



European Network Against Racism
Réseau européen contre le racisme

ENAR Shadow Report 2012-2013

ENAR SHADOW REPORT

**Racism and related discriminatory practices in
employment in Poland**

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Racism is a reality in the lives of many ethnic and religious minorities in the EU. However, the extent and manifestations of this reality are often unknown and undocumented, especially in official data sources, meaning that it can be difficult to analyse the situation and to establish solutions to it.

The ENAR Shadow Reports are produced to fill the gaps in the official and academic data, to offer an alternative to that data and to offer an NGO perspective on the realities of racism in the EU and its Member States. NGO reports are, by their nature, based on many sources of data - official, unofficial, academic and experiential. This allows access to information which, while sometimes not backed up by the rigours of academic standards, provides the vital perspective of those that either are or work directly with those affected by racism. It is this that gives NGO reports their added value, complementing academic and official reporting.

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Executive summary

The aim of this report is to contribute to knowledge and to provide insight from activists and professionals on the ground working to combat racism and discrimination in Poland as an advocacy tool by which to influence policy. It explores the situation of racism and discrimination in the field of employment in Poland for the period of March 2012 to March 2013.

Population

Poland is a very homogeneous country in terms of the ethnic, national origin, race and religion of its inhabitants. According to the National Census of Population and Housing of 2011, 93.9% of people living in Poland identify themselves only as being of Polish national/ethnic origin.¹ Third country nationals who are living in Poland mainly come from former Soviet Union countries and Asia. Ukrainians are the largest group, followed by Russians, Vietnamese, Belarusians, Armenians and Chinese. The largest national/ethnic minorities are Germans, Ukrainians, Belarusians, Roma and Russians. The religion of the vast majority of Polish residents is Christian: Roman Catholics constitute the largest group (87.58% of the total population), followed by Orthodox, Jehovah's Witnesses, Lutherans and Greco Catholics.²

Ethnic and National Minorities

Among all national and ethnic minorities, only the Roma stand out from the rest of society with regard to their situation in the field of employment. Around 95% of Roma are not in regular employment, although some work temporarily or conduct unregistered economic activity (mainly trade).³ The situation of Roma on the labour market stems from many factors, including low education outcomes (sometimes even illiteracy), lack of vocational qualifications and skills to enter and adjust to the requirements of the labour market, the low demand for occupations traditionally performed by the Roma (blacksmithing, horse trading), a negative stereotype of Roma among Poles, wide-spread hostility and discrimination. The Roma encounter discrimination even at the stage of job-seeking - they are simply refused employment.

Since 2004, a number of projects have been implemented to increase job activation and fight unemployment in the Roma community. The most frequent activities undertaken within these projects include: the organisation of vocational training courses, advisory employment services, creation of subsidised jobs, and work placements. The project activities, however, have not resulted in a tangible increase in the level of employment in the community. Very few Roma people find legal employment, even if they have attended vocational or training courses.

Refugees

Refugees and persons granted international protection, especially from the Caucasus region, also frequently experience difficulties in entering the job market. Similarly to the Roma, they cannot find

¹ Główny Urząd Statystyczny, *Narodowy spis powszechny ludności i mieszkań 2011. Raport z wyników*, GUS, Warszawa, 2012, p.117-118.

² Information from the Central Statistical Office, obtained via the Parliamentary Commission on National Minorities upon request.

³ Ministerstwo Administracji i Cyfryzacji, *Sprawozdanie z realizacji Programu na rzecz społeczności romskiej w 2012 roku*, MAiC, Warszawa, 13 May 2013, p. 15.

a job for objective reasons (e.g. insufficient knowledge of Polish), but also due to a negative attitude towards them.

Migrants

Migrants are mostly endangered by discrimination when they are performing a job. Cases of discrimination regarding access to work evidently occur, however, they are less common. For some migrants it is difficult to find a job which is not related to their origin, such as working in ethnic bars, restaurants or shops. Alternatively, they can easily find a job in sectors typically occupied by migrants, such as construction, agriculture or housekeeping, but the door to the universal labour market remains closed. Examples of reported discrimination and unfair practices at work include: lower wages, worse working conditions, violations of workers' rights, and different kinds of frauds and exploitation. The victims of discrimination and unfair treatment are most often migrants coming from former Soviet republics or Asia. There are three main groups of people who are more likely to experience discrimination and exploitation: persons who came to Poland via job agencies, persons who were brought by their countrymen to work for him/her in Poland, and persons employed by individual households.

Combating discrimination

The experience of experts and practitioners in the field of migration and/or discrimination lead to the conclusion that the current anti-discrimination law and measures do not ensure real protection for migrants and minorities in Poland. This finding is supported by data regarding complaints in this area which show a very small number of cases handled by courts, equality bodies and NGOs. This is mainly due to the fact that many migrants perform unregistered work which in practice severely limits their opportunities to seek justice. Migrants performing registered work do not exercise their rights for various reasons, including lack of knowledge about the anti-discrimination law, language difficulties, money and also – lack of will to do so. It is likely that strategic litigations of some model cases on discrimination would be helpful to convince victims to use legal and non-legal anti-discrimination measures which are available.

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1. Introduction

Racism is a reality in the lives of ethnic and religious minorities in Poland. The extent and manifestations of this fact are often unknown and undocumented, especially with regard to official data sources. As a consequence, it can be difficult to analyse the situation and to establish solutions. Even when there is extensive official data, NGOs offer a vital alternative data source which comes directly from the experiences of individuals and communities experiencing racism on a daily basis. The ENAR Shadow Reports have become a major tool for monitoring the situation of racism and xenophobia in EU Member States. Both ENAR's national and European Shadow Reports have proved to be an invaluable documented starting point for strategic and coordinated action, particularly for anti-racist civil society advocacy towards national governments, the European institutions, bodies and the media.

The aim of this report, therefore, is to contribute to knowledge and to provide insight from activists and professionals on the ground working to combat racism and discrimination in Poland as an advocacy tool by which to influence policy. This report takes on a more narrow focus than previous reports, by exploring the situation of racism and discrimination in the field of employment in Poland for the period of March 2012 to March 2013. The results will be used at national level to influence policy developments and will be further compiled into a European comparative report to influence European policies. With improved statistical and comparative data, the Shadow Reports will have a demonstrable impact for changing policy and bringing about necessary policy reforms.

1.1 Definitions

There are two main categories of people with a non-Polish background which are legally defined and referred to in legal acts, policy documents and public statistics. They are: national/ethnic minorities and aliens (foreigners).

Polish law specifically names identifies and recognises the recognized national and ethnic minorities, defining them as groups of Polish citizens who significantly differ from the remaining citizens in its language, culture or traditions, and whose ancestors have inhabited Polish territory for at least 100 years.⁴ The difference between national and ethnic minorities lies in the fact that only the former minority group can identify itself with the nation organised in its own state. Although the current definition and the "limited" list of minorities sometimes raise doubts⁵, the concept of national/ethnic minorities, within the meaning provided for by law, is commonly used in official matters (public statistics, official documents, etc.). The following groups have this legal status: Armenians, Belarusians, Czechs, Germans, Jews, Karaims, Lithuanians, Lemki, Roma, Russians, Slovaks, Tatars, and Ukrainians.⁶

According to the legal definition, an alien is any person who does not have Polish citizenship.⁷ The terms "alien" and "foreigner" are used in Polish statistics and official documents. The terms "migrant", "second generation migrant", "immigrant" and "emigrant" are not defined by the law, though some of them are used in national statistics. The Central Statistical Office defines immigrants

⁴ Ustawa o mniejszościach narodowych i etnicznych oraz o języku regionalnym, 6. December 2005, art. 2, (Dz. U. 2005/17/141)

⁵ This law does not allowed new migrant's communities to be recognized as minorities.

⁶ Ibidem.

⁷ Ustawa o cudzoziemcach, 13th June 2013, art. 2.

as “permanent residents of another country staying temporarily in Poland”.⁸ These terms are also used in policy documents, particularly those which relate to migration or integration policy. The term “religious minorities” is not defined and therefore not used in legal acts, official documents or statistical publications. In official documents, all religious communities are covered by two terms: churches and denomination unions.⁹

1.2 Statistical overview

Poland is a rather homogeneous country in terms of the ethnic, national origin, race and religion of its inhabitants.

According to the last National Census of Population and Housing (2011), 93.9% of people living in Poland identify themselves as being of only Polish national/ethnic origin (36,157,000).¹⁰ 842,000 individuals, or 2.19% of the population, have dual identity – Polish and another.¹¹ Only 1.46% (562,000) of the population identifies themselves to have exclusively non-Polish identity.¹²

After Polish, Kashubian and Silesian ethnicity/nationality were declared the most often during the Census by 817,000 and 229,000 respectively.¹³ Interestingly, neither Kashubians nor Silesians are recognised as ethnic or national minorities.¹⁴ The next biggest groups are respectively Germans (126,000), Ukrainians (46,000), Belarusians (46,000), Roma (16,000) and Russians (13,000).¹⁵ The remaining national and ethnic minorities - Armenians, Czechs, Karaims, Lemki, Lithuanians, Jews, Slovaks, and Tatars - constitute smaller communities. A significant number of individuals belonging to minorities declared dual national identity – the nationality of their ancestors and Polish (for example, Ukrainian-Polish).

The results described above relate to national origin, regardless of citizenship, and the figures comprise of both aliens and Polish citizens, with the majority constituting the latter group. The Census has shown that non-Polish citizens comprise of only about 0.1% of Polish residents (57,500 persons).¹⁶ The biggest groups are Ukrainians (24% of all foreigners), Germans (over 9%), Russians (7.6%), Belarusians (almost 7%) and Vietnamese (4.7%).¹⁷

The Census registered 56,000 immigrants, which have been defined as permanent residents of other countries residing temporarily in Poland.¹⁸ The majority – 78% - are foreigners, while the rest are Polish citizens living permanently abroad but staying temporarily in Poland. For various reasons, the

⁸ Główny Urząd Statystyczny, *Narodowy spis powszechny ludności i mieszkań 2011. Raport z wyników*, GUS, Warszawa, 2012, p. 106.

⁹ Ustawa z dnia 17 maja 1989 r. o gwarancjach wolności sumienia i wyznania, 17th May 1989, art. 2 (Dz.U. 1989 nr 29 poz. 155)

¹⁰ Główny Urząd Statystyczny, *Narodowy spis powszechny ludności i mieszkań 2011*, op. cit., pp. 117-118.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ Kashubians are recognized as a group speaking a regional language. Thanks to this, they enjoy the same rights as ethnic minorities.

¹⁵ Główny Urząd Statystyczny, *Narodowy spis powszechny ludności i mieszkań 2011. Raport z wyników*, op. cit., p. 118.

¹⁶ Ibid., p. 106.

¹⁷ Ibid.

¹⁸ Ibid.

figures on migrants are significantly underestimated, and this is underlined in the report from the Census.¹⁹ Other available sources²⁰ demonstrate a greater number of migrants, especially those working in Poland on the basis of the declaration of intention to entrust a job to a foreigner²¹. In 2012, District Employment Agencies received 243,736 such declarations submitted by a Polish employer, meaning that this number of people from Belarus, Georgia, Moldova, Russia, and Ukraine were allowed to stay and work in Poland up to six months within the subsequent 12 months.²²

The Office for Foreigners' Affairs lists 117,314 aliens holding Polish residency permit cards as of late June 2013.²³ This amount includes persons with permanent or temporary resident permits as well as those who were granted various forms of international protection, (excluding EU citizens). The number of resident card holders has increased compared to 2011 and 2012, when there were 100,298 and 111,574 resident card holders, respectively.²⁴

Foreigners (third country nationals) living in Poland mainly originate from former Soviet Union countries and Asia. Ukrainians are the largest group of resident card holders (31%), followed by Russians (11%), Vietnamese (11%), Belarusians (10%), Armenians (4%) and Chinese (4%).²⁵ The latter have started to come to Poland more frequently during the last decade, unlike the remaining groups listed above, who have a relatively long history of immigration to Poland. Chinese constitute one of the most growing and dynamic foreign community in Poland. However, they are not the only Asian group that has recently started coming to Poland. An influx of workers from Bangladesh, India, Nepal, Pakistan, the Philippines, and Thailand has been observed in recent years.²⁶ While the numbers of people from these countries are still not high, this phenomenon is worth noting as a new trend in immigration to Poland. Other significant groups of foreigners residing in Poland are Turks and Moldavians, as well as Chechens.²⁷ The latter group are mainly refugees or asylum seekers. Each year, several thousand²⁸ persons apply for international protection in Poland, and a significant growth in numbers was noted in the first six months of 2013.²⁹ During this period, Chechen nationals submitted 10,403 applications for refugee status to the Office for Foreigners.³⁰

¹⁹ Ibid., p.106.

²⁰ Statistical data regarding foreigners working in Poland available on the website the Ministry of Labour and Social Policy: <http://www.mpips.gov.pl/analizy-i-raporty/cudzoziemcy-pracujacy-w-polsce-statystyki/>

²¹ Declaration of intention to entrust a job to foreigner is a document which allows to certain groups of foreigners to work in Poland without necessity to obtain work permit. To learn more about this procedure consult the website: http://migrant.info.pl/Declaration_of_the_intention_to_entrust_a_job_to_a_foreigner.html

²² Ministry of of Labour and Social Policy, *Liczba i struktura oświadczeń zarejestrowanych przez powiatowe urzędy pracy w roku 2012*, available at: <http://www.mpips.gov.pl/analizy-i-raporty/cudzoziemcy-pracujacy-w-polsce-statystyki/>, (accessed 30.10.2013)

²³ Urząd do Spraw Cudzoziemców, *Tabela 24: Liczba osób, które posiadają ważne karty pobytu (stan na 30.06.2013 r.)*, available at: http://www.udsc.gov.pl/Zestawienia_roczne,233.html (accessed 30.06.2013)

²⁴ Zespół do Spraw Migracji, *Polityka migracyjna Polski – stan obecny i postulowane działania*, Ministerstwo Spraw Wewnętrznych, 8 marca 2012, p. 23.

²⁵ Urząd do Spraw Cudzoziemców, *Tabela 24: Liczba osób, które posiadają ważne karty pobytu (stan na 30.06.2013 r.)*, *op.cit.*

²⁶ Ministry of of Labour and Social Policy, *Cudzoziemcy pracujący w Polsce - statystyki*, available at: <http://www.mpips.gov.pl/analizy-i-raporty/cudzoziemcy-pracujacy-w-polsce-statystyki/>,(accessed 30.10.2013)

²⁷ Urząd do Spraw Cudzoziemców, *Tabela 24: Liczba osób, które posiadają ważne karty pobytu (stan na 30.06.2013 r.)*, *op.cit.*

²⁸ From 6,000 to 10,000.

²⁹ Ośrodek Badań nad Migracjami, *Biuletyn migracyjny*, nr 41, OBM, Warszawa, czerwiec 2013.

³⁰ Ibid.

The above figures exclude migrants who are undocumented. There is also a lack of information on the number of naturalized foreigners nor second-generation migrants; however, these figures may be presumed to be rather low. This presumption may be supported by the fact that Poland has a short immigration history³¹, a relatively small amount of foreigners residing in Poland in the last decades, and when also taking into consideration the young age of migrants.³²

The vast majority of people living in Poland are Christians, with Roman Catholics making up the largest group. During the National Census of Population and Housing conducted in 2011, 87.58% of the population declared their affiliation to the Roman Catholic Church, followed by the Orthodox Church, whose followers consist of 0.41% of society.³³ The next largest groups are Jehovah's Witnesses (0.36%) and Lutherans (0.18%).³⁴ According to the Census, adherents to other denominations and religious communities do not exceed 35,000.³⁵ The Statistical Yearbook 2012, however, indicates that the number of Greco Catholics is up to 55,000.³⁶ The same source estimates that there are 5,000 Shia Muslims and 1,132 Sunni Muslims – members of the Muslim Religion Union in the Republic of Poland.³⁷ This amount may be greater when considered there are also members of the Polish Muslim League and individual Muslims not affiliated to any religious union. Estimations of the overall number of Muslims reach the amount of 30,000.³⁸

³¹ Before 1989 immigration to Poland was very limited for political reasons, quite the opposite to emigration. The change occurred in 1989, after communist collapse. The open borders encouraged a vastly spread cross-border trade exchange. However, the tendency of migrants to Poland is observed from the year 2008. See: Zespół do Spraw Migracji, *Polityka migracyjna Polski – stan obecny i postulowane działania*, Ministerstwo Spraw Wewnętrznych, 8 marca 2012.

³² Zespół do Spraw Migracji, *Polityka migracyjna Polski – stan obecny i postulowane działania*, ibid..

³³ Information from the Central Statistical Office, obtained via the Parliamentary Commission on National Minorities upon request.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Główny Urząd Statystyczny, *Statistical Yearbook of the Republic of Poland 2012*, GUS, Warszawa 2013, p. 212.

³⁷ Ibid.

³⁸ Interview with Kamil Kamiński, Foundation Ocalanie, 20.08.2013. The Internet portal Arabia.pl which is specialized in the Arabic issue, estimates that there is 20 000 – 30 000 Muslims in Poland (<http://www.arabia.pl/content/view/278346/2/>)

2. The context: labour market and legal framework

2.1 Outlook of the labour market

The 2011 National Census of Population and Housing shows that the percentage of economically active Poles over 15 years of age was 50.98%, 44.37% of which were employed persons and 6.61% – unemployed persons.³⁹ 44.52% of the population were economically inactive and 4.51% were not ascribed to any category.⁴⁰ Compared to the data above, the Roma population is characterised by a much lower percentage of people in employment: 13.31%.⁴¹ The percentage of unemployed and economically inactive people in this group is higher, and amounts to 15.54% and 62.82%, respectively.⁴² There is no data regarding the form of professional activity for 8.31% of the Roma population. The figures on Roma obtained during the Census appear to be inaccurate. The data collected by provincial governors implementing the Programme for Roma Community in Poland indicated that the current average rate of unemployment and vocational inactivity stands at 95% nationwide.⁴³ Among the national and ethnic minorities, it appears that only the Roma stand out from the rest of society with regard to their situation in the field of employment.⁴⁴ The level of economic activity among the remaining ethnic and national minorities is the same as among native Poles.

The most frequent economic activity among Roma is trade. They are usually engaged in trading goods: selling cars, antiques, second-hand goods, carpets, clothing and fabrics as well as household appliances.⁴⁵ While there are wholesalers and retailers with large turnovers among this group, most of the traders are small-scale and limited to open-air markets or door-to-door sales, and are usually not officially registered.⁴⁶ The Roma also seek employment of various degrees of regularity, for example, construction site jobs, cleaning jobs (usually only in the case of the group called “Bergitka Roma”), public work or community work organised by local municipalities.⁴⁷ Such jobs do not usually require high qualifications and normally pay very little (with low salaries applying also to full-time employees from the community).⁴⁸ Few individuals have more prestigious professions, such as civil servants, teachers, lecturers, lawyers or journalists.

³⁹ Główny Urząd Statystyczny, *Wyniki Narodowego Spisu Powszechnego Ludności i Mieszkań 2011 w zakresie problematyki narodowo-etnicznej oraz języka, ze szczególnym uwzględnieniem mniejszości narodowych i etnicznych oraz społeczności regionalnej. Notatka na posiedzenie Sejmowej Komisji Mniejszości Narodowych i Etnicznych w dniu 21 marca 2011*, GUS 2013.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ministerstwo Administracji i Cyfryzacji, *Sprawozdanie z realizacji Programu na rzecz społeczności romskiej w 2012 roku*, MAiC, Warszawa, 13 May 2013, p. 15.

⁴⁴ Biuro Komisji Sejmowych, *Pełen zapis przebiegu Komisji Sejmowej Mniejszości Narodowych i Etnicznych (nr. 34) z dnia 21 marca 2013*, Kancelaria Sejmu, 2013.

⁴⁵ Ministerstwo Administracji i Cyfryzacji, *Program integracji społecznej Romów na lata 2014-2020*, MAiC, Warszawa, p. 19.

⁴⁶ Klima J., Paszko A. "Romowie w warunkach przemian wolnorynkowych w Polsce" in: *Polityka wspierania romskiej mniejszości etnicznej na rynku pracy*, Zawicki M., Paszko A. (eds.), Kraków, Małopolska Szkoła Administracji Publicznej Uniwersytetu Ekonomicznego w Krakowie, p. 130.

⁴⁷ Ibid.

⁴⁸ Ibid.

There is no statistical data on the economic activity of migrants or foreigners on a national level. It may be assumed, however, that the unemployment level in these groups is rather low because the possibility of employment is the main reason for why these groups choose to come to Poland.⁴⁹ Data regarding work permits and declarations of intention to entrust a job to a foreigner show that workforce immigration has been continuously increasing between the years 2008-2011.⁵⁰ In 2012, numbers of both work permits and declarations slightly decreased, however, still remain high.⁵¹ Relevant statistics from Mazowieckie Voivodship – a region where about 25% of foreigners live - show that there were 1,061 unemployed foreigners registered in the labour office in June 2013.⁵² This makes up 0.4% of all unemployed, the same proportion as in June 2012.⁵³ At the same time, the number of resident card holders has risen. This statistical data does not suggest that levels of unemployment among foreigners are higher than for others living in Poland, however, it must be noted that not all foreigners and migrants are entitled to have the status of an unemployed person.

Particular groups of migrants and foreigners find various niches and different ways of functioning on the Polish labour market.

According to Polish law, Belarusians, Georgians, Moldavians, Russians, and Ukrainians can work temporarily in Poland without needing to obtain a work permit. The basis of their legal employment is an employer's declaration of intention to entrust a job to a foreigner, but this only allows a foreigner to perform a job for six months within the subsequent 12 months. Ukrainians are mainly engaged in seasonal work in the agricultural, construction and industrial processing sectors. Housekeeping, babysitting and taking care of dependent persons are other job areas dominated by Ukrainians, in particular, women. Russians, similarly to Belarusians and Moldavians are most frequently employed in the construction, while Georgians often work in agriculture.⁵⁴ Jobs performed by representatives of these former Soviet Union countries nationals have been characterised as 3D – dirty, dangerous, and demeaning.⁵⁵

Some Belarusians, Georgians, Moldavians, Russians, and Ukrainians also work in Poland with a regular work permit, however, the proportion of such persons is significantly lower than those working based on an employer's declaration.⁵⁶ Again, it can be found that Ukrainians constitute the biggest group of workers. Around half are employed by construction companies and individual households.⁵⁷ Russians who have a work permit usually work in trade, while Belarusians and

⁴⁹ Zespół do Spraw Migracji, *Polityka migracyjna Polski – stan obecny i postulowane działania*, Ministerstwo Spraw Wewnętrznych, 8 marca 2012, p. 11-13.

⁵⁰ Ibid. p.23.

⁵¹ According to data from the Ministry of Labour and Social Policy, in 2008, 18,022 individuals obtained work permits, in 2009 – 29,392, 2010 – 36,622, 2011 – 40,808, 2012 – 39,144. The numbers of declarations of intention to entrust a job to a foreigner over this time was as follows: 2008 – 156,713, 2009 – 188,414, 2010 – 180,079, 2011 – 259,777, 2012 – 249,739. Source: the Ministry of Labour and Social Policy.

⁵² Wojewódzki Urząd Pracy w Warszawie, *Wstępna informacja o rynku pracy w województwie mazowieckim*, WUP, Warsaw, p. 1,.

⁵³ Ibid.

⁵⁴ Ministry of of Labour and Social Policy, *Rejestracja oświadczeń pracodawców o zamiarze powierzenia pracy cudzoziemcowi*, available at: <http://www.mpips.gov.pl/analizy-i-raporty/cudzoziemcy-pracujacy-w-polsce-statystyki/>, (accessed 30.10.2013)

⁵⁵ Klaus W., Polish employers' compliance with migrating workers' rights, ARE 1/1012, *Stowarzyszenie Interwencji Prawnej*, p. 3.

⁵⁶ Ministry of of Labour and Social Policy, *Zezwolenia na prace cudzoziemców*, available at: <http://www.mpips.gov.pl/analizy-i-raporty/cudzoziemcy-pracujacy-w-polsce-statystyki/>, (accessed 30.10.2013)

⁵⁷ Ibid.

Moldavians work in the transport and storage sectors. Concerning job skills, Belarusians, Georgians, Moldavians and Ukrainians are generally employed by Poles as skilled workers, or they perform less skilled labour.⁵⁸ Russians are mostly employed in managerial positions which, in practice, means that they run their own companies.⁵⁹ The same applies for Armenian workers, while the remaining nationalities mentioned above are mainly hired by Polish employers.⁶⁰

In the case of Asians, it is possible to identify two predominant ways of functioning on the Polish labour market: either they run their own businesses, or they work for their countrymen, which includes working both in large corporations with the headquarters in their country of origin, as well as in companies registered in Poland.⁶¹ Some migrants from Asia work for Polish companies, mainly as unskilled workers.⁶²

Armenians, Chinese, Indians and Vietnamese migrants are primarily engaged in trade and, to a lesser extent, in catering services. Running or working in small restaurants are positions mainly filled by people from Turkey and Thailand.⁶³ A significant proportion of Thais are also employed in the medical profession. Indian nationals also deal with the information and communication industries.⁶⁴ South Koreans are most active in the industrial processing sector.⁶⁵ All nations mentioned above are usually employed as qualified workers or managers.⁶⁶ Individuals from North Korea, Pakistan, Bangladesh and Nepal are employed as unskilled or skilled workers, working in construction, agricultural, industrial processing and catering services.⁶⁷

A characteristic feature of Asian communities in Poland, in particular Vietnamese and Chinese, is their concentration in huge trade centres. The biggest centre is in Wólka Kosowska, a small town situated 50 km from Warsaw. The centres remain first and foremost places of sale goods from Asian countries. However, due to the concentration of a significant number of merchants, clients and supporting employers, various forms of economic activity have been developed there (all kinds of services, small restaurants and bars, even language schools).⁶⁸

Refugees and persons granted various forms of international protection seem to be the most vulnerable group on the labour market. They mainly originate from the Caucasus (Chechens, Georgians).⁶⁹ According to an expert from the Ocalanie Foundation, Kamil Kamiński, only around 50% of families have a breadwinner (habitually this is a man).⁷⁰ Regardless of their education and previous work experience, Caucasians usually perform less skilled jobs, very often unregistered and

⁵⁸ Ibid.

⁵⁹ Hall D., Mikulska A., *Country report 2 2010 on employment, ethnicity and migrants*, Network of socio-economic experts in the Anti-discrimination Field, 1 July 2010, s. 8.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ministry of of Labour and Social Policy, *Zezwolenia na prace cudzoziemców*, available at: <http://www.mpips.gov.pl/analizy-i-raporty/cudzoziemcy-pracujacy-w-polsce-statystyki/>, (accessed 30.10.2013)

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Studies describe these centres as quasi "small towns". Kłerek N., Szulecka M., *Migranckie instytucje ekonomiczne i ich wpływ na otoczenie. Przykład centrów handlowych w Wólce Kosowskiej*, ARE 2/1013, Stowarzyszenie Interwencji Prawnej.

⁶⁹ Zespół do Spraw Migracji, *Polityka migracyjna Polski – stan obecny i postulowane działania*, ibid.58-59

⁷⁰ Interview with Kamil Kamiński, Foundation Ocalanie, 20.08.2013.

temporary. Men usually find work in construction, agriculture or as security guards, while women work as cleaners. It seems however, that prospects for the second generation are better –children of refugees who have grown up and completed school in Poland are able to find work that matches their education and skill set.⁷¹

There is no statistical data on migrants and foreigners performing unregistered work, but this number may be significant. Research among foreign workers conducted by the Legal Intervention Association revealed that 65% of interviewed persons were working informally, including both undocumented migrants and those with a legal stay permit.⁷² Unregistered workers primarily come from neighbouring countries, from beyond the eastern border (Ukrainians, Belarusians, Russians). They are followed by the Vietnamese and Armenians, often employed by their countrymen.⁷³ Migrants from neighbouring countries work undeclared in the construction sector and agriculture, as well as housekeepers, babysitters and persons taking care of aged people.⁷⁴

There are several reasons as to why employers may not register the employment of foreigner workers. Undoubtedly the cost of legal labour is one reason, followed by the complicated hiring procedures which are both costly and time-consuming.⁷⁵ What is more, irregular work is also common among Poles who work in agriculture, construction, housekeeping, catering or trade.⁷⁶ At the same time, one should bear in mind the general acceptance among Polish society for undocumented work.⁷⁷

2.2 Legal framework

The most important provisions regarding equal treatment and prohibition of discrimination are laid down in the Labour Code⁷⁸ and the Act on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment (henceforth the Equal Treatment Act)⁷⁹. A number of anti-discrimination provisions are included in the Act on Employment Promotion and Labour Market Institutions.⁸⁰ As a result of an amendment introduced in 2004, the Code of Civil Procedure now states that organisations whose statutory objectives include equality protection and counteracting discrimination, may, in the cases of claims in this field and with the consent of the citizens, institute actions on behalf of the citizens and join the proceedings at any stage thereof.⁸¹

The Labour Code sets out an open catalogue of discrimination grounds, containing special prerequisites which may constitute a basis for discrimination. The relevant provision reads as follows:

⁷¹ Interview with Kamil Kamiński, Foundation Ocalanie, 20.08.2013.

⁷² Klaus W., Polish employers' compliance with migrating workers rights, *op.cit.*, p. 9.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Klaus W., Polish employers' compliance with migrating workers rights, *op.cit.*, p. 11.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Kodeks Pracy [Labour code], 26 July 1974, ([Dz. U. z 1998 r. Nr 21, poz. 94, z późn. zm.](#)). Amendments for the purpose of transposing EU antidiscrimination directives (2000/44/EC, 2000/78/EC) were passed in 2004 and 2010.

⁷⁹ Ustawa o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania, 10 December 2010, (Dz. U. z 2010 r. Nr 254, poz. 1700).

⁸⁰ Ustawa o promocji zatrudnienia i instytucjach rynku pracy [Act on Employment Promotion and Labour Market Institutions], 20.04.2004, ([Dz.U. z 2013 poz. 674](#))

⁸¹ European network of legal experts in non-discrimination field, available at: <http://www.non-discrimination.net/content/main-principles-and-definitions-19> (accessed on 27.08.2013)

“Any discrimination in employment, whether direct or indirect, in particular on the grounds of gender, age, disability, race, religion, nationality, political views, trade union membership, ethnic origin, denomination, sexual orientation, as well as due to fixed-term or open-ended employment, or full-time or part-time work shall be inadmissible” (art. 11³). The principle of equal treatment is elaborated separately in Chapter IIa, which comprises relevant and numerous detailed regulations, including definitions of discrimination, as well as an explanation of what is meant by an infringement of the principle of equal treatment.

According to the Labour Code (chapter IIa), any discrimination in employment is forbidden, in particular with regard to concluding and terminating an employment relationship, and the terms of employment (including wages, promotion and benefits), promotion and access to vocational training aimed at upgrading professional qualifications. The rules apply equally to the public and private sectors. A victim of discrimination or non-equal treatment is entitled to compensation for an amount equivalent to the minimum wage, but not lower.⁸²

The provisions of the Labour Code governing the employment, employment relationship and dismissal procedures are supplemented and extended by the act on equal treatment on civil contracts, self-employment or independent professions.⁸³ Article 8 prohibits unequal treatment of natural persons on grounds such as race, religion, nationality, ethnic origin, religion, denomination and belief with respect to:

- vocational training, including advanced vocational training and retraining, and practical work experience;
- conditions for access to employment, self-employment or to occupation, specifically under the employment relationship or under civil-law contracts;
- membership of, and involvement in, an organisation of workers or employers, or any organisation whose members practise a particular profession, including the benefits provided for by such organisations;
- access to and conditions for benefiting from labour market instruments and services as set forth in the Employment Promotion and Labour Market Institutions Act.

The Equal Treatment Act extends protection for *legal persons* on the grounds of race, ethnic origin and nationality of its members. All forms of discrimination are prohibited, and the right to compensation also relates to legal persons. Moreover, the freedom of choice of the contractor is permissible as long as it is not based on the grounds of gender, race, ethnic origin or nationality.⁸⁴ In the case of occupational activities within churches and other public or private organisations whose ethos is based on religion or belief, a difference in treatment based on a person's religion or belief is not considered as discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitutes a genuine, legitimate and justified occupational requirement, with regard to the organisation's ethos.⁸⁵

⁸² Apart from this, the civil code and civil procedure code contain a general procedure concerning compensation in the case of infringement of the principle of equal treatment.

⁸³ Ustawa o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania [Act of on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment], 03.12.2010 (Dz.U. 2010 nr 254 poz. 1700)

⁸⁴ European network of legal experts in non-discrimination field, available at: <http://www.non-discrimination.net/content/main-principles-and-definitions-19> (accessed on 27.08.2013)

⁸⁵ Ibid.

Provisions of the Labour Code (chapter IIa) and the act on equal treatment (art. 3) refer to direct discrimination, indirect discrimination, harassment, as well as incitement to discriminate. Anti-discrimination law introduces the general prohibition of victimisation.⁸⁶ Protection extends to a person who, in any way, supports the person exercising his/her rights. In cases of discrimination, the rule of shifting the burden of proof applies.

Polish anti-discrimination law differentiates the level of protection afforded for different groups. In particular, persons with disabilities, persons who are LGBT and persons discriminated against on the basis of their religion, belief or age, are not protected against discrimination in education, access to services or social protection. This not-equal protection of different vulnerable groups is criticised by NGOs, the Human Rights Defender and the Government Plenipotentiary on Equal Treatment and due to this, the Equal Treatment Act will be amended.⁸⁷

⁸⁶ <http://www.non-discrimination.net/fr/content/main-principles-and-definitions-19>

⁸⁷ An exchange of letters between the Human Right Defender and the Government Plenipotentiary on Equal Treatment on this issue is available here: <http://www.sprawy-generalne.brpo.gov.pl/szczegoly.php?pismo=1647153> (accessed on 30.08.2013)

3. Manifestations of racism and structural discrimination in employment

3.1 Perceptions of discrimination in employment

Polish society is characterized by limited ethnic diversity. Therefore, issues of discrimination on the grounds of origin or religion are not considered serious social problems, and in principle, are also not discussed in the public forum. Neither political parties nor trade unions express interest in this topic. Consequently, they are not active in this field even though there has been a multiple increase in the number of migrant workers in Poland since 1990. Particular cases, including undeclared employment, instances of severe exploitation and human trafficking, attract some media attention, but only from time to time. One can argue that the lack of public or political debate has its positive side – minorities and migrants are not the subject of political programmes and statements which probably helps to avoid the polarisation of society in this regard and does not inflame racist or xenophobic sentiments. The downside however is the lack of awareness of discrimination among stakeholders which results in the low effectiveness of anti-discrimination measures and a lack of policy in this area. Meanwhile, it is mainly NGOs and some academics who observe the situation of migrants in employment on a daily basis and conduct their own research or surveys focusing on possible discrimination.

Special measures targeting minorities are undertaken only in the case of the Roma community. An example of such a measure is the Programme for Roma Community in Poland⁸⁸ (henceforth “the Programme”), implemented countrywide since 2004.⁸⁹ Apart from that, the Operational Programme Human Capital (OPHC) contains a so-called “Roma component” which places the issue of employment at centre stage.⁹⁰ In the framework of these two programmes, a number of activities are carried out which aim to generally improve the situation for Roma on the labour market; none of them, however, focus directly on counteracting discrimination. The situation of Roma on the labour market also results from upstream factors such as the low level of education among Roma (sometimes even illiteracy), the lack of marketable qualifications and the low demand for occupations traditionally performed by the Roma (blacksmithing, horse trading). Roma also suffer from negative stereotype, hostility and discrimination.⁹¹ Yet, in some places, the difficult situation on the local labour market (including structural unemployment) also plays a very important role, which results in high unemployment of entire local populations.⁹²

Low level of employment is perceived by the Roma as the most pressing problem of their community. In surveys carried out by ASM - Market Research and Analysis Centre, 214 Roma were asked to select from a list presented to them up to three problems of the Roma community.⁹³ The answer “unemployment” was indicated 150 times out of a total number of 598 indications, followed

⁸⁸ <http://mniejszosci.narodowe.mac.gov.pl/mne/romowie/program-na-rzecz-spole/program-na-rzecz-spole/tresc-programu-na-rzecz/6670,Tresc-Programu.html>

⁸⁹ The Programme for Roma Community in Poland has been implemented since 2004 and will be completed by the end of 2013. It will be replaced in 2014 with the new “Programme for Social Integration of Roma in 2014-2020”.

⁹⁰ <http://mniejszosci.narodowe.mac.gov.pl/mne/romowie/komponent-romski-progr>

⁹¹ Klima J., Paszko A. “Romowie w warunkach przemian wolnorynkowych w Polsce”, op.cit.

⁹² Ibid.

⁹³ Walczak M. *et al Ocen zakresu i ukierunkowania poddziałania 1.3.1. POKL w kontekście wcześniejszych działań na rzecz społeczności romskiej*, ASM – Centrum Badań i Analiz Rynku. 2008. Kutno, p. 37, available at: www.ewaluacja.gov.pl/Wyniki/Documents/6_064.pdf

by low level of education (97), lack of professional qualifications (94), low level of school attendance of Roma children (85), housing concerns (53), and reluctance on the part of Polish nationals (48).⁹⁴

In 2011 Institute of Sociology of the Jagiellonian University in Cracow conducted research on situation of the several, vulnerable groups.⁹⁵ The survey results indicate that the rest of the society is aware of unequal treatment of Roma.⁹⁶ More than a half of respondents (52%) who personally knew someone of Roma origin claimed that such people (the Roma) were treated less fairly because of their ethnic origin. At the same time, declared social distance of Poles towards the Roma people is high compared to other ethnic/national groups quoted in the survey (Arabs, Chechen people, Vietnamese, Jews, Russians, Germans, black people). Poles declare a stronger distance only to the LGBT community and the mentally ill.⁹⁷ However, their distance towards LGBT people changes positively as a result of personal interaction, whereas it remains high in the case of the Roma community.⁹⁸

3.2 Incidence of discrimination in employment

The employment situation is the most difficult in the case of Roma, who are practically excluded from the job market. Roma encounter discrimination at the stage of job-seeking - they are simply refused employment.⁹⁹ The FRA 2011 pilot survey on the situation of Roma indicates that over 60 % of Roma aged 16 and above looking for a job in the past 5 years, experienced discrimination because of their origin.¹⁰⁰

Other individuals at risk of discrimination due to their race, nationality, ethnic origin or religion (which in practice refers mainly to migrants) are more likely to encounter discrimination while already performing a job. Instances of discrimination in accessing work evidently occur, however, they appear to be less common. Some migrants point out that it is difficult to find a job which is not related to their origin (such as working in an ethnic bar, restaurants or shops).¹⁰¹ Alternatively, they can easily find work in sectors usually occupied by migrants, such as construction, agriculture or housekeeping, but the door to the common labour market remains closed.¹⁰² Examples of reported discrimination and unfair practices at work include: lower wages, harsh working conditions, violations of workers' rights, and different kinds of frauds and exploitation.¹⁰³ Instances of trafficking in human beings for the purpose of forced labour are also noted. Victims of discrimination and unfair treatment are individuals from former Soviet republics or Asia, especially those performing less

⁹⁴ Ibid.

⁹⁵ Antoszek P. *Równe traktowanie standardem dobrego rządzenia. Raport z badan sondażowych*, Kraków, Uniwersytet Jagielloński, 2012, p. 5-10.

⁹⁶ Ibid. p. 40.

⁹⁷ Ibid. p. 62-63.

⁹⁸ Ibid., p. 62-63.

⁹⁹ For details see chapter discrimination in access to employment.

¹⁰⁰ European Union Agency for Fundamental Rights, *The situation of Roma in 11 EU Member States – Survey: results in glance*, Luxembourg: Publication office for European Union, 2012, p. 27.

¹⁰¹ K., Bąbiak I., „Migranci „rodzinni”, in: *Bieg przez płotki. Bariery w drodze do integracji migrantów*. Mikulska A., Patzer H. (eds.), Helsińska Fundacja Praw Człowieka, Warszawa, 2012, pp. 103-107.

¹⁰² Mikulska A., „Bariery w drodze do integracji – podsumowanie”, in: *Bieg przez płotki. Bariery w drodze do integracji migrantów*. Mikulska A., Patzer H. (eds.), Helsińska Fundacja Praw Człowieka, Warszawa, 2012, pp. 158-160.

¹⁰³ Mikulska A., „Bariery w drodze do integracji – podsumowanie”, in: *Bieg przez płotki. Bariery w drodze do integracji migrantów*. Mikulska A., Patzer H. (eds.), Helsińska Fundacja Praw Człowieka, Warszawa, 2012, pp. 158-160; for details see also chapter *Discrimination at the workplace*.

skilled jobs.¹⁰⁴ There are single cases of discrimination of people from Arabic countries or Africa, but they are much less often reported. Most likely, this is mainly due to the smaller representation of persons from these parts of the world. There are no reports on discrimination or unfair treatment of individuals coming from rich and developed countries such as the USA, Japan or South Korea.

The situation for refugees and persons granted international protection who arrive mainly from the Caucasus (the majority of whom are Chechens) is more complicated. The first obstacle to finding a job is an insufficient command of Polish, followed by a lack of the necessary documents proving education and previous work experience, which undoubtedly is virtually impossible for refugees to have in light of their circumstances. Moreover, refugee centres are often situated on the outskirts of towns in Eastern Poland where there are few job opportunities; unemployment is already high among local residents. As pointed out by Kamil Kamiński from the Ocalanie Foundation, some employers are reluctant to hire refugees as they are afraid of possible administrative mistakes associated with employing foreigners.¹⁰⁵ Some, as not by Kamiński, are not willing to employ Caucasians for clearly xenophobic reasons. Interestingly, some refugees do not perceive such behaviour as discrimination but simply “normal” for a person to prefer employing an individual from his/her own country. While performing work, especially irregularly, refugees face the same problems as other migrants – lower salaries, fraud, working overtime without appropriate compensation, etc.

Discrimination based on religion is rarely mentioned in reports or studies focusing on discrimination in employment. Undoubtedly, islamophobic sentiments affect the attitude of Poles towards people who are Muslim, or are perceived as Muslim, and this may influence their willingness to employ them. This assertion is supported by the results of public opinion polls showing that Poles keep a distance from Muslims.¹⁰⁶ It is also expressed by practitioners dealing with refugees and asylum seekers from the Caucasus.¹⁰⁷ There is no information, however, if the same is true for other Muslims, especially those who do not originate from Arabic and African countries.¹⁰⁸

For several years, the Seventh-day Adventist Church has been highlighting the issue of holding state profession exams on Saturdays, which is a religious holiday for several denominations. In particular, this refers to the State Examination for Medical Doctors, the State Examination for Dentists, and exams for lawyers. This issue has been addressed both by the Human Rights Defender (HRD) and the Governmental Plenipotentiary for Equal Treatment (GPET) - the two equality bodies in Poland. This problem remains unresolved even though the Minister of Health stated in his letter to the HRD that he would endeavour to avoid organising exams on Saturdays.¹⁰⁹

3.3 Patterns of inequality over the course of time

When compared against data from the National Censuses of Population and Housing conducted in 2002 and 2011, the newest data show an increase in the employment rate of the Roma population.

¹⁰⁴ Ibid.

¹⁰⁵ Interview with Kamil Kamiński, Ocalanie Foundation, 20.08.2013.

¹⁰⁶ Centrum Badania Opinii społecznej, Społeczne postawy wobec wyznawców różnych religii, Warszawa, październik 2012.

¹⁰⁷ Interview with Kamil Kamiński, Ocalanie Foundation, 20.08.2013.

¹⁰⁸ While preparing this report, some Muslim organisations were consulted. None who responded to the question had received information about discrimination in employment.

¹⁰⁹ Rzecznik Praw Obywatelskich (2011) *Informacja o pracy Rzecznika Praw Obywatelskich, styczeń-marzec 2011 r.*, pp. 24-25.

In 2002, only 8.29% were in employment and nearly one-third were unemployed.¹¹⁰ Economically inactive persons or persons with undefined vocational status constituted the remaining group. According to Census results in 2011, the percentage of Roma in employment has risen, reaching 13.31%. The percentage of unemployed and economically inactive Roma constitutes 15.54% and 62.82%, respectively.¹¹¹ The form of vocational activity is unknown in the case of 8.31% of the Roma population.¹¹² The above figures significantly differ from the data collected by provincial governors during the implementation of the Programme for Roma Community. According to the provincial governors, the factual rate of unemployment and vocational inactivity of Roma reaches 95% nationwide.¹¹³ Moreover, the authors of the annual reports on the implementation of the Programme for Roma Community explicitly state that over the years of carrying out the Programme, the situation in employment has not improved; the number of Roma not in employment has remained dramatically high, at over 90%.¹¹⁴ The same observations have been made by the authors of the external evaluation report on the Programme for Roma Community.¹¹⁵ However, it is unclear as to what extent the bad situation for Roma results from discriminatory practice, or from other factors.

Concerning migrant workers, two important facts have been observed in the past decade. Firstly, there is a growing number of foreigners employed in Poland and an influx of workers from Asian countries, namely China, India, Thailand, Nepal, Pakistan, the Philippines, and Bangladesh.¹¹⁶ It seems, by and large, that the forms of discrimination and unfair treatment of migrant workers remain the same - lower wages, violation workers rights, fraud, etc.¹¹⁷ It could be assumed therefore that due to a rise in the number of migrant workers, the scale of discrimination and unfair treatment should be at least proportionally greater. This assumption, however, has not been confirmed to date by a higher amount of complaints submitted to courts, equality bodies or NGOs. Secondly, more foreign employers bring their countrymen to work in Poland. In the opinion of NGOs, people working in such employment situations are probably even more exposed to discrimination and exploitation as

¹¹⁰ Ministerstwo Administracji i Cyfryzacji, *General characteristics of national and ethnic minorities as well as communities using a regional language, Annex 2 to the 3rd Report for the Secretary-General of the Council of Europe on the implementation by the Republic of Poland of the provision of the Framework Convention for the Protection of National Minorities*, MAiC. Warszawa 2012, p. 9.

¹¹¹ Główny Urząd Statystyczny, *Wyniki Narodowego Spisu Powszechnego Ludności i Mieszkań 2011 w zakresie problematyki narodowo-etnicznej oraz języka, ze szczególnym uwzględnieniem mniejszości narodowych i etnicznych oraz społeczności regionalnej. Notatka na posiedzenie Sejmowej Komisji Mniejszości Narodowych i Etnicznych w dniu 21 marca 2011*, op.cit.

¹¹² Ibid.

¹¹³ Data obtained upon author's request from Ministry of Administration and Digitalisation.

¹¹⁴ Ministerstwo Administracji i Cyfryzacji, *Sprawozdanie z realizacji Programu na rzecz społeczności romskiej w 2012 roku*, op.cit., p.15.

¹¹⁵ Biuro Obsługi Ruchu Inicjatyw Społecznych, *Raport końcowy z badania ewaluacyjnego „Programu na rzecz społeczności romskiej w Polsce” realizowanego w ramach projektu „Q jakości – poprawa jakości funkcjonowania Programu Romskiego*, BORIS, Warszawa, 8 December 2011.

¹¹⁶ Ministry of Labour and Social Policy, *Cudzoziemcy pracujący w Polsce - statystyki*, available at: <http://www.mpips.gov.pl/analizy-i-raporty/cudzoziemcy-pracujacy-w-polsce-statystyki/>, (accessed 30.10.2013)

¹¹⁷ Klaus W., *Polish employers' compliance with migrating workers' rights*, p. op.cit., Mikulska A., „Bariery w drodze do integracji – podsumowanie”, op.cit.

they are to a large extent dependent on their employers.¹¹⁸ The same rings true for workers coming to work in Poland via job agencies.¹¹⁹

3.3 Discrimination in access to employment

Undoubtedly, negative stereotypes and the hostility of Poles towards Roma are crucial factors limiting Roma's access to work, a fact which is underlined by both governmental and independent experts.¹²⁰ In many cases, however, it is difficult to judge if the employer refused to hire Roma due to his/her origin, or because of his/her level of education, vocational qualification or professional experience. Some evidence of discrimination have been described by people who assist Roma in finding employment as part of vocational activation projects within the Operational Programme Human Capital.¹²¹ Such projects enable Roma people to attend vocational and further education courses which are followed up with job-seeking assistance. According to job finders, there are many situations where employers express interest in hiring a new employee, but only until they learn that the prospective employee is of Roma origin.¹²² Then, they revoke their initial job offer. It sometimes happens that an employer refuses to employ an individual who has already been accepted when they turn up for work. Another obvious instance of discrimination was reported by a member of the Polish Roma Union¹²³. An employer in a small Polish town accepted a Roma woman for a work placement, but the woman was fired after protests from other workers who threatened that they would leave because of the new employee. Their argument was that the trainee might steal from them.¹²⁴

With reference to migrants, the difficulties they may face accessing employment is ambiguous. This is due to the fact that the majority arrive to Poland to perform jobs in economic sectors which lack workers. This mainly refers to employment in construction, agriculture (predominantly seasonal, but not only), housekeeping, catering and trade. Access to formal job market, however, remains more difficult. Furthermore, some migrants individuals have commented that it is difficult to find work which is not considered to be a typical "immigrant occupation" or has no link to a person's ethnic origin (ethnic restaurants, shops).¹²⁵ As reported by NGOs dealing with refugees, people from the Caucasus are sometimes refused to be hired because of their origin.¹²⁶

In 2010, the Institute of Public Affairs conducted the first pilot discrimination test in Poland concerning access to employment for third country nationals.¹²⁷ The survey entailed sending two equivalent CVs in response to an employer's recruitment advertisement, with the only factor

¹¹⁸ Mikulska A., Patzer H. (eds.) *Bieg przez płotki. Bariery w drodze do integracji migrantów.*, Helsińska Fundacja Praw Człowieka, Warszawa; interview with Witold Klaus, Polish Academy of Sciences, Legal Intervention Association, 7.08.2013,

¹¹⁹ Kościeszka K., Patzer H., "Migranci pracownicy", in: *Bieg przez płotki. Bariery w drodze do integracji migrantów.* Mikulska A., Patzer H. eds.), Helsińska Fundacja Praw Człowieka, Warszawa, 2012, pp.108-139.

¹²⁰ Ministerstwo Administracji i Cyfryzacji, *Program integracji społecznej Romów na lata 2014-2020*, MAiC, Warsaw, 2013.

¹²¹ Biuro Komisji Sejmowych, *Pełen zapis przebiegu Komisji Sejmowej Mniejszości Narodowych i Etnicznych (nr. 34) z dnia 7 lutego 2013*, Kancelaria Sejmu, 2013.

¹²² Ibid., also author's conversation with a representative of the Polish Roma Union, 20.03.2013.

¹²³ Ibid., also author's conversation with a representative of the Polish Roma Union, 20.03.2013.

¹²⁴ Ibid., also author's conversation with a representative of the Polish Roma Union, 20.03.2013.

¹²⁵ Gmaj K., Bąbiak I., "Migranci "rodzinni", op.cit., pp. 103, 107.

¹²⁶ Interview with Kamil Kamiński, Ocalanie Foundation, 20.08.2013.

¹²⁷ Wysieńska, K., *Nguyen, Serhij, czy Piotr: pilotażowe badanie audytowe dyskryminacji cudzoziemców w rekrutacji*, Instytut Spraw Publicznych, Warszawa 2010.

differentiating the two CVs being the candidates' origin. Due to the relatively small scale of the study, the authors could not decisively state the existence of discrimination, however, they observed a slight tendency of employers expressing their preference to Polish nationals: the CVs were sent to 167 employers, nine of which expressed interest only in the Polish candidate, three only in the application of the applicant with a foreign name, and seven in both candidates.¹²⁸

3.4 Discrimination in the workplace

As mentioned in the previous subchapter, migrants working in Poland are exposed to different forms of discrimination and unfair treatment, such as lower wages, worse working conditions, violations of workers' rights, different kind of frauds and exploitation. While these affect both legally and illegally working migrants, the latter are undoubtedly more vulnerable to such treatment. It should be mentioned here that the number of migrants working is likely to be very high. This concerns not only undocumented immigrants but also those having regulated status. As mentioned before, the vast majority of foreigners come to Poland on the basis of an employer's declaration of intention to entrust a job to a foreigner. Due to such declarations, they are then given a visa and should start working for the body which issued the declaration. In reality, however, many do not. Instead, they work without permission for another employer.¹²⁹ "Partially registered" work is also common practice. Some people are employed part-time and for the rest of the time perform an unregistered job for the same or another employer. Undoubtedly there are individuals working who actively chose this manner of employment but this is not a rule which applies to everyone. Quite often, because of the lack of any other alternative, immigrants have to accept this form of employment with all its negative consequences, including the lack of health and social insurance, workers' rights and other forms of protection. What puts foreigners in a particularly precarious position regarding the protection of their rights is the law concerning the undeclared employment of aliens. Non-Polish citizens working without the requisite permits are liable to expulsion from Poland and may also not be allowed to enter the European Union for several years. For some, being banned from coming to Poland (and in certain instances, the EU) in practice would effectively mean cutting off their primary source of income. Due to this fact (and others which will be discussed later) they are not willing to fight for their rights when they are discriminated against or unfairly treated.¹³⁰

There is no statistical data which can prove differences in salaries between Polish employees and migrants. However, a disproportion in earnings is mentioned by NGO reports based on qualitative research among foreigners - according to the majority of foreign workers interviewed by the Legal Intervention Association, the wages of Poles are usually higher than of non-Polish nationals performing comparable jobs.¹³¹

¹²⁸ Ibid.

¹²⁹ Platonova A., Urso G., *Labour market inclusion of the less skilled migrants in the European Union*, International Organisation for Migration, 2012, p. 69; Klaus W., *Polish employers' compliance with migrating workers' rights*, p. op.cit., p. 39.

¹³⁰ Interview with Witold Klaus, Polish Academy of Sciences, Legal Intervention Association, 7.08.2013,

¹³¹ Klaus W., *Polish employers' compliance with migrating workers' rights*, p. op.cit., p. 19-20. Interestingly, in some other studies, opposite opinions were expressed. In the opinion of Poles working for foreign employers, namely Vietnamese and Chinese, the countrymen of the company's owner are better paid. See: Kłorek N., Szulecka M., *Migranckie instytucje ekonomiczne i ich wpływ na otoczenie. Przykład centrów handlowych w Wólce Kosowskiej*, op. cit., 34.

Payment-related fraud is the most commonly reported problem faced by migrants (particularly those working in the construction and agricultural sectors).¹³² This fraud includes cases where the employer does not pay at all, or does but less than the agreed amount prior to the commencement of the job. Sometimes, employers explain lower wages as being deductions of the costs of food and accommodation, even if such a deduction had not been included in the contract. Such examples of dishonesty are also experienced by Poles, especially those working irregularly, but much less often.¹³³ The second common fraud that takes place is related to registering employment – employers declare to their employee that he/she is registered to work but in fact he/she is not.¹³⁴ Immigrants arriving from Asian countries via job agencies also encounter other forms of deceit, including a different type of work and/or much longer working hours than agreed before their arrival to Poland.¹³⁵

Available reports and studies mention that migrants often work more than 12 hours per day (in extreme cases even 19 hours per day).¹³⁶ However, it is sometimes difficult to interpret the issue of after-hours work and lack of holiday leave only in the light of possible discrimination or exploitation. This is due to the fact that in some cases this is the choice of migrants to work very long and without break. This especially concerns those coming to Poland for a relatively short period of time in order to gain a maximum amount of money.¹³⁷ Their strategy is to work and to earn as much as possible and return home afterwards.¹³⁸ Such working hours is characteristic for the sectors in which migrants are most often employed, namely agriculture and construction.¹³⁹ However, in many cases migrant workers are forced to work overtime against their will under the threat of dismissal.¹⁴⁰

Unlimited working hours and the lack of days off also concern workers employed in other sectors. As non-governmental organisations¹⁴¹ conducting research among migrants have noted, a person living with his/her employers faces difficulties in separating his/her working and non-working hours. This situation relates to women in housekeeping, or who take care of children and other dependent persons. Some employers require constant availability and expect a foreign employee to work around the clock without a day off or even sick leave. In extreme cases, work conditions and the way in which workers are treated by employers are so bad that it could be described as 'modern slavery'.¹⁴² Some women also suffer sexual abuse.¹⁴³

¹³² Białas J., Domańska B., "Jak to zrobić? Najczęstsze problemy prawne migrantów" in: *Bieg przez płotki. Bariery w drodze do integracji migrantów*. Mikulska A., Patzer H. eds.), Helsińska Fundacja Praw Człowieka, Warszawa, 2012, pp. 143-144; Klaus W., *Polish employers' compliance with migrating workers' rights*, op.cit., 19-20.

¹³³ Interview with Witold Klaus, Polish Academy of Sciences, Legal Intervention Association, 7.08.2013,

¹³⁴ Białas J., Domańska B., "Jak to zrobić? Najczęstsze problemy prawne migrantów", op. cit., pp. 143-144.

¹³⁵ Kościeszka K., Patzer H., "Migranci pracownicy", in: *Bieg przez płotki. Bariery w drodze do integracji migrantów*. Mikulska A., Patzer H. eds.), Helsińska Fundacja Praw Człowieka, Warszawa, 2012, pp.108-139.

¹³⁶ Klaus W., *Polish employers' compliance with migrating workers' rights*, p. op.cit., p. 19-20. Kościeszka K., Patzer H., "Migranci pracownicy", op. cit., p. 113.

¹³⁷ Bieniecki M., Pawlak M., *Strategie ukraińskich migrantów zarobkowych wobec polskiej rzeczywistości instytucjonalnej*, Instytut Spraw Publicznych, Warszawa 2010, p. 58; Klaus W., *Polish employers' compliance with migrating workers' rights*, p. op.cit., p. 23. Kościeszka K., Patzer H., "Migranci pracownicy", op. cit., p. 132.

¹³⁸ Ibid.

¹³⁹ Bieniecki M., Pawlak M., *Strategie ukraińskich migrantów zarobkowych wobec polskiej rzeczywistości instytucjonalnej*, op.cit., p. 58; Klaus W., *Polish employers' compliance with migrating workers' rights*, op.cit., p. 23; Interview with Witold Klaus, Polish Academy of Sciences, Legal Intervention Association, 7.08.2013.

¹⁴⁰ Kościeszka K., Patzer H., "Migranci pracownicy", op. cit., p. 113.

¹⁴¹ Among others: Legal Intervention Association, Helsinki Foundation for Human Rights.

¹⁴² Klaus W., *Polish employers' compliance with migrating workers' rights*, p. op.cit., p. 28.

¹⁴³ Ibid.

As mentioned earlier, it is mainly Ukrainian women who are employed by individual households, but the problems described above also concern workers from Asian countries. This is especially the case for workers who are brought by employers to work for their company in Poland. It is commonplace that a newcomer will firstly work to pay back the cost of his/her travel to Poland and the cost of the work arrangements.¹⁴⁴ The amount to be paid back, as well as the working conditions themselves, are sometimes not clear from the outset, which may lead to long-term dependency on the employer, the necessity to work afterhours both in the work place and also at the employer`s house. In extreme cases, this may lead to severe exploitation.¹⁴⁵ For various reasons it is very difficult for a worker to detach from such a relationship, not to mention being able to fight for his/her rights. Apart from being personally and financially dependent, migrant workers often lack knowledge of the language, Polish law, administrative issues and general information about how to independently survive in foreign countries, making them dependent on their employers. Similar problems concern some migrant workers coming to Poland via job agencies, especially those from non-European countries.¹⁴⁶

Last but not least, there are problems related to the safety and hygiene of the workplace which are often not observed in the case of migrant workers.¹⁴⁷ Violations range from skipping obligatory trainings in this field, to the more serious violation of safety rules, such as working on scaffolding without appropriate protection.

It is difficult to prove that the above-mentioned instances of unfair treatment have a specific discriminatory nature, as in some cases there is no comparable data regarding native Polish workers. What can be noted is the inequality in payment when both Poles and migrants work together.¹⁴⁸ However some types of work (e.g. harvesting, housekeeping combined with accommodation at the employer`s place) are performed almost solely by foreigners due to the low salary and/or working conditions which are not attractive to native Poles.¹⁴⁹ It may be argued therefore that offering such working conditions to migrants which are not acceptable for native Poles is a form of indirect discrimination.

¹⁴⁴ Kościeszka K., Patzer H., "Migranci pracownicy", op. cit., pp. 108-139.

¹⁴⁵ The issue of 'dependency relations' among Vietnamese is pointed out in various studies. However, apart from seeing the possible negative impact of such practices, they are also described as more complicated, culturally rooted phenomena. See: Szulecka M., "The Right to be Exploited: Vietnamese Workers in Poland", in: *Human Rights and Migration. Trafficking for Forced Labour*, Van den Anker Ch., I. van Liempt (ed.) Palgrave Macmillan. Houndmills, Basingstoke, Hampshire. p. 161-192.

¹⁴⁶ Kościeszka K., Patzer H., "Migranci pracownicy", op. cit., pp. 108-139.

¹⁴⁷ Klaus W., *Polish employers' compliance with migrating workers' rights*, p. op.cit., 1p. 26.

¹⁴⁸ Klaus W., *Polish employers' compliance with migrating workers' rights*, p. op.cit., p. 19-20.

¹⁴⁹ Ibid.

4. Tackling the challenges

4.1 Public policies

There are no policies or programmes that directly aim at combating racism and discrimination in employment. There are however several framework programmes and documents which look into public policies, including the Programme for Roma Community in Poland, the Operational Programme Human Capital (OPHC) (a part of the European Social Fund (ESF)), “Migration Policy of Poland – present situation and recommended actions”¹⁵⁰ supplemented by the draft document “Polish Integration Policy”, and “National Action Plan for Equal Treatment” (the latest documents have been recently drafted and have not yet been implemented).

The Programme for Roma Community in Poland has been carried out countrywide since 2004 and will be continued until the end of 2013. It is implemented at three levels – central, regional and local. The coordinator of the Programme is the Minister of Digitalisation and Administration. At the regional level, the Programme is administered by the voivodes (government regional administration units). Therefore, government administration (central and regional) and local self-government units, as well as NGOs (including Roma associations) are involved in the Programme’s execution. However, differences in how the local authorities engage in implementing the Programme have been observed.¹⁵¹ The Programme covers eight areas: education, living conditions, healthcare, unemployment, prevention, safety, culture, promotion of knowledge about the Roma community and civic education of Roma. It must be noted, however, that employment issues are not very popular among the implementing entities of the Programme for Roma Community in Poland, with only 2% of the Programme’s budget being expended on employment-related initiatives.¹⁵² At the same time, however, the number of activities that aim to encourage Roma to engage in professional activities and combat unemployment in the Roma community are carried out within the “Roma Component” of the Operational Programme Human Capital.¹⁵³

The most frequent activities include organising vocational training courses for Roma people, employment counselling services, creating subsidised jobs and work placements. From 2004 to 2012, about 600 Roma took part in vocational courses to improve or change their qualifications within the Programme for Roma Community in Poland.¹⁵⁴ OPHC activities include, predominantly, training courses and vocational development, vocational advisory services, work placements, and skills and motivation workshops. Such activities are usually organised within larger projects with elements of education, such as trainings for adults, remedial classes for children, and promoting Roma culture and healthcare.¹⁵⁵ There are no projects which directly address the issue of discrimination in

¹⁵⁰ <https://www.msw.gov.pl/pl/aktualnosci/10149,dok.html>

¹⁵¹ European Commission Against Racism and Intolerance, *ECRI report on Poland (fourth monitoring cycle)*, Council of Europe, Strasbourg, 15 June 2010, p. 32, par. 137.

¹⁵² Biuro Obsługi Ruchu Inicjatyw Społecznych, *Raport końcowy z Badania ewaluacyjnego „Programu na rzecz społeczności romskiej w Polsce” realizowanego w ramach project “Q jakości – poprawa jakości funkcjonowania Programu Romskiego*, op. cit, p. 15.

¹⁵³ <http://mniejszosci.narodowe.mac.gov.pl/mne/romowie/komponent-romski-progr>

¹⁵⁴ Biuro Obsługi Ruchu Inicjatyw Społecznych, *Raport końcowy z Badania ewaluacyjnego „Programu na rzecz społeczności romskiej w Polsce” realizowanego w ramach projektu „Q jakości – poprawa jakości funkcjonowania Programu Romskiego*, op. cit., p. 17, Ministerstwo Administracji i Cyfryzacji, *Sprawozdanie z realizacji Programu na rzecz społeczności romskiej w 2012 roku*, MAiC, Warszawa, 13 May 2013, p. 15.

¹⁵⁵ Władza Wdrażająca Programy Europejskie, *Program Operacyjny Kapitał Ludzki Poddziałanie 1.3.1. Projekty na rzecz społeczności romskiej. Skrócone opisy projektów realizowanych w ramach I,II, III, IV Konkursu*.

employment, however, there are initiatives which are dedicated to eliminating negative stereotypes of Roma or to establishing better relations between Roma and other groups of society. Such activities are worth mentioning within the context of combating discrimination in employment, as one of the reasons for not hiring Roma is the negative attitude of Poles towards them.

Unfortunately, all these initiatives have not resulted in a tangible increase in the level of employment in the Roma community. This can be proved by statistical data from entities implementing the Programme for Roma Community in Poland and also by the results of an evaluation of the Programme conducted by an association called the Office for the Management of Social Initiatives Movement.¹⁵⁶ It follows from interviews conducted during the evaluation stage that very few Roma people find legal employment even if they have attended vocational or training courses.¹⁵⁷ Moreover, successful employment is conditioned upon references from a Pole. Some individuals, e.g. women trained in styling and make-up, render paid services in this area, but are not officially registered as self-employed.¹⁵⁸ The vast majority of Roma remain unemployed (or at least not in registered employment).

4.2 Access to effective remedies

4.2.1 Judicial remedies

There is no exact number of court cases on discrimination based on nationality, race, ethnicity or religion,¹⁵⁹ but it may be assumed that there is only a handful. In 2012, the Polish Society of Anti-discrimination Law published a report which evaluates the implementation of the anti-discrimination provision by Polish courts.¹⁶⁰ Out of 172 of judgments that were analysed, issued in 2004-2011 by Polish courts, only two cases were related to discrimination based on nationality or citizenship. In both cases, the court's decisions were favourable to the applicants.¹⁶¹ Data from NGOs, which provide legal aid to the victims of discrimination, also indicate that the number of court cases in this area is extremely low.¹⁶² In the reporting period, the Legal Intervention Association handled two court cases on discrimination based on national origin in employment.¹⁶³ In both cases, the victims complained that they had been harassed by the employer and/or colleagues due to their national origin. Examples of inappropriate treatment included shouting, making unpleasant comments, jokes, comparatively worse working hours, etc. One of the complainants (originating from the Middle East)

¹⁵⁶ Biuro Obsługi Ruchu Inicjatyw Społecznych, *Raport końcowy z Badania ewaluacyjnego „Programu na rzecz społeczności romskiej w Polsce” realizowanego w ramach projektu „Q jakości – poprawa jakości funkcjonowania Programu Romskiego*, op. cit., p. 17.

¹⁵⁷ Ibid,

¹⁵⁸ Author`s telephone conversation with coordinator of the project “Education, better future” run by Centrum Doradztwa i Informacji dla Romów w Polsce oraz Stowarzyszenie Społeczno – Kulturalne ETHNOS, 25.02.2012.

¹⁵⁹ Data from the Ministry of Justice on cases of discrimination are not desegregated on the grounds of discrimination

¹⁶⁰ Wieczorek M., Bogatko K. (eds.), *Prawo antydyskryminacyjne w praktyce polskich sądów. Raport z monitoringu*, PTPA, Warszawa, 2012

¹⁶¹ Wieczorek M., Bogatko K. (eds.), *Prawo antydyskryminacyjne w praktyce polskich sądów. Raport z monitoringu*, PTPA, Warszawa, 2012.

¹⁶² Wieczorek M., Bogatko K., „Udział organizacji pozarządowych w postępowaniach z zakresu dyskryminacji” Wieczorek M., Bogatko K. (eds.), *Prawo antydyskryminacyjne w praktyce polskich sądów. Raport z monitoringu*, PTPA, Warszawa, 2012.

¹⁶³ Interview with Katarzyna Wencel, Legal Intervention Association, 22.08.2013. In both cases, court proceedings started 2-3 years ago.

also claimed that he had received a lower salary than the other employees, including those less qualified and experienced. The courts found discrimination only relating to wages, but they did not recognize instances of inappropriate behaviour towards the complainants as harassment on the basis of national origin.¹⁶⁴

The most understandable reasons why migrant workers do not seek justice in court when experiencing discrimination are the lack of knowledge about relevant legal provisions and the relevant administrative procedures, and an insufficient command of Polish. Obviously, undocumented or irregular workers are not interested in lodging complaints to the court as they would risk serious consequences for themselves. But also, some migrants are often simply not interested in using judicial remedies as court proceedings are very time-consuming and costly. Spending both time and money without any guarantee of success is the kind of risk which not migrants are prepared to take, especially those wishing to stay in Poland temporarily.¹⁶⁵ Some foreign workers also simply come to terms with the fact that they are treated worse than native workers, and this can generally be seen to apply to many migrants across Europe.¹⁶⁶

4.2.2 Non-judicial remedies

4.2.2.1 Ombudsman or equality body

There are two main institutions in Poland in which deal with the issue of discrimination and equal treatment: the Human Rights Defender (henceforth the “HRD”) and the Government Plenipotentiary for Equal Treatment (henceforth the “Plenipotentiary”). The mandate of the Human Rights Defender includes analysing, monitoring and promoting equal treatment; conducting relevant independent surveys and studies; preparing reports, issuing statements and recommendations regarding combating discrimination and implementing the principle of equal treatment.¹⁶⁷ According to provisions in the Equal Treatment Act¹⁶⁸, the HRD also support endorses victims of discrimination. This last task is subject to consideration as to how it should apply in cases where there is a conflict between two private parties, since the HRD’s competences refer to relations between a public organ and a person. In such a case, the HRD may limit his/her actions in providing the victim with information about his/her rights and possible actions.¹⁶⁹ The Government Plenipotentiary for Equal Treatment is responsible for executing the state’s policy regarding equal treatment and combating discrimination. The Plenipotentiary’s task, among others, is to develop the National Action Plan for Equal Treatment¹⁷⁰.

Equal treatment as a special task was assigned to the Human Rights Defender by the Equal Treatment Act, which entered into force in 2011. Before that date, the HRD was already dealing with up to 30 complaints and notifications related to national, ethnic or religious minorities per year. Despite these bodies, complaints related to discrimination in employment remain very rare.

¹⁶⁴ Interview with Katarzyna Wencel, Legal Intervention Association, 22.08.2013.

¹⁶⁵ Interview with Witold Klaus, Polish Academy of Sciences, Legal Intervention Association, 7.08.2013.

¹⁶⁶ Klaus W., *Polish employers’ compliance with migrating workers rights*, p. *op.cit.*.

¹⁶⁷ <http://www.rpo.gov.pl/pl/content/rpo-jako-organ-ds-rownego-traktowania>

¹⁶⁸ Ustawa o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania, 10 December 2010, (Dz. U. z 2010 r. Nr 254, poz. 1700).

¹⁶⁹ European network of legal experts in non-discrimination field, available at: <http://www.non-discrimination.net/content/equality-bodies-20>

¹⁷⁰ The document has been drafted but is not yet in force.

Complaints and notifications on discrimination and violations of the principle of equal treatment are also sent to the Government Plenipotentiary for Equal Treatment. In 2012, the Plenipotentiary received a total of 45 complaints and notifications classified as cases related to discrimination based on ethnic origin (14), race (9), citizenship (10) and religion (12), which is almost twice more than in the previous year (26).¹⁷¹ These figures include cases of hate speech and other forms of biased language or behaviour, racist violence as well as instances of alleged discrimination. Complaints about discrimination in employment, however, are extremely rare. What the Government Plenipotentiary for Equal Treatment can do upon receiving information about discrimination is to inform another relevant body (e.g. the Prosecutor) about this case, or to send the letter with a request for explanation to the actor accused of discrimination. In practice, this is not a strong mechanism to support victims, especially in the case of private entrepreneurs who can simply ignore such a letter. This was the case of an employer who included a particular religious affiliation (Jehovah's Witnesses) in the job's requirement even though such a requirement was unreasonable for the job position (a salesperson).¹⁷²

4.2.2.2 Labour inspectorate

In 2012, the National Labour Inspectorate (NLI) received 1,981 complaints related to discrimination, mobbing and harassment in employment, which makes around 4.5 % of all complaints submitted to the NLI.¹⁷³ This number includes all complaints regardless of the grounds of discrimination. Ethnicity, nationality, race and religion were not cited as grounds for the complaints, but the most popular grounds of unequal treatment were sex, age and membership in trade unions.¹⁷⁴

The competences of the National Labour Inspectorate in cases of discrimination are very limited even though the scope of the NLI's activities comprises supervision and inspection of labour law observance which includes the issue of non-equal treatment. Inspectors do not have the mandate to adjudicate whether particular cases are discrimination cases or not, as this is assigned to the labour courts. It is neither entitled to refer the victim to court, nor to file a complaint in court against an employer who is suspected of discrimination. What the Labour Inspectorate can do in the case of suspected discrimination is to conduct a relevant control, intervene with a request to the employer to explain unequal treatment, provide advice to the victim, etc.

Protection of migrant workers by the National Labour Inspectorate is even lower; and according to some experts (e.g. Witold Klaus), there is no such protection.¹⁷⁵ Firstly, due to the fact that many foreigner workers do not have a regular work contracts, they work on the basis of a civil contract which is not covered by the provisions of the Labour Code. In such cases, Labour Inspectors can only control the legality of employment and the issue of health and safety in the workplace, but not the observance of workers' rights. Here it should be restated that persons working under a civil contract are protected by the Equal Treatment Act. According to the head of the National Labour

¹⁷¹ Pełnomocnik do Spraw Równego Traktowania, *Sprawozdanie z działalności Pełnomocnika Rządu do Spraw Równego Traktowania za okres od 1 stycznia 2012 do 31 grudnia 2012*, Warszawa, 2013.

¹⁷² Information from the Plenipotentiary's website : <http://rownetraktowanie.gov.pl/interwencje/rekrutacja-do-pracy-okreslona-wyznaniem>

¹⁷³ Główny Inspektor Pracy, *Sprawozdanie z działalności PIP w 2012 roku*, PIP, Warszawa 2013, p. 27-28.

¹⁷⁴ Ibid.

¹⁷⁵ Interview with Witold Klaus, Polish Academy of Sciences, Legal Intervention Association, 7.08.2013.

Inspectorate, however, the NLI has no mandate to control the observance of provisions laid out in the above-mentioned law.¹⁷⁶

As the mandate of the National Labour Inspectorate includes controlling the legality of employment, NLI is not an institution to which an irregular worker could direct his/her complaints as he/she would risk serious consequences, including even deportation from Poland.

4.3 Civil society initiatives

4.3.1 Trade Unions

Polish trade unions are not particularly engaged in the issue of racism and discrimination on the grounds of race, ethnicity, nationality or religion. The exception is the Polish Nationwide Trade Union of Footballers which is involved in a number of actions and campaigns against racism in sport (e.g. the campaign *Let's Kick Racism out of Stadiums*, carried out by the Never Again Association since 1990.) Other trade unions undertake some actions in the area of discrimination on different grounds (sex, age, disability, religion affiliation, national or ethnic origin) such organising and participating in anti-discrimination trainings.

4.3.2 NGOs activities

There are three main areas of NGO initiatives dedicated to combating discrimination and racism in employment: (1) providing legal and non-legal assistance to individuals, (2) conducting monitoring, research and surveys (including situation testing) (3) providing training on anti-discrimination law and raising awareness in this area. Such activities are usually conducted by organizations dealing with the issue of migration in a broader scope (e.g. Helsinki Foundation for Human Rights¹⁷⁷, Legal Intervention Association¹⁷⁸, Institute of Public Affairs¹⁷⁹, Foundation for Development "Beyond Borders"¹⁸⁰, Ocalenie Foundation¹⁸¹), as well as NGOs focusing on the issue of racism and discrimination on all grounds (e.g. Polish Society of Anti-discrimination Law¹⁸², Association Against Anti-Semitism and Xenophobia "Open Republic"¹⁸³). Moreover, some civil society organisations (e.g. Polish Roma Union, Information and Counselling Centre for Roma in Poland) conduct activities aiming to improve the general situation of vulnerable groups on the labour market; the main target group of such activities are Roma. NGOs are also involved in developing policy documents related to equal treatment, as well as migration and integration. They have also been engaged in lobbying for the exhaustive application of anti-discrimination law and implementation of anti-discrimination policies. Interestingly enough, in relation to these actions, the Coalition for Equal Chances was set up in 2009.¹⁸⁴ The Coalition is managed by the Polish Society of Anti-discrimination Law and today consists of around 50 non-governmental organisations.

¹⁷⁶ Opinion expressed in a letter to the Human Rights Defender dated 12.02.2013. Rzecznik Praw Obywatelskich, *Informacja o pracy RPO styczeń-marzec 2013*, RPO, Warszawa, 2013, p. 21.

¹⁷⁷ <http://www.hfhr.pl/>

¹⁷⁸ <http://interwencjaprawna.pl/>

¹⁷⁹ <http://www.isp.org.pl/>

¹⁸⁰ <http://frog.org.pl/>

¹⁸¹ <http://fundacjaocalenie.org.pl/>

¹⁸² <http://www.ptpa.org.pl/>

¹⁸³ <http://www.otwarta.org/>

¹⁸⁴ <http://www.ptpa.org.pl/koalicja>

Assistance offered to individuals covers both legal and non-legal measures. The most popular is legal advice directly and indirectly related to the area of employment. This includes counselling persons who have been discriminated against or cheated by their employer, but also – in the case of migrants – helping to legalize their stay in Poland, to obtain a work permit, etc. These latter kinds of assistance are very important in the context of discrimination for two main reasons. First of all, as already outlined, irregular migrants and migrants performing unregistered jobs are more exposed to discrimination and exploitation. It is beyond doubt that there are cases where for some people, staying and working irregularly in Poland is their own choice. There are some persons who are undocumented as a result of their own, or their employer's, negligence (e.g. missing deadlines to send documents related to their stay or work permits to the relevant authorities) or dishonesty (the employer does not register a foreign worker, does not pay his/her taxes and social security contribution, etc.). Such situations are less likely to happen when a foreigner is assisted by a professional who can help him/her to handle legal and administrative matters. The second argument is that sometimes migrants are not aware they are being discriminated against and/or are not aware of the existing anti-discrimination law. This applies especially to persons coming from countries where the law does not contain anti-discrimination provisions. While resolving a migrant's problem, NGO workers are able to notice further instances of discrimination, and provide the victim(s) with the relevant information and suggest possible solutions.

Apart from legal counselling, civil society organisations can offer a wide range of legal services for cases of discrimination, including the preparation of a written plea, submission of an *amicus curiae* brief, watching a court trial, filing a complaint, or joining the proceedings on behalf of the party.¹⁸⁵ However, such services are not often provided. This is due to the fact that the victims, who are mainly migrants, are not willing to seek justice in court, for the reasons described in the previous chapters. If anything, they prefer to use other means, such as for an NGO to intervene with the employer. Consequently, the number of court cases related to discrimination in employment handled by single NGOs is very low; it ranges from 0 to 2 cases per year.¹⁸⁶ The number of interventions, by telephone or post, is higher (several per year).¹⁸⁷ It should be noted however that often, interventions made by an NGO are enough to convince an employer of his/her unfair practice, resulting in the employer agreeing, for example, to pay the agreed remuneration.¹⁸⁸ It is also worth noting that it is still rare that a NGO will handle a court case related to discrimination, regardless of the grounds of discrimination.¹⁸⁹ As stated by lawyer Katarzyna Wencel from the Legal Intervention Association, civil society organisations still lack experience and skills in this regard.¹⁹⁰

Another area of NGO activities regarding discrimination in employment are studies and surveys on the situation of migrants. Most often they are carried out using qualitative methods - participant observation, interviews and questionnaires with foreigners and stakeholders. Since 2010, the Institute of Public Affairs has conducted qualitative surveys using situation testing methods.¹⁹¹ Due

¹⁸⁵ Wieczorek M., Bogatko K, „Udział organizacji pozarządowych w postępowaniach z zakresu dyskryminacji”
Wieczorek M., Bogatko K. (eds.), *Prawo antydyskryminacyjne w praktyce polskich sądów. Raport z monitoringu*,
PTPA, Warszawa, 2012.

¹⁸⁶ Interview with Katarzyna Wencel, Legal Intervention Association, 22.08.2013; Helsinki Foundations for
Human Rights.

¹⁸⁷ Ibid.

¹⁸⁸ Interview with Katarzyna Wencel, Legal Intervention Association, 22.08.2013;

¹⁸⁹ Wieczorek M., Bogatko K, „Udział organizacji pozarządowych w postępowaniach z zakresu dyskryminacji”,
op. cit.

¹⁹⁰ Interview with Katarzyna Wencel, Legal Intervention Association, 22.08.2013.

¹⁹¹ Wysińska, K., *Nguyen, Serhij, czy Piotr: pilotażowe badanie audytowe dyskryminacji cudzoziemców w
rekrutacji*, Instytut Spraw Publicznych, Warszawa 2010.

to the limited data from courts and equality bodies, NGO reports resulting from studies and surveys are the main sources of information concerning the manifestation of racism and discrimination based on race, nationality and ethnicity.

With minor exceptions, training seminars on anti-discrimination in employment usually concern all grounds of discrimination. NGOs specialized in such activities offer trainings for different professional groups, e.g. the Police, public servants or trade union members. For instance, in 2010-2012 the Polish Society of Anti-discrimination Law trained around 100 trade union members.¹⁹²

Some NGOs carry out activities aiming to improve the situation of vulnerable groups on the labour market however, these projects do not focus on reducing discrimination. Projects targeted at Roma are run by both Roma and non-Roma organizations. Project activities are mainly professional and vocational trainings, skills and motivation workshops and other education activities which help Roma to be more competitive on the labour market. The Polish Roma Union implemented two parts of the project "Innovative Roma on the Labour Market"¹⁹³ (the second part was completed in December 2012). The project aimed to support the long-term unemployed in entering the labour market. "Innovative Roma on the Labour Market" created a network of social and vocational assistants whose task was to identify beneficiaries in need of support, assist them in finding employment and help them in furthering their qualifications, as well as in dealing with the administrative part of the process. The assistants were Roma people who had been trained in employment and social counselling, job-seeking techniques, vocational counselling and attitude formation. The project trained a total of 40 social and vocational assistants who assisted 1,401 unemployed Roma. Approximately 120 persons found employment as a result of the project.¹⁹⁴ It is worth mentioning that a number of direct discrimination cases in access to employment were observed during this project (see chapter *Discrimination in access to employment*). Unfortunately, no action in these cases has been taken.¹⁹⁵

Among the many initiatives being implemented today, the "Jedni z wielu" ("Some of Many") campaign by the PROM Foundation seems to be especially interesting in terms of combating the negative stereotype of Roma as uneducated and vocationally inactive people.¹⁹⁶ Specifically for the project, a world-famous photographer, Chad Evans Wyatt, portrayed dozens of Polish Roma who are educated, successful in their professional life, and well-integrated with the rest of society.¹⁹⁷ The photos, accompanied by short interviews with the subjects, have been shown in a number of travelling exhibitions and are available online.¹⁹⁸

4.3.3 Employers' organisations

The Lewiatan Confederation¹⁹⁹, a countrywide network of employers, has been carrying out the project "Diversity Index" that focuses on the issue of managing diversity in companies.²⁰⁰ Within the project, an internet tool called the "Diversity Index" has been developed to examine diversity in the

¹⁹² Information from the Polish Society of Anti-discrimination Law website, available at : <http://www.ptpa.org.pl/projekty/prawo-antydiskryminacyjne-w-codziennej-dzialalnosci>

¹⁹³ <http://www.romowie.com/innowacyjni/index.php>

¹⁹⁴ Author's conversation with the Polish Roma Union, 20.03.2013.

¹⁹⁵ Ibid.

¹⁹⁶ The campaign's website: <http://jednizwielu.pl/bohaterowie-kampanii>

¹⁹⁷ Ibid.

¹⁹⁸ Ibid.

¹⁹⁹ <http://konfederacjalewiatan.pl/>

²⁰⁰ http://www.diversityindex.pl/en-GB/text/diversity_index

workplace. By using this tool, companies may perform a self-audit in the area of diversity management, compare themselves with others, etc. The project is implemented in partnership with the Agency of Innovation and Development.²⁰¹

4.3.4 Other civil society initiatives

One of the few and far between initiatives related to counteracting discrimination in employment is the Diversity Charter.²⁰² The Diversity Charter consists of a short document voluntarily signed by companies, organisations and public institutions. It outlines the measures they will undertake to promote diversity and equal opportunities in the workplace, regardless of race or ethnic origin, sexual orientation, gender, age, disability or religion. Similar charters have been already signed in several EU member countries (Austria, Belgium, Spain, Germany, Sweden, Ireland, Italy, Estonia, Finland and France).²⁰³

The text of the Polish Diversity Charter was discussed in collaboration with the public administration, non-profit organisations, trade unions and business representatives. In addition to introducing diversity management to companies, it also includes the appointment of a person or a team which coordinates diversity actions within the organization, implements periodic anti-discrimination education for all employees, and reports on activities undertaken and their results. The Diversity Charter was launched in February 2012 by the Responsible Business Forum in collaboration with the Office of the Government Plenipotentiary for Equal Treatment and the Office of the Polish Human Rights Defender. During 2012 and the first half of 2013, almost 50 companies (and 4 NGOs) signed the charter.²⁰⁴

²⁰¹ Information from the Lewiatan website: http://www.diversityindex.pl/en-GB/text/diversity_index

²⁰² The project part of the EU-level Exchange Platform funded by the European Commission Directorate-General for Justice.

²⁰³ <http://www.diversity-charter.com/>

²⁰⁴ <http://kartaroznorodnosci.pl/pl/karta-w-polsce/sygnatariusze.html>

5. Conclusions and recommendations

5.1 Political and societal developments related to racism and discrimination

Of all matters concerning racism and discrimination, the problem of hate crimes and activism by radical groups were the most important issues discussed in Poland between 2012 and early 2013.²⁰⁵ Public discussions started after a series of racist and xenophobic incidents in 2012. Racist attacks, which took place in the Białystok area (Eastern Poland)²⁰⁶, where the scale of hate crimes has increased in recent years, have mobilised public institutions and civil society to undertake anti-racist measures. Among others, the Human Rights Defender visited Białystok in order to assist in developing solutions which would help to prevent racism. At the same time, in some other cities (Wrocław, Kraków), some anti-racist initiatives were launched.²⁰⁷ During the conference *“Mowa nienawiści w internecie – jak z nią walczyć”* (“Hate speech on the Internet – how to fight it”)²⁰⁸ held in October 2012, the Prosecutor General underlined the necessity of cooperation between law enforcement and other public institutions to combat hate speech and hate crimes. Unfortunately, despite these actions, racist attacks have continued into 2013. It must be remembered, however, that the issues of hate crimes have remained unresolved for a much longer time. This issue is regularly raised by NGOs²⁰⁹ and international bodies (e.g. ECRI, CERD) which for years have been alarmed by the fact that hate crimes are not being properly investigated by law enforcement bodies and that the courts fail to recognize the racist motivation of perpetrators. It is highly probable, that due to past failures, many more efforts and greater engagement are needed to effectively combat racism.

The problem of racist crimes is linked to the issue of discrimination and exploitation for several reasons. Firstly, some migrant workers are victims themselves of racist crimes. Secondly, society “silently consents” to these racist crimes, because by not acting out in protest or expressing dismay at the situation, their inaction demonstrates that it is in actual fact acceptable to commit such crimes and unfairly treat migrants and non Polish natives. . Moreover, hate speech against a particular group of migrants or minorities may negatively influence their situation on the labour market. Over the years, the issue of racist crimes has not been properly addressed and undoubtedly this is one of the reasons why hate speech and racist violence have spread in recent years. There is the danger that the same mechanism could apply in the cases of racism and discrimination in employment.

5.2 Conclusions and recommendations

Although the number of migrants coming to live and work in Poland is systematically growing, the issue of racism and discrimination in employment is not high on the public agenda, nor is it discussed in the public forum. Consequently, this topic is not particularly addressed by public policies or by the relevant public actors. Nevertheless, thanks to ongoing monitoring and studies conducted by NGOs and academics, the situation of workers with a migrant background is quite well-researched, also in regard of discrimination and unfair treatment. Results from studies and the experience of

²⁰⁵ Interview with Aleksandra Gliszczyńska-Grabias, Association Against Anti-Semitism and Xenophobia “Open Republic”, 30 August 2013.

²⁰⁶ <http://bialystok.gazeta.pl/bialystok/0,114123.html?tag=rasizm>

²⁰⁷ Biuro Komisji Sejmowych, *Pełen zapis przebiegu Komisji Sejmowej Mniejszości Narodowych i Etnicznych (nr. 34) z dnia 7 lutego 2013*, Kancelaria Sejmu, 2013.

²⁰⁸ <https://www.facebook.com/events/510177372327308/>

²⁰⁹ E.g. Association Against Anti-Semitism and Xenophobia “Open Republic”, Never Again Association, Helsinki Foundation for Human Rights, Legal Intervention Association

practitioners lead to the conclusion that migrant workers are subject to discrimination and unfair treatment, but existing anti-discrimination law and procedures do not constitute real protection for them. This latter finding is supported by data regarding complaints in this area which show a very small number of such cases handled by courts, equality bodies and NGOs. This is mainly due to the fact that most of them are working in Poland as undeclared workers or partially undeclared which, in practice, severely limits their opportunities to seek justice and fight for their rights. This relates to court trials as well as to receiving any protection by the National Labour Inspectorate which, unfortunately, also serves as an institution to counteract undeclared employment. In July 2012, Poland transposed the provisions of Directive 2009/52/EC²¹⁰ which improves the situation of undocumented workers with the exception of those who are registered to reside in Poland, but who are not declaring their employment (which is a large proportion of migrants).²¹¹ Migrants performing registered work do not exercise their right to be free from discrimination for various reasons, including a lack of knowledge about the anti-discrimination law, language difficulties, money and also a lack of will to do so. It is likely that the more litigation there is specifically in this field would be useful in convincing victims to make use of the legal and non-legal anti-discrimination measures which are available to them.

The lack of efficient protection for migrant workers results from the situation whereby employers who discriminate against or exploit foreign workers remain unpunished and are free to continue their practices. The economic crisis, combined with a constant influx of new workers, may even foster this phenomenon and lead to systematic discrimination on a larger scale.

Roma, refugees and individuals granted international protection (especially those from the Caucasus) are the most vulnerable groups on the labour market. Their difficult situation in employment derives from many different factors and therefore need to be addressed in a very special, complex way.

Recommendations (formulated on the basis of interviews and reports):

Migrants in general:

- Information about anti-discrimination law and knowledge of how to access ones rights should be widespread among migrants; they should be able to easily obtain information in a language they understand; such information should be distributed, among others, by the administrative bodies which issue visas and work/residence permits;
- The task of the National Labour Inspectorate should only include the protection of workers, both registered and unregistered; examining the legality of employment should be excluded from the NLI's mandate;
- More training programmes for NGOs and individual lawyers on how to handle discrimination-related court cases are needed (anti-discrimination provision in Polish law, collecting evidence, shifting of the burden of proof, previous case law, etc). They could be organized by NGOs themselves but also by organisation of professionals, including bar associations, councils of Roma Advisors, ect;
- People employed by individual households and working in ethnic clusters should be the subject of special concern of the public authorities as they are the most exposed to severe exploitation;
- The work of job agencies should be controlled by relevant public authorities, including labour inspectors, regarding possible fraud and exploitation of foreign workers;

²¹⁰ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

²¹¹ Klaus W., *Polish employers' compliance with migrating workers' rights*, p. *op.cit.*, p. 39.

- Trade unions shall be engaged in the issue of discrimination of foreign workers and support them to fight against exploitation by the employers.

Refugees and persons granted other forms of international protection:

- Polish language courses on more advanced than basic level should be offered to refugees and persons who have been granted other forms of international protection, in order to facilitate their access to the labour market; The decision to establish refugee centres in a particular place should be taken after analysing the labour market in the surrounding area. It would be advisable not to locate such centres in an area with a high level of unemployment and a shortage of workplaces;
- The system of relocating refugees to an area of the country where they can get a job should be developed; the system should include assistance to find a job, housing and to handle all administrative matters in the place of relocation. Some material and financial assistance should also be provided.

Roma:

- Disaggregated data on ethnic origin should be collected in the field of employment to better assess discrimination against the Roma;
- Specific actions should be taken to facilitate employment and training of Roma, in support of the EU Framework on National Roma Integration Strategies
- Projects aiming to combat the negative stereotype of Roma should be continued. Public media should be among the main actors carrying out such activities. For instance, Roma could be introduced as “positive character” on the popular tv shows or other broadcasts.

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