/ Dz.U. 2010 nr 236 poz. 1559 [Journal of Laws of 2010 No. 236, item 1559] (09 December 2010); Poland/ Dz. U. z 2011 r. Nr 155, poz. 919 [Journal of Laws of 2011 No. 155, item 919] (20 July 2011); Poland/ Dz.U. 2013 poz. 1507 [Journal of Laws of 2013, item 1507] (28 November 2013).

This procedure required that the employer register the declaration in the local labour office and indicated the name of the employee, position and salary. Such a declaration were free of charge. On the basis of this declaration the migrant was able to apply for a visa and work legally for that employer. The migrant could have several declarations during the duration of his/her short-term visa, as long as the stay on this basis does not exceed 6 months out of 12.



Source: Ministry of Family, Labour and Social Policy.⁶

Ukrainians received approximately 1.2 million of these declarations in 2016, although this does not mean 1.2 million persons, because one person can receive several declarations. The age of the migrants who received these declarations is between 26 and 40, and women comprise 1/3 of them. In 2016 the leading sectors for which Ukrainians received declarations were: 1) administrative and support services (this means that workers are employed by TWA and work in various sectors); 2) agriculture 3) construction and 4) manufacturing.⁷ The jobs specified in these declarations are 1) simple jobs; 2) industry workers and craftsmen; 3) operators and fitters of machines and equipment.

Intermediaries who sell declarations to potential migrants have often mis-

⁶ Ministry of Family, Labour and Social Policy. <https://www.mpips.gov.pl/analizy-i-raporty/cudzoziemcy-pracujacy-w-polsce-statystyki/>. Accessed 1.11.2017.

⁷ Ibid.

used this procedure. Some migrants who received declarations work in other than the declared places, or employers send them to do other jobs. In view of these violations, Polish governments were keen to control the process of issuing declarations and to limit their abuse, and the EU, too, required implementation of the directive on seasonal workers.⁸ In 2017 Poland introduced a law that came into force on 1 January 2018, replacing declarations of intent with two types of documents: declaration of employment and seasonal work permits. The former is a modification of the declaration of intent and allows migrants to work in Poland for up to 6 months in a 12-month period, while the latter allows them to work for 9 months out of 12, but is limited to several sectors. Employers have new obligations concerning reporting the employment of foreigners and the signing of work contracts.⁹ The law adds new procedures in order to limit violations, but also makes legalization of work even more complicated, which is likely to open the way to abuse by intermediaries handling paperwork for access to the Polish labour market.

To sum up, the increased demand for better-paid jobs in Ukraine has resulted in an increase in short-term migration to Poland and other EU states using Polish documents. In 2016 Ukrainian citizens received 1 360 000 visas, an increase of $\frac{1}{4}$ since 2015, and 1 262 845 declarations. While there is no precise data regarding the number of Ukrainians in Poland due to the shuttle character of migration, it can be seen that such migration transforms into long-term migration despite the complex nature of the procedures.¹⁰

Employment through

⁸ Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0036> Accessed 30.10.2017.

⁹ Ustawa z dnia 20 lipca 2017 r. o zmianie ustawy o promocji zatrudnienia i instytucjach rynku pracy oraz niektórych innych ustaw. [Law of 20 July 2017 amending the law on promotion of employment and institutions of labour market and some other laws.] Dz.U. 2017 poz. 1543.

¹⁰ The Office for Foreigners provides information about short and long-term foreign residents in Poland. Ukrainians now account for almost half of the total number of foreigners residing

Intermediaries

Typology of the intermediaries

The research revealed that the majority of migrants interviewed used the services of intermediaries in finding a job, submitting visa documents or providing documents for the legalization of their stay while already in Poland. Most of these intermediaries cooperate with their agents (individuals, agencies or their offices) in Ukraine. Intermediaries that provide such services may be divided into three groups:

1. Large international and local work agencies
2. Small registered work agencies
3. Unregistered agencies or private persons who recruit through a network of private persons or “travel agencies” which operate in Ukraine. Sometimes these are companies that operate in Poland, but which are not registered as agencies.

Since 2014 Poland has seen rapid growth in the number of agencies, especially of temporary work agencies (TWA). There were 6081 agencies in 2015, 7386 in 2016 and 8 646 agencies by 20 October 2017.¹¹ 1.2 million people found jobs through agencies in 2015, 799 727 of these being temporary employment. The data refers to employees in general without a division into foreign and local employees.¹² Of those in temporary employment, 73 % worked in production, 25 % in services, 2 % in agriculture and 1 % in construction. Manufacturing companies tend to use the services of agencies to employ workers, and these tend to be Polish TWA that recruit in Ukraine through their office network or local recruiters. One intermediary wrote

here, and there were 128 thousand Ukrainians in Poland with valid residence permits as of 30.06.2017. Office for Foreigners, <https://udsc.gov.pl/statystyki/raporty-specjalne/biezaca-sytuacja-dotyczaca-ukrainy/> Accessed on 19.10.2017.

¹¹ Register of agencies: <http://www.stor.praca.gov.pl> Accessed 20.10.2017.

¹² Rynek Agencji Zatrudnienia w 2016 roku [Polish Market of Work Agencies in 2016]. Polskie Forum HR, 2017. P. 7-8, 16.

on Facebook that companies situated around Wrocław do not hire workers directly, only through agencies. TWA are now the leading employers of Ukrainian migrants in Poland.

The legal basis for the operation of TWA and work agencies is the Law on Employment of Temporary Workers of 9 of July 2003 (Dz.U. 2003 nr 166 poz. 1608) and the Law amending the Law on Employment of Temporary Workers and Other Legal Acts of 7 April 2017 (Dz.U. 2017 poz. 962).¹³ The law has two dates of implementation: 1 July 2017 and 1 January 2018. The law put an end to the practice of employing people long-term using temporary employment contracts. A worker cannot now be employed on a temporary contract for more than 18 months in 36 months, counting both agencies and user company. The intention is to change the practice of employing one person for the same job and the same user company for a long period. The law also introduces protection of pregnant women. If the contract expires after the 3rd month of pregnancy, the contract is prolonged to the date of childbirth and the woman is entitled to maternity leave payments. The condition is at least two months' employment with the agency as a temporary worker.¹⁴

Practices of agencies and unregistered intermediaries

The large agencies have created a network of offices and other partner agencies in Ukraine to recruit workers. They provide combined services for user companies: 1) agencies employ migrants, or 2) recruit workers for user companies. For them it is important to underline that their services are free of charge. Migrants, however, may be charged

¹³ On the genesis of the temporary work agencies in Poland see: Neil M Coe, Jennifer Johns, Kevin Ward, *Flexibility in action: the temporary staffing industry in the Czech Republic and Poland*. Environment and Planning A 2008, volume 40, pp. 1391 - 1415.

¹⁴ Ustawa z dnia 7 kwietnia 2017 r. o zmianie ustawy o zatrudnianiu pracowników tymczasowych oraz niektórych innych ustaw [Law of 7 April 2017 amending the law on employment of temporary workers and some other laws]. Dz.U. 2017 poz. 962. <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20170000962> Accessed on 30.10.2017.

with the costs of drawing up documents for visas or work permits. An expert from the PIP said that such payments are legal if they do not exceed the real cost of such a service. However, most intermediaries charge their clients for the job and their services. TWA say this is a way of ensuring that a potential employee will not resign during the legal procedures and transfer to the user company.

Small agencies and unregistered intermediaries have built an extensive network both in Ukraine and Poland. They recruit through private persons or work and travel agencies. Their services include finding jobs (real or fake), preparing work permits (declaration of intent or work permit, and since 1.01.2018 also declarations of employment or work permits for seasonal work), visa documents, and transporting migrants to the workplace. The chain of intermediaries includes representatives in Ukraine and Poland. Representatives in Ukraine recruit, provide support for visa applications, and in some cases they organize transport to the workplace. Representatives in Poland search for user companies, deal with the legalization of work when such is required or promised by them, and coordinate the transport of workers to the workplace and the supervision of workers when the agency is the employer. CC1 is the owner of a small construction company and he recruits his workers through his own network of contacts in Ukraine. He pays 24 euros for the recruitment of one person. C1's construction company also recruits workers directly, but he helps them to find employees by bringing relatives, friends or workers he met during his work in Poland. They both mentioned the significant turnover of workers in their companies due to lack of qualifications and problems with alcohol, meaning that recruitment is constant.

Ukrainian migrants often pay for the services of agencies. They believe if they pay for a job they will be provided with one. This reflects the general situation that has developed in Ukraine since the 1990s, with state institutions losing the trust of society. People began to rely on

private contacts and private agreements, and thought that only paid services could be trusted. TWA2 mentioned that when they opened offices in Ukraine, people treated them with mistrust because their services were free of charge. These days the situation is changing, as a result of information campaigns and international agencies coming into Ukraine with new standards and the idea that jobs should be for free.

The large agencies are dissatisfied with the role of shadow intermediaries because they create a negative image of agencies in general. Some of them initiated information campaigns aimed at migrants about their labour rights or supported activities aimed at migrants: the campaign “I don’t pay for a job” from Otto Work Force,¹⁵ legal consultations, short movies on legal employment or charitable activity from SAS Logistic,¹⁶ the consultation point at the Bus Station West Warsaw and the program “Safe Work” from EWL.¹⁷ They position themselves as institutions that support migrants and their rights.

Interviewees from agencies said their companies did not work for the construction business because the irregularities occurring there (employment and payments) made it too high-risk.

Posting of migrant workers

Intermediaries advertise employment of Ukrainians with Polish visas or biometric passports in other EU countries. The most popular countries are Germany, the Czech Republic and Slovakia. None of

¹⁵ Website of the campaign “I don’t pay for a job” <http://www.nieplaczaprace.com/> - Accessed 19.10.2017.

¹⁶ Social media page of the organization established by SAS Logistic <https://www.facebook.com/FundacjaPartnerstwoRozwoj/> - Accessed on 19.10.2017

¹⁷ The EWL’s project “Secure Job” <http://www.bezpiecznapraca.info.pl/pl/> - Accessed 19.10.2017

the interviewees had been posted outside Poland, and nor did the agencies questioned practice the posting of workers.¹⁸ TWA1 said that the company had been considering posting workers, but concluded that the procedures were too complicated and it would take too much effort to realize. Experts in posting workers said that the procedures for posting foreigners were complicated and there was an insufficient legal basis, since there are only directives and no implementation laws. Another obstacle is the differences between member states' legal systems, and some experts pointed to the reluctance of the Social Security Institute (ZUS) to issue form A1 for foreigners, necessary for a posting.¹⁹

Posting requires the registration of the worker with the ZUS by filling in form A1. From January-September 2017 the ZUS issued 167 753 A1 forms, of which 2309 were for third country nationals, including 2078 for Ukrainians. In total 1682 Ukrainians received form A1.²⁰ They represent the main group of foreigners posted abroad, but still a tiny minority of all posted workers and those working in other EU states who are believed to be posted workers.

Many intermediaries work in the grey zone, and they recruit Ukrainian workers to work in the grey zone both in Poland and in other countries. They use the Polish system of work permits, which are relatively easy to obtain, to bring Ukrainian workers to Germany or the Czech Republic. With the establishment of a visa-free regime for Ukrainians, the number of advertisements regarding postings has

¹⁸ The posting of workers in Poland is regulated by the Directive 96/71/WE of the European Parliament and of the Council of 16 of December 1996 and Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation').

¹⁹ Experts consulted during the conferences on posting of workers.

²⁰ Data provided by Social Security Institute (ZUS) on 3.11.2017.

increased. Intermediaries promise regular employment, but since the number of A1 forms for Ukrainians is small, it means that employment is irregular.

- Job-finding fees. The services of agencies cost from 100 euros, depending on the types of documents they prepare. S5 mentioned that her acquaintances paid approximately 70-100 euros for their jobs. Many Ukrainian intermediaries post job offers with prices on the Internet. However, recently this has started to change, and job offers on the Internet often include statements that there are no job-finding fees. Probably this is the result of information campaigns initiated by NGOs and competitor agencies which provide services free of charge, and as the result of sharing knowledge on social media.
- Job fees in the form of a deposit to an agency. C1 said that his intermediary took approximately 167 euros from him for his job, and returned 119 euros when the worker used his services next time. The job finally cost him 48 euros. TWA1 said that such deposits are often required to ensure Ukrainian workers' appearance at the workplace.
- Deductions of various sums from salaries. Agencies deduct money for things such as lunch, housing or work equipment. In the opinion of the expert from the PIP, if a deduction is mentioned in the work contract, then it is legal, but if not, it is illegal. Interviewees did not complain about deductions, but the expert from the Ukrainian House had received numerous complaints about such deductions.
- Contracts are only in Polish. Most Ukrainian temporary migrant workers speak Polish on the beginner level, so it is hard for them to understand the legal language of contracts. Their knowledge of the Polish legal system is limited. Migrants often sign such

contracts without understanding their meaning and what type of contracts they are signing. Experts also said that many migrants were not interested in reading contracts. CC1 underlined that his employees do not read their contracts even if he gives them a translation, and that they check only the salary. They trust the employer and expect that the employer will guide and protect them, especially if s/he comes from Ukraine. Yuriy Karyagin from a Ukrainian trade union also underlined this problem. TWA1 supports this statement, because her company provides translation of all documents that migrants have to sign, but they rarely read before signing. Since 2018 agencies have been obliged to provide contracts translated into a language migrants understand.

- Work without a work permit. Some agencies promise migrants legal employment (work contract and work permit) and a regular and fixed salary, but when migrants start working the agencies turn out to be reluctant to sign contracts and provide work permits. This also happens in the case of other employers. The employer is obliged to provide a migrant with a work permit. In the event of an inspection by the PIP or Border Guard both employee and employer could be fined, but the former will be reported to the Border Guard and could be deported. For migrants whose life plans involve temporary migration to Poland, expulsion from Poland and a ban on entry for some time is a serious punishment. Migrants also treat visas for work as access to the Polish labour market. They often place such announcements on Facebook: “I have a visa valid until this date and I am looking for a job.” Of the foreigners inspected by the PIP, 96 % of those without a valid work permit were Ukrainians (4 982 illegally employed).
- Blackmail of migrant workers using their desire to prolong their work in Poland and legalize their residence. Migrants need documents from their employer to obtain a work or residence

permit, and thus they often agree to work for lower salaries or in difficult conditions. S5 said that she would not be working for a fast food chain if she did not need documents to legalize her stay in Poland.

- Recruitment for fake jobs and selling permits for visas. Many migrants who are unaware of this end up unemployed and without support. Those who are aware of the type of documents they bought are looking for a job by themselves. They treat visas received using fake Declarations as open access to the labour market.
- Limited training in workplace health and safety. The issue of whose responsibility it is to train workers is blurred when workers are employed by agencies. According to the law, the user company is responsible for accidents at the workplace, even if agency workers are involved. Some user companies prefer agencies to perform training in workplace safety. Thus, such training is not always conducted.
- The posting of migrant workers to other EU countries in irregular ways, since only 1682 Ukrainians received form A1, indicating legal employment with social security taxes paid.

Typical violations at the workplace

Contracts

The present system of employment contracts in Poland dates back to the 1990s. Ewa Giermanowska divides contracts into two types.²¹ The first is full-time employment based on open-ended employment contracts with a defined place, time of work, minimum wage, and social security benefits paid, and with the right to paid vacation and

²¹ Ewa Giermanowska, Rzyzko elastyczności czy elastyczność rzyzka. Instytucjonalna analiza

sick leave. Such employment is regulated by the Labour Code and is protected by trade unions and the Labour Inspectorate. The second type of employment Gierwatowska calls non-labour employment, and it includes precarious types of employment based on civil law, so-called “civil law employment”, self-employment and temporary agency work. Civil law employment includes the freelance contract (*umowa zlecenie*) which falls under minimum wage regulations, social security taxes are paid, but there is no limit on working hours and there is no paid vacation and sick leave. Payment for sick leave is possible only if the employee agrees to deduct a special tax from his/her salary. Contracts for specific works (*umowa o dzieło*) are the next type of civil law contract, and provide no social security benefits. Non-labour employment is not regulated by the Labour Code and PIP does not have the power to protect workers with such contracts.

Six out of eight migrants interviewed had signed civil law contracts. This reflects a general tendency in the employment of migrants, that if they have any work contract it is likely to be a civil employment contract. At the end of 2016, 382 000 foreigners were registered with the Social Insurance Office (ZUS) and 286 000 of these were Ukrainian citizens (75 %), which means that they have the type of employment contracts where social security taxes are paid. 164 000 Ukrainians had civil law contracts (57 %).²²

A few interviewees indicated that they or their friends preferred to be employed on the basis of a civil law contract. They said that an employment contract would limit their possibility to work extra hours and to earn more. All interviewees worked 10-12 hours per day, and

kontraktów zatrudnienia [The risk of flexibility or flexibility of risk. Institutional analysis of employment contracts]. Warsaw, 2013. P. 327; Małgorzata Maciejewska, Adam Mrozowicki. The Rise of Dual Labour Market: Fighting Precarious Employment in the new member states through industrial relations (PRECARIR). Country Report Poland. CELSE Research Report No 13. 2016. P. 12.

²² Data provided by the PIP.

this working time was their decision. S4, like his colleagues from work, does not want to be employed on an employment contract, because it limits his working hours and requires him to pass a special exam and to change the bus he drives for a more technically-complex model. He also stated that at his work only Poles have employment contracts, while Ukrainian workers have only civil contracts. C2 claims that at his work some Poles wanted to change their employment contracts to civil contracts because they wanted to earn more. C2 though this was not sensible, because they were in their own country, had homes and families and could not work such long hours.

Polish law requires that migrants have a written work contract, as opposed to Polish workers who can also have an oral contract. In the event of an inspection, migrants might face consequences for not meeting this requirement. This rule causes also the situation described by C1, who said that at his company only foreigners had work contracts, because they needed to apply for work and residence permits.

Wages

The migrants interviewed said their salary was between 2.8 and 4.3 euros net per hour. The Polish government raised the minimum wage in Poland to 3.1 euros gross per hour from 1 January 2017. Employers who sign contracts with migrants must pay at least the minimum wage. In general, wages in the construction business are higher than in other sectors and they depend on experience, qualifications and profession. Workers without qualifications or who are newly arrived are paid 2.8 euros net per hour. Those with experience and good qualifications can expect to receive 4.3 euros net per hour. Interviewees C1 and C2 had several years of experience and their salaries were 3.8 and 4.3 euros per hour. C1 also indicated that he was paid double wages for work

on Sundays.

Migrants working in services declared that they were paid the Polish minimum wage, 3.1 euros gross per hour. This refers to restaurant workers and a bus driver. S2, a hotel cleaner, is paid 1.4 euros per room. Seven out of eight interviewees said they had similar wages to Poles. Only C2 mentioned that at his work Poles received a higher salary. He said that Poles earned approximately 4.3 euros, and Ukrainians 2.8 euros. They complained to the employer, but without success.

Growing demand for labour in Poland in 2017 changed the wages paid to migrant workers. The Upper Job agency indicated that because there was a high demand for workers in Poland, Ukrainians were starting to demand higher salaries for their work.²³ There has been an increase of approximately 15 %-35 %. For instance, builders' wages in May 2017 were 4.8 euros per hour, but by July had gone up to 5.6 euros. Cooks also want a wage increase of 17 %, that is to 3.3 euros per hour. On average physical workers from Ukraine sought to earn 33 % more in July than in May 2017.

Working hours

All interviewees work 10-12 hours per day. Construction workers work 6 days a week, restaurant workers, the cleaner and bus driver work in shifts. Service workers often combine their main employment with other jobs, thus they work at least 6 days a week. S2 combines a regular job in a hotel with irregular work in a care institution.

Interviewees did not complain about extensive working hours, because

²³ Ukraińcy pracujący w Polsce i żądają wyższych zarobków [Ukrainians work in Poland and request higher wages]. <http://www.solidarnosc.org.pl/pl/aktualnosci/wiadomosci/zagranica/item/15412-ukraincy-pracujacy-w-polsce-i-zadaja-wyzszych-zarobkow>. Accessed on 20.10.2017

their goal was to earn money and working 10-12 hours per day and 6 days a week is thus acceptable to them. S5 said that her friend worked on a production line 14 hours per day and 6 days a week, and resigned from her work contract because she wanted to work more hours than the work contract would allow. TWA1 underlined that the agency had examples of people being offered an 8-hour working day with a good salary, but Ukrainian migrants quit the job claiming that they wanted a 10-hour working day at least, and agreed to work for more hours even with a lower salary per hour.

Some interviewees pointed to differences in working style and payments between Poles and Ukrainians. C2 stated: “Poles are more demanding workers. When it rains, they don’t want to work, and go home. Ukrainians stay and work and they complain about the Poles, because they want to finish their job faster and to work longer hours than Poles.”

Interviewees made no complaints about working time, but there are multiple complaints regarding working time and working conditions in Ukrainian groups on social media.

Quotation from social media: Restaurant on the Baltic seashore. It is slavery for Ukrainians and others and there is significant turnover of employees every day. They employ people on tourist visas or biometric passports, but no one checks the documents. Their recruiter is a Ukrainian woman. She misleads potential workers about working conditions. There are no days off, lunch breaks, the working hours are 15 hours per day. The employer forces workers to work at night. When a sanitary inspection comes the workers must run off, taking off their working clothes, or have to be shut up in a small room. Workers sleep in builders’ huts with mould and insects. The restaurant is open during the summer season. 10 people from Rivne worked there during the summer and servers spoiled food. There are a hundred dissatisfied

Ukrainians and students.

Main violations at the workplace

- Work without a work contract. Many Ukrainian migrants work in the grey zone, especially in sectors where such grey-zone employment is common, such as services or construction. The PIP discovered that of the 4 982 Ukrainians they inspected, 4 685 had no valid work permit and 511 lacked a written work contract. Research carried out for IOM indicated that 20 % of Ukrainian migrants worked without a contract and 22 % were victims of exploitation.²⁴ C1 and CC1 mentioned the practice of part-time employment in the construction sector. Workers' contracts state that they work for instance 4 hours a day, but in reality they work 10-12 hours. For the additional hours, they are paid unofficially. In case of non-payment for these extra hours, migrants have limited opportunity to pursue their rights. Social security taxes are high both for employer and employee, thus both sides prefer irregular employment or part-time employment, which provides social security benefits for migrants, but also allows them to receive a higher salary.
- Types of work contracts are not the right ones for the work migrants do. Often they should be employment contracts instead of civil law contracts.
- Medical care is not provided, since many Ukrainian migrants work in the grey zone or have civil law contracts that provide no medical care. In the event of accidents, workers could be sent to Ukraine in

²⁴ Anna Rostocka, Badanie ankietowe BCC i IOM. Przedsiębiorcy o zatrudnianiu cudzoziemców. 2017 [Survey research BCC and IOM. Businessmen on employment of foreigners]. P.2. https://www.bcc.org.pl/uploads/media/2017.10.04_Przedsiębiorcy_o_zatrudnianiu_cudzoziemcow_-_badanie_ankietowe_BCC_i_IOM.pdf Accessed 15.10.2017.

order to avoid medical care expenses and compensation.

- Extensive working hours. For the most part, temporary migrants prefer to work 10-12 hours a day, because they want to earn as much as possible during their short stay in Poland. However, migrants often complain, especially on social media, of cases when an employer forces them to work 14 and more hours a day and in difficult conditions.
- The non-payment of wages by both intermediaries and direct employers. Our interviewees had no such experience, but experts said that this was the main violation declared by migrants. The PIP backs up this statement. Of 500 complaints filed with the PIP in 2016 by migrants, 287 were about non-payment of wages. Sometimes this reflects the general situation in sectors of the economy such as construction. Employers in the construction sector often have problems paying wages, because their company is a sub-contractor of another company and if the client is delaying payment, the whole chain of sub-contractors has problems with running the business and payment of salaries. S6 mentioned that his employer delayed payment to her husband, because his company was sub-contracted by another company and the latter owed 1 190 476 euros to the first company. The employer has to pay the husband 2 381 euros.
- Employers also practice non-payment for the final months of employment; they abuse migrants' need to return home before their visa expires.
- Unpaid trial period. Such employment has been reported to exist in restaurants, when workers are hired for a trial period, then fired without payment. Such recruiting is common for unqualified jobs like washing dishes or cutting vegetables. An expert from the

Ukrainian House said that a Polish restaurant chain required, as a condition for paid employment, that a newcomer work for free for several days.

- Deduction of housing and other costs from salaries. Such cases raise complaints from migrants if they were not informed about the deductions, or they signed contracts without reading them. The expert from the PIP stated that if such a deduction is included in the work contract, then the employer has the right to make it, but if not then the PIP can intervene and punish the employer.

Employment rights enforcement and resistance

Employment rights enforcement

The main state institution responsible for employment rights enforcement is the *State Labour Inspectorate (PIP)*. The PIP is subject to the lower chamber of the Polish Parliament, the Sejm, and is supervised by the Council of Work Protection established by the Marshal of the Sejm. The Marshal appoints the Main Labour Inspector, who manages the PIP. Since 2007 this institution has been entitled to inspect both legality of employment and work safety conditions.²⁵ Starting from 1 January 2018 the PIP will gain new powers to monitor and punish irregular employment.²⁶ The PIP will be able to impose a variety of financial fines for the irregular employment of migrants, starting from 238 euros and going up to 7 143 euros.

There are some limitations to the PIP's powers, since the institution

²⁵ Ustawa z dnia 13 kwietnia 2007 r. o Państwowej Inspekcji Pracy [Law of 13 April 2007 on the State Labour Inspectorate]. Dz. U. z 2017 r. poz. 786.

²⁶ Ustawa z dnia 20 lipca 2017 r. o zmianie ustawy o promocji zatrudnienia i instytucjach rynku pracy oraz niektórych innych ustaw [Law of 20 July 2017 amending the Law on the promotion of employment and labour market institutions and some other laws]. Dz.U. 2017 poz. 1543.

is entitled to take action to protect workers who have employment contracts but has limited authority to act in cases of civil contracts. Since the PIP monitors legality of employment and reports cases of irregular employment to the Border Guard, and the latter punishes foreigners, migrants thus treat this institution predominantly as controlling and not as protecting them.

PIP Inspectors monitor the legality of employment in organisations where violations tend to occur most often. For 2017 PIP defined these as TWA and construction companies. The PIP chooses sectors using data and results of inspections in previous years. Indicators taken into account are: a high number of irregularly-employed migrants; companies that employ seasonal workers; work agencies and user companies; foreign companies that post workers to Poland. The main reasons for an inspection are complaints from employees, and information from other institutions about a suspicion of irregular employment of migrants.

The PIP has approximately 200 inspectors to monitor the legality of employment of migrants. In 2016 the PIP inspected 25 405 Ukrainian workers in Poland and 4 982 were defined as irregularly employed.²⁷ The irregularities occurred mainly in large cities, but in small companies. Table 3 shows the violations of safety rules and labour rights concerning foreigners.

Table 2: Violations of safety and labour rights concerning foreigners. Result of PIP controls in 2016	% foreigners who were the object of violations of rules
Violation of safety rules and working conditions	19.4
Employment of foreigner in conditions other (worse) than were defined in the declaration of intent	12.5

²⁷ Information provided by Jarosław Cichoń from State Labour Inspectorate.

Violations of rules concerning the provision of social insurance for foreigners	12.2
The practice of signing civil contracts in cases where employment contracts should be signed	7.3
Working in a different position or having other conditions of work than were provided in the work permit for temporary work and residence permit.	4
Work for an employer other than the one that issued the declaration of intent	3.7
Work contracts do not include conditions mentioned in work permit or temporary residence and work permit	2.4
No written employment contract or civil contract	1.8

Source: PIP.

In the case of work agencies the PIP controls both the agency (legality of employment, social benefits for workers) and user company (safety and work conditions). The PIP checks whether migrants are receiving a lower salary or are working in a different position than provided for in the work contract, and what type of contract they have, if any. The employer is fined for providing inappropriate types of contract. The PIP does not intervene if employment conditions (salary and type of contract) are better than in the declaration of intent or work permit. The PIP's obligations include monitoring the posting of workers. The institution monitors both the posting of workers to Poland and of Poles abroad by inspecting the companies that post. The PIP is a contact institution in Poland for the IMI system, whereby EU countries can monitor the posting of workers. PIP provides answers to enquiries from EU states about work agencies or the legality of employment of migrants, and also monitors local companies that post Ukrainian workers abroad.

The PIP cooperates with the Border Guard on a daily basis and exchanges information about planned inspections. When there is a suspicion of the irregular employment of a large number of

immigrants, or in the case of large enterprises, the PIP organizes the inspection together with the Border Guard.

The PIP controls occupational safety conditions for all workers, regardless of origin. In 2016 the PIP discovered safety procedure violations in the case of 3000 foreigners, compared to 1800 cases in 2015. They mainly concern the construction sector e.g. work at height without security equipment, or unsecured excavations. The PIP has no authority to control housing conditions, but they could do so at the request of employees. If they find violations of fire rules, or unfit sanitary conditions, they report them to the fire brigade or other responsible institutions.²⁸

The PIP is engaged in information campaigns on migrants' labour rights and work legalization. In September 2017 the PIP, together with the Social Insurance Institute (ZUS), initiated the campaign "I work legally!"²⁹ This campaign includes distribution of printed materials, creation of a website and of programs in the languages spoken by migrants in Poland. The PIP frequently organizes training sessions for civic organizations or other institutions supporting migrant workers.

The Border Guard gained competences in the 1990s to control legality of employment in addition to legality of stay.³⁰ For irregular work and residence migrants could receive a fine and an order to leave the country with a ban on entering the EU for a certain period. The Border Guard can inspect companies, households and private persons who

²⁸ Information provided by Jarosław Cichoń from the State Labour Inspectorate.

²⁹ Campaign website: www.prawawpracy.pl, accessed on 2.11.2017.

³⁰ The prerogatives of the Border Guard are regulated by: Ustawa z dnia 12 października 1990 r. o Straży Granicznej [Law of 12 October 1990 on the Border Guard]. Dz. U. 2016 r. poz. 1643 z późn. zm.; Ustawa z dnia 2 lipca 2004 r. o swobodzie działalności gospodarczej [Law of 2 July 2004 on freedom of business activity]. Dz. U. 2016 r. poz. 1829 z późn. zm.; Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 20 lutego 2009 r. w sprawie przeprowadzania przez funkcjonariuszy Straży Granicznej kontroli legalności wykonywania pracy przez cudzoziemców, prowadzenia działalności gospodarczej przez cudzoziemców oraz

employ foreigners, as well as foreigners running their own business. Table 3 shows the results of inspections of the regularity of foreigners' employment.

Table 3: Border Guard findings of irregular work by foreigners	2016	2015
Ukrainians	2054	1532
Third country nationals in total	2242	1699

Source: Border Guard³¹

The social insurance of migrant workers is monitored by the Polish Social Insurance Institute (ZUS). This institution controls whether employers have signed proper employment contracts and whether social security taxes have been paid. The ZUS collaborates with the Border Guard and provides the latter with data on entrepreneurs and employers who register foreigners for social insurance. The Border Guard informs the ZUS of suspected violations of regulations concerning the insurance of foreign workers. To facilitate information exchange, the ZUS and Border Guard have created an internet platform.³² The ZUS is also involved in the registration of posted workers. The employer must register with the ZUS migrant workers who are to be posted to EU countries, and must provide them with form A1 issued by the ZUS.

powierzenia wykonywania pracy cudzoziemcom [Decision of Minister of Interior Affairs and Administration of 20 February 2009 on the conduction of inspections of the legality of employment of foreigners, economic activity of foreigners and entrusting performance of work to foreigners by functionaries of the Border Guard]. Dz. U. 2009 r. nr 36, poz. 284.

³¹ Statistics of Border Guard: <https://www.strazgraniczna.pl/pl/granica/statystyki-sg/2206,Statystyki-SG.html> Accessed 6.11.2017.

³² ZUS i Straż Graniczna będzie współpracować ws. kontroli legalności pracy cudzoziemców [ZUS and Border Guard will collaborate in control of legality of employment of foreigners]. *Gazeta Prawna*. 18.01.2017. <http://www.gazetaprawna.pl/artykuly/1011718,zus-i-straz-graniczna-bedzie-wspolpracowac-ws-kontroli-legalnosci-pracy-cudzoziemcow.html>. Accessed 6.11.2017

Resistance

Ukrainian workers manifest their dissatisfaction with employers' violation of their labour rights and improper working conditions by changing employer. C1 and S4 declared that they would change employer if he did not pay enough, or did not want to discuss working conditions. They had already changed employer several times. Only when an employer is not paying for work at all do migrants consider going to civic organizations, trade unions or the labour inspectorate for support. Migrants rarely use strikes as a means of putting pressure on employer, but prefer individual or collective negotiations.

Migrants in general demonstrate low awareness of institutions and trade unions that provide support or could intervene in cases of violations of their rights. When problems appear, they rely on their contact networks or they use the services of intermediaries. Those who are familiar with social media ask for support there by sharing their stories in Ukrainian groups. They also send information about employers and agencies to internet portals like zarobitchany.org, which publishes blacklists and whitelists of agencies. The Ukrainian trade union "Labour Solidarity" has also published its blacklist of employers.

Ukrainian migrants, when looking for support outside their circle and intermediaries, mainly use the services of civic organizations. In Poland, those who are doing job of the protection of the labour rights of migrants are civic organizations. They, like other Polish organizations, are highly dependent on financing from grants. Support to migrants was until 2014 mainly financed by the European Integration Fund, and from 2015 by the Asylum, Migration and Integration Fund (AMIF). These funds were distributed both directly from Brussels and through the Polish Ministry of Interior and Administration. With parliamentary elections in 2015 and the coming to power of the right

wing party “Law and Justice”, however, the situation has changed. The present government has withheld the distribution of the AMIF funds for two years, which means the majority of civic organizations supporting labour migrants and refugees are running out of funds for their activity. In June 2017 the government announced that the funds, which were dedicated to projects run by organizations, will be distributed to regional governors (województas). The latter can invite civic organizations to realize the integration tasks, but they are not obliged to do so. Of 16 regions, only 7 have announced a tender for a partner organization to run integration projects. That means that only a few organizations in Poland have resources to provide support to migrants, while the rest remains without resources for their existence and continuation of support for foreigners. As a result, there is a curtailment of legal and integration support for foreigners, and of monitoring of human rights protection and support provision in cases of violations, a lack of stability in the integration activities run by organizations and local authorities, and the dissolution of the qualified teams which had been supporting migrants, and which included lawyers, psychologists, interpreters, cultural mediators, etc.³³ Interviewees were familiar with the activity of some organizations that provide support to migrants. Since 5 interviewees were contacted in the Ukrainian House in Warsaw, they were thus aware that this institution provides support. They were not aware, however, of the existence of Ukrainian trade unions in Poland, and only some of the interviewees were familiar with the existence of the PIP and the possibility of filing a complaint against their employer for non-payment of salary. C2 claimed that his previous employer owes him 952 euros and that he is considering filing a complaint.

Foreigners have the right to become a member of a trade union and to

³³ Witold Klaus, Ewa Ostaszewska-Żuk, Marta Szczepanik. Fundusze europejskie i ich rola we wspieraniu integracji cudzoziemców w Polsce [European funds and their role in supporting the integration of foreigners in Poland]. Warsaw 2017. 10. Accessed on 31.10.2017: <https://interwencjaprawna.pl/wstrzymanie-fami-wplynelo-organizacje-wspierajace-cudzoziemcow/>

establish one, unlike membership of political parties. Migrants have limited knowledge and a low opinion of trade unions, which comes from Soviet times and from their limited presence in the private sector in Ukraine. The trade unions that originated in Soviet times and operate in large state companies and institutions are perceived as connected to the employer. Their main occupation, as migrants see it, is the organization of vacations or other celebrations. S1 perceives the trade union *Solidarność* at his workplace in Poland as something that offers the possibility of vacations for employees. He was not considering joining the trade union, because he did not consider it an institution that protects his rights.

Until recently, trade unions in Poland did not see migrant workers as a group whom it was their duty to protect. Their goal was to protect Polish workers, and they treated migrants as a social dumping threat. With the influx of temporary migrant workers their attitude has undergone change. There are, however, some limitations to the powers of trade unions to protect the rights of workers who are employed on the basis of civil contracts. Migrant workers often have such contracts.

The All-Poland Alliance of Trade Unions (OPZZ) dates back to the Soviet period of Poland, and is still active. In the past few years the OPZZ has started to become involved in the protection of the rights of migrant workers in Poland. This year the OPZZ Council approved the document “Position of the OPZZ Council on migration policy”³⁴ in which they opt for drawing up a long-term, fair and sustainable migration policy, which would serve the interests of workers, the economy and migrants. They believe that the rule “equal pay for the same job at the same place” should be applicable to migrant workers and that Poland should introduce sectoral collective agreements,

³⁴ Position of OPZZ Council on migration policy. <http://www.opzz.org.pl/-/stanowisko-rady-ogolnopolskiego-porozumienia-zwiazkow-zawodowych-z-dnia-27-wrzesnia-2017-w-sprawie-polityki-migracyjnej>. Accessed on 1.11.2017.

which would guarantee equal salaries and conditions regardless of workers' origin. Migration policy should be strongly connected to integration policy.

The Independent and Self-Governing Trade Union *Solidarność* (*Solidarność*), the right-wing trade union which dates back to the opposition movement in Poland in the 1980s, used to be keener to protect Polish workers against the social dumping which migrants could cause. However, the influx of migrants, especially temporary workers for manufacturing companies, caused *Solidarność* to engage itself in the protection of their rights. Trade union members who organized a protest against the company Bridgestone included demands regarding the need to provide equal wages for Ukrainian workers.³⁵

The Workers' Initiative (*OZZ Inicjatywa Pracownicza*)³⁶ is a trade union established by the Cegielski factory in Poznań in 2004 and has a number of committees working in Poland. This trade union originates in the anarchist movements and nowadays is attractive for workers because it has avoided the establishment of a developed bureaucracy and dependence on employers.³⁷ The initiative also protects the rights of migrant workers and in 2015 initiated an information campaign addressed to Ukrainian workers in which it underlined the need for equal treatment for Polish and migrant workers and promised support if their rights were violated.³⁸

³⁵ Protest pod firmą Bridgestone [Protest on company Bridgestone]. 31.01.2017. www.solidarnosc.org.pl Accessed 26.10.2017.

³⁶ The Workers' Initiative (*OZZ Inicjatywa Pracownicza*) <http://ozzip.pl/> Accessed 27.10.2017.

³⁷ Regarding the activity of The Workers' Initiative (*OZZ Inicjatywa Pracownicza*) and NSZZ *Solidarność* at Amazon in Poland: Dominik Owczarek, Agata Chełstowska. *Amazon po Polsku. Warunki pracy i stosunki z pracownikami* [Amazon in Polish way. Working conditions and relations with employees]. Warsaw 2016.

³⁸ Information campaign of the Workers' Initiative (*OZZ Inicjatywa Pracownicza*). <http://ozzip.pl/vostok/item/2106-2016-04-20-18-15-54>. Accessed 3.11.2017

In the legal sense, there are no Ukrainian trade unions in Poland. However, in 2016 two organizations that call themselves trade unions were registered: “Labour Solidarity” and “Intersectoral Trade Union of Ukrainian Workers in Poland” (ITUIW). They both are registered as foundations, a legal form of civic organization that substantially limits their powers regarding the protection of workers’ rights. “Labour Solidarity” was established by a Ukraine-based left-wing organization.³⁹ The organization followed a confrontational approach and organized a protest against non-payment of salaries in a construction company in February 2017. “Labour Solidarity” has also started to create a blacklist of employers and runs a hotline for workers.

The Intersectoral Trade Union of Ukrainian Workers in Poland was founded by the Association of Polish-Ukrainian Friendship in collaboration with the OPZZ.⁴⁰ A representative of the OPZZ became a board member of the ITUIW, and the OPZZ provides it with an office and financial and legal support. Ukrainian trade unions can rely on the network of OPZZ offices and lawyers to support migrant workers. Yuriy Karyagin stated that their organization has 2000 members, and the main sectors of their interest are construction, transport, students and services. They run a consultation point for migrant workers. Karyagin also said they were working with employers to convince them to translate work contracts into Ukrainian, and to give their employees days off for the Ukrainian holidays. They also intervene when safety conditions are not properly maintained. The majority of cases with which migrants come to them are related to non-payment of salaries. According to Karyagin they helped a young migrant worker who had his fingers cut off at the workplace to receive financial compensation.

³⁹ “Labour Solidarity” - <http://laborunion.org.ua/blog/category/poland/> Accessed on 24.10.2017.

⁴⁰ Intersectoral Trade Union of Ukrainian Workers in Poland. <http://www.mpupp.kit-sleuth.in.ua/en/> Accessed on 24.10.2017.

Conclusions

Short-term work permits (Declarations of intent) for foreigners in Poland are characterized by widespread fraudulent practices. This procedure allows fast access to the labour market for migrants who are needed on the Polish labour market, but because of its limitations it is abused. There is high demand for migrant workers in Poland, but the legal system is not keeping pace with such demand and the supply and flexibility of employment needed in many sectors of the economy. Polish governments still believe that they need to limit access to the labour market by implementing various restrictions and procedures, despite the economy's great need for labour, which has increased in the last couple of years.

The main limitation of the short-term work permit procedure that gives rise to its abuse is that all types of work permits in Poland are given only for one job, one employer and with a fixed salary. Such a practice substantially limits the employer's flexibility to employ migrants and the migrant worker's ability to change jobs. The Declaration of Intent provided the easiest way to change jobs or to combine several jobs, but in the case of other permits a change of job required and still requires a change either of work permit, residence permit or both. Thus, migrants remain in the system of short-term work permits and adapt their plans to it, or they try to shift to long-term residence in Poland by applying for long-term visas on the basis of a work permit.

Migrants work in sectors of the economy that require flexibility of employment, such as construction, services, cleaning or agriculture. These sectors are characterised by grey-zone employment of both Poles and Ukrainians. Both migrants and employers prefer to minimize employment bureaucracy and maximize the short-term benefits. Opting for irregularity is a welcome middle ground for both employer and migrant.

One can note alliances between employer and employees in the abuse of short-term work permits and the avoidance of legal employment in order to maximize benefits. In consequence, however, it is mainly migrants who pay the costs of irregular work by being fined or deported. It also happens that an employer violates their rights, but being irregularly employed they have limited opportunity to pursue their rights.

Recent years have seen the creation of a system of migrant dependence on intermediaries. TWA and unregistered intermediaries have become the main employer of Ukrainian migrants. Many cases of violations of migrant workers' rights occurred because of the malpractices of agencies. The most common are non-provision of work contracts and work permits, non-payment of salaries, the provision of migrants with poor housing conditions and illegal deductions of money from salaries. Still, in the event of problems with employers or other intermediaries, migrants tend to look to other intermediaries for solutions to their problems.

Migrants have a limited number of social actors that can defend their interests, and a low awareness of their rights. It is mostly civic organizations who support migrants in the event of problems and raise their awareness. However, these organizations are now in the process of serious fragmentation due to financial problems, and they for now provide only limited support to migrants. Migrants feel threatened by the State Labour Inspectorate due to its authority to check on the legality of employment, regardless of the fact that the Inspectorate is also able to help them. So far, trade unions, especially Ukrainian ones, are not on migrants' radar as organizations that can provide support and protection.

Migrants in general rely on informal institutions such as their network of acquaintances. Thus, they rarely file complaints to the authorities

about working, safety or housing conditions. They only decide to act when employers are not paying salaries. This means many of the violations of labour rights and malpractices by intermediaries are not processed by the authorities.

Recommendations

The Polish authorities should consider simplifying the bureaucratic procedures connected to the issuing of work and residence permits to foreigners. Such bureaucratization, because of its complex nature, limits the mobility of the labour force on the labour market, which brings losses to the economy. The complicated procedures mainly profit the intermediaries who know how to manoeuvre in the legal system surrounding the employment of foreigners.

Polish authorities should consider a shift of perspective from intensifying control of access to the labour market for foreigners towards an opening of the market to migrant workers. Measures that could reduce violations of the short-term work permits system include:

1. Issuing work permits to foreigners with a right to work in a particular sector of the economy, and not for a particular employer and fixed job as at present.
2. The abolition of work permits, or at least the introduction of a list of professions where work permits are needed, instead of the current list of professions where permits are not needed, since the Polish economy is growing and the labour market needs more workers.
3. The introduction of self-employment for foreigners (with all types

of residence documents) , with fixed taxes paid per certain period regardless of the number of employers they work for. Since work in construction or domestic care is performed mainly in the grey zone both by Poles and foreigners, such a solution could diminish the shadow economy in the employment of migrants and bring additional tax receipts into the economy, especially from the construction, services, cleaning, and domestic care sectors

Since intermediaries have become the main employer of migrants and provider of labour force to manufacturing companies there is a need to continue thorough monitoring of their practices, especially in the case of unregistered intermediaries. The state authorities should monitor not only legality of employment, but pay more attention to the occupational safety, working and housing conditions of migrant workers.

There is a need to increase migrant workers' awareness of their rights through information campaigns organized by the state, public institutions, trade unions and civic organizations. These campaigns should be broadcast via social media and institutions in Poland and Ukraine. Such awareness campaigns require cooperation between Polish and Ukrainian authorities. Trade unions should intensify workers' awareness of unions' competences to defend their rights, and encourage migrants to join them, since they have the legal means to protect workers.

List of informants

Table 5: List of informants

Number	Institution/company	Name of person/ Number of interviewee	Sector/occupation
1.	National Labour Inspectorate	Jarosław Cichoń	Governmental
2.	Foundation "Our Choice." Consultation Center for Foreigners	Oleksandra Pustova	Non-governmental
3.	Intersectoral Ukrainian Trade Union	Yuriy Karyagin	Non-governmental
4.	Temporary work agency	TWA1	Business
5.	Temporary work agency	TWA2	Business
6.	Temporary work agency	TWA2	Business
7.	City transport company subcontractor	S1	Driver
8.	Hotel	S2	Room cleaning
9.	Restaurant	S3	Cook
10.	City transport services - Uber	S4	Driver
11.	Restaurant, fast food	S5	Cook
12.	Construction	C1	Interior construction
13.	Construction	C2	Construction worker (participant in group discussion)
14.	Small construction company	CC1	Owner and manager/migrant
15.	Restaurant/cleaning	S6	Waiter/cleaner

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