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PUBLICZNYCH**



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**Foreign workers in Poland during the COVID-19
pandemic**

MOBILEurope National Report

INSTITUTE OF PUBLIC AFFAIRS
European and Migration Policy Programme

Project: MOBILEurope: Collective bargaining for mobile workers in Europe under the COVID-19 - cases of frontier, seasonal and migrant workers



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About the project

MOBILEurope is a two-year research project, running from 2022 to 2024, aimed at improving expertise in the field of industrial relations. The research was carried out in 6 countries - 4 Member States of the European Union: Spain, Greece, Portugal and Poland, and 2 candidate countries: Serbia and North Macedonia.

The project is coordinated by the Spanish trade union Independent Trade Union Coalition of Workers of Madrid (Coalición Sindical Independente de Trabajadores de Madrid) CSIT UNION PROFESSIONAL.

Main objectives of the project

- To examine the impact of the COVID-19 crises on frontier, seasonal and migrant workers in terms of employment, working conditions and social protection in the six countries studied.
- To identify the role and impact of social dialogue and collective bargaining in mitigating the challenges of COVID-19 for frontier, seasonal and migrant workers.
- To develop findings and conclusions on how the social partners can work together and on the challenges at national and EU level to guarantee socio-economic rights for mobile workers.

The outputs of the project will include:

- 6 country reports (based on an analysis of existing data, results of surveys of mobile workers, interviews with social actors and/or focus groups),
- 1 comparative analysis, which will provide data (based on the surveys conducted) on current trends in 4 EU Member States and 2 Candidate Countries with specificities of industrial relations and provide recommendations and conclusions for further theory and practice in Europe.

Key concepts

Collective bargaining is a process in which representatives of employers and employees negotiate terms and conditions of employment. The aim of these negotiations is to find a compromise that satisfies both parties and leads to fair and satisfactory working conditions. Collective bargaining deals with various aspects of work, such as working conditions, pay, overtime, benefits, health and safety, training and grievance mechanisms. Workers' interests are usually represented by representatives of the union to which they belong.

The concept of **mobile workers** in the project refers to frontier, seasonal and migrant workers. This type of work has been defined differently, but this report uses the definitions contained in the jointly agreed European Union and United Nations directives (or other legislation).

A frontier worker is defined in Regulation 883/2004 of the European Parliament and of the Council of the European Union as 'any person who pursues an activity as an employed or self-employed person in a Member State and who resides in the territory of another Member State to which he or she returns as a rule each day or at least once a week' (European Parliament 2004: 2). Unlike migrant workers (who leave their country of origin altogether to live and work in another country), frontier workers have dual territorial allegiances based on their place of residence and their place of work.

A seasonal worker means “a third-country national who retains his or her principal place of residence in a third country and stays legally and temporarily in the territory of a Member State to carry out an activity dependent on the passing of the seasons, under one or more fixed-term work contracts concluded directly between that third-country national and the employer established in that Member State” (European Parliament; Council of the European Union 2014: 381). However, the definition needs to take into account that seasonal work can be carried out by both EU nationals and third-country nationals who take up seasonal employment in an EU Member State while maintaining their main residence in another EU Member State or in a third country.

According to the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, a **migrant worker** is “refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national” (UN General Assembly 1990: 262). However, this definition is very broad and, if applied strictly, could include frontier and seasonal workers. Therefore, as mentioned above, a more precise definition of migrant workers refers only to people who have completely left their country of origin to live and work in another country. Our research should focus on migrant workers who are third-country nationals, often referred to as 'migrants' in the EU context to distinguish them from EU citizens. These two categories of workers are, of course, in a different legal situation, as EU citizens are already largely protected by the freedom of movement (d'Auchamp 2011: 9).

Study methodology

This report is based on triangulation, i.e. data obtained through three methods.

- The first set of data came from secondary sources - a review of literature, laws and government regulations relating to the situation of mobile workers in the era of the COVID-19 pandemic (desk research).
- The second set of data came from a quantitative survey conducted from June to September 2023 using an online questionnaire. The questionnaire was developed by the coordinator of the research part of the project, the Institute of Sociology, University of Belgrade, and consisted of 32 questions. The project coordinator assumed that the questionnaire would be completed by 10 frontier workers, 10

seasonal workers and 10 migrant workers. Unfortunately, such a method did not work at all in the case of seasonal workers (0 responses), and it was also very limited in reaching border workers (4 responses). Thus, the majority of responses (26) came from migrant workers - foreigners working in Poland during the COVID-19 pandemic. Therefore, the results of the survey cannot be considered representative.

- The third set of data comes from the qualitative survey. Between December 2023 and March 2024, 25¹ individual in-depth interviews (IDIs) were conducted on the basis of a questionnaire prepared by the coordinator of the research part of the project - the Institute of Sociology, University of Belgrade. 13 interviews were conducted with employers and 12 with trade union representatives. The list of institutions whose representatives were interviewed is attached.

Structure of the report

- The first part of the report presents the institutional framework of the analysis - a review of literature, laws and government regulations related to the COVID-19 pandemic situation, with a special focus on the situation of mobile workers in the Polish labour market.
- The second part of the report discusses the results of a survey of 30 foreigners working in Poland during the COVID-19 period.
- The third part of the report discusses the results of the qualitative research - 25 interviews with representatives of employers and trade unions.
- The fourth part of the report contains conclusions from the research and recommendations.
- The report concludes with an appendix containing a list of institutions interviewed for this study and a list of sources used.

Introduction

One of the objectives of the project was to determine the impact of social dialogue and collective bargaining in mitigating COVID-19 challenges for frontier, seasonal and migrant workers.

¹ The project assumed 30 interviews - 15 with employer representatives and 15 with trade union representatives. As migrants are not a group of workers specifically targeted by trade unions, it was possible to reach a smaller number of interviewees. Despite this, the themes raised by trade unionists began to recur, meaning that the collected material had reached a stage of saturation and was sufficient for analysis. In the case of employers, the material collected was also sufficiently diverse. The 10 people I asked to participate in the study either refused on the reason of lack of knowledge or did not respond to the enquiry.

It should be noted at the outset that in the case of Poland this objective could not be achieved. According to information obtained during an interview with a lawyer from NSZZ Solidarność trade union, an expert dealing mainly with collective bargaining and industrial disputes, **Poland is the country with the lowest rate of workers covered by collective agreements in the European Union**, ranking 27th. It can therefore be assumed that the level of collective bargaining for mobile workers is close to zero. **And the collective agreements that do exist do not contain provisions that address the specific needs of migrant workers.**

This is confirmed by the words of an expert from the organisation Employers of Poland (Pracodawcy Rzeczypospolitej Polskiej) who, when asked about collective bargaining in relation to mobile workers, pointed to the **lack of specific legislation aimed specifically at this group of workers**. She added that people with civil law contracts have the right to join trade unions and negotiate just like any other employee or contractor in Poland, but that for various reasons (to be discussed later in the report) mobile workers do not exercise this right. Asked about the issue of improving collective bargaining coverage in Poland, she concluded that:

This is a very difficult issue that has been around for many years and this crisis has been visible for many years. There are various proposals to somehow revive these negotiations, while from the employers' side there is always the argument that labour law in Poland is at a rather general level. That is to say, the law regulates various areas of employment to such an extent that it provides for these minimum standards, which are, so to speak, at such a high level in terms of labour costs, employment costs, employee entitlements, that employers simply do not agree to increase these entitlements further through collective agreements. (Interview P.6)

It should also be emphasised that in Poland labour rights are regulated by normative acts - the Act of 26 June 1974 on the Labour Code (Journal of Laws No. 2023, item 1465) and the Act of 20 April 2004 on the promotion of employment and labour market institutions (Journal of Laws No. 99, item 1001), and the benefits to which they are entitled depend on the type of contract signed. Thus, mobile workers (migrants) have the same rights and working conditions as Polish workers employed under similar types of contracts (employment contract, mandate contract, less frequently, contract for specific work). The same was true during the COVID-19 pandemic.

Is there anything in the collective agreements that treats these people on the basis that they are of another nationality, yes, and that they are economic migrants? No, it is the form of employment that is the determining factor. There is no distinction between foreign workers. (Interview Z.6)

In view of the above, the following part of the report will present the general conclusions of the research conducted about foreigners on the Polish labour market, with a special focus on the periods of the COVID-19 pandemic and the most severe period of restrictions in 2020-2021.

COVID-19 pandemic - desk research

Agenda

The first diagnosed case of coronavirus infection in Poland was officially confirmed on 4 March 2020. On 14 March, by regulation² a state of epidemic emergency was introduced in Poland, the movement of citizens was restricted, and a quarantine was introduced for Poles returning to the country. On 15 March, Poland's borders were closed to foreigners, with the exception of drivers carrying cargo. The first restrictions on economic activity were introduced (the so-called first lockdown). A week later³, an epidemic state was introduced in Poland.

In May 2020, some industries (e.g. hotels, catering, entertainment, beauty) were finally able to resume operations - facilities were opened under a sanitary regime. On 17 October 2020, restrictions were reintroduced. On 23 October 2020, on-site catering was again closed, and from 7 November, hotels could only serve selected groups of customers (e.g. customers on documented business trips) (ZPP 2021). The business restrictions remained in place for seven months, until May 2021.

The epidemic state was lifted on 12 May 2022 with the re-establishment of the epidemic state. According to a regulation⁴ of 14 June 2023, the coronavirus pandemic officially ended on 1 July 2023.

Action taken by the Polish government and mobile workers

Under the above-mentioned legislation, certain categories of workers were exempted from the restrictions on movement (initially, for example, professional drivers), then this corpus was extended to include sea and air crews, and then agricultural workers. However, the legal status of foreigners whose residence or work permits expired during the closure remained undefined.

From the beginning of March 2020, the Polish government began to introduce a number of solutions to support the economy, businesses and workers during the pandemic. These solutions were called the Anti-Crisis Shield.

The first Act⁵ of 2 March 2020 did not address the issue of regulations related to the employment of migrants at all. It was subsequently amended as part of the four laws that make up the Anti-Crisis Shield. The first amendment, dated 31 March 2020, introduced

² Regulation of the Minister of Health of 13 March 2020 on the declaration of a state of epidemic emergency in the territory of the Republic of Poland. Journal of Laws 2020 item 433

³ Regulation of the Minister of Health of 20 March 2020 on the proclamation of an epidemic state in the Republic of Poland territory. Journal of Laws 2020 item 491

⁴ Regulation of the Minister of Health of 14 June 2023 on the cancellation in the Republic of Poland territory of a state of epidemic emergency. Journal of Laws 2023 item 1118

⁵ Act of 2 March 2020 on special solutions related to preventing, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them. Journal of Laws 2020 item 374

provisions on the extension of the deadline for applying for residence permits for foreigners, the extension of the validity of national visas and temporary residence permits, and the extension of the validity of work permits for foreigners until 30 days after the end of the epidemic, i.e. de facto until the end of August 2023 (Florczak 2020).

However, the situation of foreigners who entered Poland under the visa-free regime before the pandemic remained undefined. The last group mainly included Ukrainians - the largest group of foreign workers in Poland - who, since June 2017, have benefited from the possibility to freely come to Poland to work for a limited period. This required further measures to extend their legal stay - this group was covered by the second anti-crisis shield of 16 April, which expanded the catalogue governing the extension of a foreigner's legal stay in Poland (Cope et al. 2021: 8).

In Poland, work permits for foreigners are issued for a specific position with a specific employer and form the basis for an application for the right of residence. Residence cards are issued by provincial offices. However, according to the Supreme Audit Office (2019), these are lengthy procedures, which means that before the pandemic, foreign workers were dependent on their employers not only for work but also for legal residence. After the epidemic was declared a state of emergency, the provincial offices responsible for issuing residence permits stopped receiving applicants in person. This made access to procedures virtually impossible. The offices resumed work at the end of May, but some did not start receiving clients until the end of July. It was still possible to send documents by post, but in some offices the waiting time for the initial meeting initiating the procedure lasted several months (Cope et al. 2021: 13).

The Act⁶ of 14 May 2020 introduced the possibility to change the conditions of the foreigner's work without having to change the permit, obtain a new permit or submit a new declaration of the foreigner's employment in the register of declarations. It also added an article establishing exceptions to the foreigner's obligation to hold a work permit and the obligation to renew it (Florczak 2020).

Situation of seasonal workers

One of the reasons for the changes in working conditions for foreigners was the need to allow foreigners to carry out seasonal work during the summer.

Prior to the pandemic, in 2018, a new type of contract - the harvest assistance contract - was introduced, which met the expectations of the Polish fruit and vegetable industry by facilitating the legal employment of third-country nationals in the face of a huge labour shortage on the domestic labour market.

Although a harvesting contract relates to the performance of specific activities for the farmer and is therefore employment in the economic sense, it is not a type of employment contract.

⁶ Act of 14 May 2020 on amendments to certain laws on protective measures in connection with the spread of the SARS-CoV-2 virus. Journal of Laws 2020 item 875

The contractual terms do not guarantee the right to health and safety at work (e.g. minimum wage, right to daily and weekly rest, right to health and safety at work and holidays, or standards for maximum manual lifting, use of chemical agents and personal protective equipment). It therefore raises doubts as to its compliance with Article 66 of the Polish Constitution and the so-called Framework Directive on health and safety at work. The contractual arrangement of harvesting support also appears to contradict the objectives set out in the European Pillar of Social Rights (Surdykowska 2018; Florczak 2019).

After the outbreak of the COVID-19 pandemic, on 8 May 2020 the Minister of Agriculture and Rural Development and the Chief Sanitary Inspector issued guidelines for agricultural producers employing foreigners for seasonal work in relation to the spread of the SARS CoV-2 virus. Part A, entitled 'Preventive procedures: ensuring transport and quarantine conditions', states that “(...) *During the first 14 days of quarantine on the farm, the worker is allowed to work, on condition that it is strictly forbidden to leave the farm during the quarantine period, and contact with people living on the farm is also limited to the minimum necessary (...).*) *In the case of a large number of workers on the holding, separate quarters (separate entrances) should be provided for small groups of people - up to a maximum of 10 workers - and their stay should be organised in such a way that the groups do not come into contact with each other during the quarantine period, both at work and outside the quarantine period in the welfare facilities, during transport to the field/work site, in the yard, etc.*” (Florczak 2020: 72).

Thus, the regulation not only introduced an exception to the general rules of quarantine, but was also impossible to fully implement in practice. Foreigners working and living on farms did not have the opportunity to isolate themselves from other workers. However, the overriding objective was to ensure the continuity of agricultural work, which was considered a higher value than human health and life.

The perspective of foreigners working in Poland at the time of COVID-19 - results of the questionnaire survey

The coordinator of the research part of the project (the Institute of Sociology, University of Belgrade) designed a 32-question questionnaire to be completed (anonymously) by 180 mobile workers in four EU Member States: Spain, Greece, Portugal and Poland, and two candidate countries: Serbia and North Macedonia.

In Poland, I used the English version of the questionnaire and also prepared versions in Ukrainian and Russian. I sent it through the channels of the Institute of Public Affairs to organisations and individuals working with foreigners. I received a third part of the responses in this way. I then posted announcements on Facebook in groups for foreigners and received the remaining two thirds of the questionnaires in this way. The vast majority of questionnaires were filled in by migrant workers (i.e. those living in Poland on a long-term basis). I tried to

reach seasonal and frontier workers by posting advertisements on Russian and Ukrainian-speaking groups offering temporary work in Poland. For several days we also tried to reach this population by posting a paid advertisement on Facebook, but no seasonal workers responded. The chosen methodology was not suitable for surveying hard-to-reach populations such as seasonal or cross-border workers. However, we did not have the opportunity to change the methodological assumptions of the project.

A total of 30 foreigners completed the questionnaire, half of whom were women. Almost half of the respondents were between 25-34 years old, while almost a quarter were between 35-45 years old. 13% of the respondents were between 45-54 years old and the remaining 3 were in the 55+ age group.

4 people (Ukrainian citizens) were border workers whom I reached through private contacts and 26 people were migrant workers.

Border workers

All 4 questionnaires were completed by men of Ukrainian nationality, one worked in a Polish health institution and 3 were international transport drivers employed by Ukrainian transport companies. Based on their answers, it can be concluded that the COVID-19 pandemic did not change the nature of their contract, their working hours or their wages.

Migrant workers

In this pool of 26 questionnaires, 8 respondents were from Ukraine, 4 were from other EU countries (2 from Spain and 1 each from the Netherlands and Portugal) and 14 were third country nationals (4 from the USA, 2 from India and 1 each from Afghanistan, Chile, Costa Rica, Mauritius, Mexico, Peru, Turkey and the UK). Only one man (from Portugal) reported being a member of a trade union. On the other hand, 12 people marked 'I am not a trade union member but would like to become one'.

When asked what sector of the economy they worked in:

- 8 respondents indicated the IT industry;
- 4 respondents indicated the food industry;
- 2 respondents indicated the services sector;
- 2 respondents indicated construction and infrastructure;
- respondent said health and residential care;
- the remaining 9 respondents indicated response other.

Half of the respondents reported that the COVID-19 pandemic did not affect the operation of their workplace, 5 people reported that their organisation expanded its activities during the pandemic. 6 people reported that the organisations they worked for suspended their activities for a limited period of time. However, only one person experienced a negative impact in terms

of being made redundant, and only three reported a reduction in their working hours and income because of the pandemic. The vast majority experienced no change in their situation, while 5 people received a pay rise. 3 people also experienced an improvement in their working conditions - their fixed-term contracts were changed to open-ended contracts. Based on these responses, the results of the survey cannot be considered representative in any way⁷.

In view of the above, it was interesting to ask how the respondents thought trade unions could help foreigners on the Polish labour market.

The following answers were given:

- a) providing information and assistance on workers' rights and safety at work (7 indications);
- b) to promote fair treatment and equal opportunities for migrant workers (4 indications);
- c) working with the community to support the social and economic integration of migrant workers (1 indication);
- d) negotiating with employers on behalf of migrant workers for better wages and working conditions (1 indication);
- e) providing legal assistance and representation to migrant workers facing discrimination or exploitation (6 indications);
- f) creating networks and communities of migrant workers to provide mutual support and resources (3 indications);
- g) other (8 indications, of which 4 people added a comment that they would like to tick all of the above).

One person also left a comment that in practice they had never had any contact or support from trade unions on any of the above points. This suggests **that there is a potential for unionisation among foreigners in the Polish labour market, it would just be necessary to find effective information channels to facilitate their access to trade union structures.**

⁷ In comparison, a survey conducted by the EWL Temporary Employment Agency on 9-15 April 2020 on a sample of 600 foreigners from Ukraine, Belarus, Moldova and Georgia working in Poland showed, among other things, that the lockdown introduced in Poland due to the coronavirus epidemic had a very serious impact on the situation of foreign workers in Poland. 26.6% of them had to change their line of work, and for more than 60% of foreigners the pandemic meant that their employer reduced their working hours. Slightly more than 20% of migrants also declared the need to change their place of work and almost 30% also their place of accommodation. (EWL 2020: 5)

Employer and trade union perspectives - findings from the qualitative study

Market industries and mobile workers

Based on interviews with trade union activists and employer representatives, it is possible to identify a number of sectors in which it is easier for foreigners to find employment. This is due, firstly, to the high demand for workers in these sectors and the shortage of Polish workers or their lack of interest in taking up this type of work. Secondly, these are sectors in which fluency in Polish is not required and in which it is possible to learn the profession relatively quickly in the case of a lack of experience/qualifications (e.g. production plants in the white goods industry). Thirdly, the competitive advantage of foreign workers is their greater flexibility and time availability, which was pointed out in interviews by representatives of temporary employment agencies, especially in the case of migrants who are motivated by work rather than settlement. This also worked in their favour during the pandemic:

They were more receptive, they were more willing to move, even over long distances. In a sense, they came here to earn money, so they lived where the work was, not the other way around. Now the situation is a bit different, because now they work where they have settled permanently, because, well, this is no longer economic emigration, it is war emigration and it has its own laws. Also other, other people come to us. Then more men, women when they came, or men when they came, it was rare that the whole family came, just the family came, then just the woman came, then the children came, for example if they decided to move. (Interview P.13)

Even before covid there were situations in which foreigners sometimes earned more [than] Polish citizens because they were more available for work (Interview P.10)

A similar trend was also pointed out by a representative of Konfederacja Pracy:

Ukrainians are somehow willing to work more hours and overtime at the beginning, so they get higher salaries. Well, because they work more hours, and then there is a feeling of inequality between those Poles who, for example, only want to work five days a week, have Saturdays off, Sundays off, and those people from Ukraine who are prepared to work overtime for some time. (Interview Z.5).

Market sectors in which, according to the interviewees, there is a high demand for foreign workers are:

- transport industry;
- agriculture and food industry;
- hotel industry;
- construction industry;
- domestic services (cleaning and care);
- IT industry.

Workers and activists from the National Committee of NSZZ Solidarność in the transport and hotel sectors unanimously stated in interviews that large companies and multinationals employ foreigners on the same basis as Polish workers and respect health and safety requirements. The problem is with small, private companies, which sometimes try to take advantage of foreigners' lack of knowledge, for example by employing them below the applicable rates, failing to comply with formal obligations such as registering contracts with ZUS, and consequently failing to pay contributions or paying arrears. However, trade unionists point out that this lack of knowledge is a universal and transnational problem.

When it comes to this area of precarious employment, we generally have problems with our fellow countrymen when it comes to knowing certain things, so it is difficult to say that there is something specific to migrants. I myself have experienced that young Poles do not really know what they are entitled to when they start [a job based on a civil law contract], i.e. there are actually challenges that are more a result of the type of contract (Interview Z.8).

At the time of COVID-19, for example, international transport drivers were forced, under threat of dismissal, to go to destinations that were reserved at the time, such as Spain or Italy, or employees were made responsible for providing their own personal protective equipment, such as masks or disinfectant liquids. Although this applied to small companies, according to the interviewee, such companies make up the vast majority of the market (Interview Z.2).

The construction and domestic service sectors were identified by interviewees as those where employment without a formal contract still occurs (although this does not apply to large construction companies, which cannot afford to violate labour rights and health and safety standards), and where foreign workers are sometimes exploited by dishonest employers. This was also the reason why, in 2019, a group of Ukrainian domestic workers began to meet and later founded the Committee of Domestic Workers (Komisja Pracownic i Pracowników Domowych) at the Workers' Initiative trade union (Inicjatywa Pracownicza). In its two years of activity, the committee has successfully intervened in several cases of mistreatment of caregivers, mainly related to non-payment of wages. In addition, members organise regular meetings to educate caregivers about their rights.

In this context, one specific industry is the IT sector, which tends to attract highly skilled workers. The interviews also show that Polish employers highly value the skills of IT specialists from neighbouring countries (Ukraine, Belarus). Their additional advantage is a work culture like the Polish one, which does not bring additional challenges for the employer in terms of team management. In this sector, foreign employees can expect the same working conditions as Poles.

Type of employment

Most migrants are employed on the basis of civil law contracts (mandate contracts). If they are employed under an employment contract, it is usually a fixed-term or probationary contract. Experts from the State Labour Inspection stressed that open-ended contracts are rarely used, although they are used for Ukrainian workers:

During our telephone consultations on the legality of employing foreigners, we know that there are companies that are interested in employing these Ukrainian citizens, especially for an unspecified period, because they have proved themselves. Certain people, yes, only the employees of the company want to be employed as if for a longer period, so there are also such cases (Interview P.11).

The form of employment is sometimes linked to a wider trend in a particular sector, rather than to the nationality of the employee. A representative of Konfederacja Pracy talks about this in an interview:

The mandate contract is the standard, whether for migrants or for Poles in general, because it is much more advantageous for them. Perhaps the working hours are not as regulated as in the case of an employment contract, so these employees can work more, on weekends, and of course they do not have days off, so it is worth it for them to come in for extra hours, otherwise they lose out financially somehow (Interview Z.5).

It is also important to note that migrants, especially those from Ukraine, prefer to sign civil law contracts because they are more flexible. This was pointed out by experts from Fundacja Inicjatyw Społeczno-Ekonomicznych:

Many people, for example, do not work under contract because they earn less. Well, actually it doesn't pay them because they agree, they agree with their employer, they accept it on purpose. They prefer to work on a contract basis. Why is that? Because they can, for example, quickly go to the Ukraine at any time, terminate the contract, or go on holiday or something like that, and that suits them. (Interview P.1)

It is also important to remember that in the case of seasonal workers, who intend to return to their home countries, the main motivation is the salary, which will be higher in the case of a civil law contract. In addition, they may not be fully aware of the different types of contracts and the benefits that, for example, a fixed-term contract could offer them.

Irregularities

The State Labour Inspection monitors the legality of the employment of foreigners and compliance with labour rights.

A positive trend is the observed decrease in the number of foreigners working illegally due to illegal stay on the territory of Poland. (State Labour Inspection 2022: 139)

On the other hand, the most frequent violation of the provisions on the legality of the employment of foreigners is the **lack of the required work permit**. Other violations concern the employment of foreigners on the basis of declarations submitted by an entity other than the one that entrusts the work, or the **entrustment of work to other contrary to the conditions specified in the work permit**, in particular with regard to the working time dimension. However, the authors of the report (State Labour Inspection 2022) emphasise that the level of violations of these provisions detected during the periods of greatest restrictions

due to the COVID-19 pandemic, i.e. in 2020-2021, did not differ from those detected in previous years.

Regarding compliance with workers' rights (State Labour Inspection 2021, 2022), the most frequent violations of workers' rights were:

1. failure to comply with health and safety rules or regulations (almost half of all offences in 2020, just over 46% in 2021);
2. failure to pay remuneration for work or other benefits on the agreed date, making an unjustified underpayment or deduction (in both 2020 and 2021 this accounted for around 19% of all offences);
3. violation of regulations on working time or regulations on workers' rights related to parenthood and employment of young people (in both 2020 and 2021 this accounted for more than 6% of all infringements).

During the interview, State Labour Inspection experts emphasised that such **problems affect both Polish and foreign citizens**. It can therefore be concluded that the problem does not lie in the nationality of the employee, but in the dishonesty of the employer. The State Labour Inspection experts also noted that foreigners are even better protected by Polish law, as in their case a civil law contract must be concluded before work begins.

The irregularities reported by the State Labour Inspection were confirmed in interviews with trade union representatives. The trade union confederation intervened 'in situations such as unpaid wages or the absence of a legal contract' (Interview Z.5), and a representative of the Committee of Domestic Workers gave examples of interventions for non-payment of wages.

In Poland, however, the trade union has an effect on these workers, on employers, somehow there is even the word trade union, so I think it's a control, simply that they don't go unpunished in the sense that such, I introduce myself, that such, yes, here you turned to us with, such our member, with such, with such, with such a kind of request and intervention that you don't want to pay (...) what kind of job? What, on what basis and so on. And then I, as soon as I hear from a lady, the one who didn't want to pay the last salary, they gave you to a nursing home everything was fine half a year, and the last month already something wrong and Tatiana called me with a request that there four and a half thousand they don't want to pay (Interview Z.4).

Inspections carried out by the State Labour Inspection in temporary work agencies during COVID-19 also revealed an increasing trend towards the conclusion of civil law contracts under conditions that are characteristic of an employment relationship. In 2020, irregularities were detected in 5.2% of the units inspected, while in 2021, irregularities were detected in 8.2% of the agencies. Before the pandemic, this type of practice was detected in 6.8% of units in 2019 (State Labour Inspection 2022: 150).

On the other hand, the trade unions criticise the phenomenon of abusive 'false outsourcing', i.e. situations where workers who, according to the trade unions, should be employed by a particular company, are provided with temporary work externally through temporary work agencies.

There are also situations where we have workers who are employed by temporary agencies on a contract basis doing this work on machinery in a coordinated way, for example, by workers of a particular company, the one that owns the hall, the machinery, yes? And de facto it is work that is done under the guidance and direction of people from that company (Interview Z.6)

In general, outsourcing consists of separating a certain part of the activity of a company, yes, handing it over to an external entity on the basis of the regulations in force, yes, but well, we often see situations where, for example, on the production line we have employees of the company and we have employees of another entity who are just providing these external services, doing exactly the same thing, yes? And they are not agency workers (Interview P.11).

Trade unions and mobile workers

The relationship between Polish trade unions and migrant workers has evolved.

About a dozen years ago, the attitude of Polish trade unionists was very suspicious of foreigners, there was even a suspicion that they were being used to lower wage standards, right? That changed very slowly, and now there's no such threat when it comes to such normal big companies, especially in the industrial sectors, and if it's still a question of, in order to function in a trade union, you need to have a sense of some perspective of functioning in a given country, right? (Interview Z.8)

As more workers, particularly from Ukraine, decided to stay in Poland on a long-term basis, their interest in trade union activities increased. A representative of the National Commission confirmed in an interview (Z.6) that NSZZ Solidarność has members of Ukrainian nationality, although this is still not a large number. Joining the structures was usually the result of a positive experience - getting help to solve a problem at work.

However, the trade unionists I spoke to suggest that there is still some reluctance or mistrust about trade union membership among foreigners. On the one hand, this may be due to a lack of awareness that unionisation gives them more opportunities to influence working conditions and organisation. On the other hand, the largest groups of migrants in Poland come from Ukraine, Belarus and other post-socialist countries and, as one interviewee put it, 'they come to Poland with all sorts of stereotypes about trade union organisations that they have taken with them from their home countries'. Moreover, mobile workers tend to take jobs in the private sector, and

If they find themselves in a company where there is no trade union, well, it is difficult to assume that a person who is a migrant in a particular country, who is just getting to know that country, will have the courage to form a trade union (Interview Z.5)

A representative of the non-governmental sector expressed a similar view of trade unions:

The state is not trusted by people from Ukraine, Belarus, Kazakhstan, Georgia, and trade unions are even less trusted, because trade unions are associated with such a big post-Soviet mob, where you pay dues so that the management can have the occasional Santa Claus party for the children (Interview P.12).

So, one of the key issues should be to break down mutual stereotypes.

Actions taken

Based on the information from the interviews, the trade unions have so far undertaken the following activities aimed at foreign workers:

- organising regular information and integration meetings;
- publication of information in local languages on websites and social media (Facebook, Telegram);
- running information points offering advice and guidance, including in Ukrainian and Russian;
- providing Polish and English language courses;
- running a certification programme for employment agencies (together with Konfederacja Lewiatan);
- intervention with employers on behalf of workers;
- lodging complaints with the State Labour Inspection.

Trade unions and support for mobile workers

The interview scenario included the question: in your opinion (whether you are a trade union leader/member or not), how can trade unions help mobile workers?

The following are suggestions from people who are members and/or employees of trade unions:

- Trade unions should participate in the process of education of these people, facilitate such assimilation in the country, i.e. to be co-responsible, for example, for language courses, for training activities, for education about the history of Poland, life in Poland, knowledge about Poland. Trade unions, Solidarność has certain premises in the regions, this material structure, which with some financial support could be used very quickly to build this physical structure necessary to support these people in some way, for example in language courses or this kind of activities (Interview Z.1).

- Information about Polish law, about their rights and duties, help with Polish and English language courses, for example, various meetings, seminars, some events on topics such as where to look for a job or the same, for example, what are the rights and duties of the employee and the employer or some changes in legislation, for example, to inform and so on (Interview Z.3).

- Above all, to get them to join a trade union, because a trade union is the best way for them to influence their working conditions and to have a stronger bargaining position in talks or negotiations with the employer (Interview Z.5).

- Even if foreigners already speak Polish, very often with an accent, and the employer is in a position of strength, not only because of his/her position as an employer, but also because he/she speaks the language well or at least has some knowledge of the current legislation. Trade unions should undertake educational activities and create training courses on labour law, preferably in the native languages of migrants, offer free legal aid in the native languages of these migrants. If possible, organise language courses (Interview Z.5).

- Trade unions have a certain know-how in terms of organisation and self-organisation. I think that most trade unions in Poland are open to migrants, but in fact the situation with the lack of employment contracts, with some kind of temporary stay in Poland, is also a factor that makes it a bit difficult to establish such structures and for them to work efficiently. But in my opinion, if we have a choice between not organising and organising, it is better to organise, even if it does not mean that all the problems will be solved automatically. And that often means explaining to people that just joining a union and even getting a group of people together is just the beginning (Interview Z.7).

Below are suggestions from employers about the role trade unions should play in relation to foreign workers:

- The role of the trade unions should be, first of all, to raise awareness among foreigners about the existing legal possibilities, because this awareness is simply lacking, and this is where the trade unions, which should be closer to the workers, should expand this knowledge and take into account the fact that we have more than a million foreigners employed on the Polish labour market, so they should be advocates not only for unionised workers but also for these foreign workers (Interview P.4).

- A trade union is needed because it is a place, it is an institution, to which foreign workers can go with their problems and have a chance to solve them professionally under the guidance of lawyers or employees of such a trade union (Interview P.8).

- Information, but targeted, verified information, based on facts and not on fake news, as on the Internet. We have a lot of information on social media platforms, but it is unfiltered information and very often has little to do with reality. So the idea is that first of all these people should get an information package in the national languages (Interview P.10).

- Polish law at the moment is not so much conservative, it is quite liberal by EU standards, it is just terribly complicated. Dealing with any migration case really requires a lot of skill from a legal point of view, knowledge of the practice of the provincial offices. It is a very lucrative industry. And now, yes, it's not enough to have a person who has read the Aliens Act well, because that's not what it's about, like a really experienced person. And now the question is, can the trade union offer such a person from 15 thousand a hand? Because that's the wage scale at the moment (Interview P.12).

Employers' perspective

In several interviews, experts drew attention to a certain dualism in the Polish approach to the employment of foreigners - on the one hand, the rather liberal regulations and, on the other hand, the lengthiness of procedures. An expert from Konfederacja Lewiatan calls for:

regulations should be more employee-friendly. Employers, of course, are also as interested as possible in making it easy to legalise residence, as there is no legal employment without legal residence. (Interview P.4)

She also points out that "it is easy to fall into illegal residence or illegal employment, even unintentionally" because of the length of the procedure and thus the "lack of clarity about the current status of the person whose previous residence permit has already expired and the next one has not yet been issued".

In this context, the COVID regulations, which introduced the extension of the validity of national visas and temporary residence permits and the extension of the validity of work permits for foreigners to 30 days after the end of the epidemic, were a great relief for employers, as representatives of temporary employment agencies said in interviews.

Well, it was, it's a big relief for us, because the workers don't have to leave. Well, that is much more important. The companies need stabilisation, we won't send people out if we change employees every now and then, there will be a high turnover, it's not good for the company, because hardly does a person learn a job, they already have to leave because they've run out of papers, that's why it was here, it was convenient. Well, it's just, it's the main thing for us, it's loosening up when it comes to residence and work documents (Interview P.5).

In an interview, a migration expert from an NGO pointed out that for many years employment agencies were considered to be the 'scourge' of the Polish labour market, as migrants earned less through their services than they could by signing a contract directly with the employer. In a pandemic situation, however, it turned out that the foreigners they employed were in a more privileged situation.

Their employees seemed to be in a better situation because even if they lost their job somewhere, a new job would be found for them by the agency and they did not have to change their set of documents because they had a certificate or permit issued to the agency and not to the employer. In other words, while they could physically change their place of work and often even their sector, they did not have to change their permit or residence card. Paradoxically, those who happened to work in factories, transport, Lidl, Biedronka and so on and so forth, especially as agency workers, even if the job disappeared somewhere, the agencies I know were sometimes able to find them work elsewhere in Poland within a day (Interview P.12)

Representatives of employment agencies (interviews P.5, P.10 and P.13) confirmed the above statement in their interviews. They also pointed to a number of other facilities they had put in place for mobile workers, such as organising quarantine and food for the duration of the quarantine, or isolation flats in case they were infected with the SARS-CoV-2 virus+7.

We took such care of him that he was not left alone, only if there were people in such a flat, we had an appointment for a doctor to come there. I can honestly say that they had better care than the Poles. (...) There was a house for quarantine purposes, that was it, people were reported. The Border Guard would come, the police, they would check who was there, who wasn't there, and here people were politely separated and they didn't pay for it, only here we paid the costs somehow (Interview P.5).

A representative of EWL - the temporary employment agency employing the largest number of foreigners in Poland - recalls that:

in the first year [of the pandemic] 11,000 people went through our quarantine, I think there were 1,1007, so we laughed that in the sense we were the organisation that created the centre. In the sense that I don't know if there was any organisation that created quarantine on a larger scale than we did (Interview P.13).

The problem, on the other hand, was the legal ambiguities and the chaos that resulted from frequent changes and new regulations that excluded certain groups of workers, such as international transport drivers, or changed the length of compulsory quarantine.

There was a situation where at 3.30 p.m. the Minister of Health issued a decree changing the quarantine obligations and there was an arrangement whereby there were people who, if they tested positive for COVID-19 and had this negative result, then they could continue to work on the basis of confirmation from a particular medical company with the authority and so on. And we established a relationship with a company that did such tests and during that period all the employees were tested when they came to us. If we found a person who was infected, then we had a special quarantine and with a special vehicle we took such a person with a valid result to the quarantine because it was all reported and so on. Whereas people with a certificate that they were free of COVID-19 could continue to work. And the Minister of Health, I don't think it was Niedzielski at that time, but the one before, Szumowski, I think it was Szumowski, at 3.30 p.m. a decree was published that from midnight the obligation of unconditional quarantine would come back, and we had, we didn't have quarantine accommodation for hundreds of people, and those were times when we were taking in 250-300, even 400 people a week, yes? There were times when we took in 700, probably 20 in a week, or some record of ours, so we literally had half a working hour. (Interview P.13)

The lack of legal stability, as in the above situation, was a problem both for the agency and for employers who found out at the last minute that the workers they were expecting were not available. It was also inconvenient for mobile workers - in a situation where they did not expect to be subject to compulsory quarantine, they would arrive unprepared for such a situation, e.g. without a supply of clothing.

Experts from employment agencies also pointed out that the employment structure of foreigners is changing and that new challenges are emerging. For many years, the labour market was dominated by citizens of Ukraine and Belarus. Today, more and more foreigners are being recruited from countries that are both geographically and culturally distant, such as Indonesia, Colombia, the Philippines, Cuba, Georgia and Kazakhstan.

When it comes to newcomers from further afield, it is often the case that these are people who have left their country for the first time, who suddenly arrive in Poland and may even be surprised that it is colder than they expected. These are cultural issues, language issues, they need help, in fact at the moment almost everywhere a Ukrainian citizen will get medical help in their own language because simply all the companies have prepared for it, the hospitals have prepared for it very well. On the other hand, a Spanish-speaking Colombian, or, I don't know, a Chinese or Indonesian, needs help and an interpreter, because he/she just can't manage on his/her own (Interview P.13).

As a positive trend, the expert points to the greater openness of companies - agency clients report the need for training, they order such services to prepare themselves to work with non-European foreigners. In the period of the COVID-19 pandemic, many companies also hired

foreigners as demand increased and there was a shortage of workers in many sectors. The EWL expert pointed to the e-commerce (online shopping) industry and courier companies, where the demand for workers was huge.

A different strategy was adopted by an employer who was in the process of changing industries during the COVID-19 pandemic - he gave up running a temporary employment agency in favour of the hospitality industry, but in both cases he hired a lot of foreigners, mainly from Ukraine.

I did it in such a way that I paid a basic salary to the people who worked for me, but we agreed that they shouldn't treat it as non-repayable aid, but that during this time they should learn something, for example in the hotel industry, that they should take an English course. The condition was, you don't come to work, you don't have to, or at least there was help connected with social security, I think you got 3 months of social security there, it was OK. I paid the base, while I asked each person to do something with themselves. So, she went to some, she went to English, she worked like that (Interview P.10).

So, he used the period of economic downturn in the industry to develop the skills of the workforce.

Conclusions and recommendations

Conclusion

Poland does not have an open and consistent migration policy, while at the same time there has been a very large increase in the number of work permits issued in recent years.

Interviewees stressed that the lack of a vision and migration strategy means that it is employers who shape the demand for migration to Poland and, as research shows, this is also linked to unfair practices by some actors.

As the expert from NSZZ Solidarność said, it is necessary to develop a migration policy that would be the result of a tripartite dialogue. Such a strategy document should be consulted with the trade union movement at a central level. Only such a long-term vision would allow trade unions to adopt a position on foreign workers and would provide a reference point for planning and implementing further actions aimed at migrant workers.

Regarding the period of the COVID-19 pandemic, which was the context of this study and analysis, "the main actor was the state. In general, the social partners, i.e. the trade unions, the employers' organisations, were of course present, while the initiative came from the state, and here we had no particular reservations" (Interview Z.8) An interviewee from the National Commission of NSZZ Solidarność also stated that there were no discriminatory elements on the basis of nationality when it came to supporting companies or employees during the pandemic. "As far as supporting companies during covid is concerned, it was done on the basis of the so-called covid agreements, which were negotiated between the unions and the employer at company level, which allowed for the suspension of some benefits, the reduction of working hours, but at the same time provided job security in an appropriate amount. There

was no, if they worked there, if foreign workers were employed there, then of course they were treated with the same rights" (Interview Z.8).

Migrants employed in the service sector based on civil law contracts also received some security in the form of the so-called standstill benefit, which was intended for entrepreneurs and people employed on the basis of commission contracts, i.e. also for legally working foreigners. According to an expert from the National Commission of NSZZ Solidarność, there has been no trade union action in favour of foreign workers because there was no perceived need - no cases of differentiation or discrimination were identified.

A bigger potential problem was foreign workers providing platform work, who are difficult to reach for both researchers and trade unionists and whose status is unknown. Admittedly, in the COVID-19 era, the deadline for foreigners to apply for residence permits was extended, the validity of national visas and temporary residence permits was extended, and the validity of foreigners' work permits was extended until 30 days after the end of the epidemic, i.e. de facto until the end of August 2023. However, it is not possible from this study to determine the impact of the COVID-19 pandemic on their labour market situation.

During the pandemic, all persons residing in Poland, regardless of their legal status, were entitled to health care services and sanitary-epidemiological examinations (e.g. COVID tests) related to the control of diseases, infections and infectious diseases, including COVID-19. Once the coronavirus vaccine was developed, everyone could be vaccinated free of charge.

However, the fact that the legislator made several changes to the content of the Basic Law (the so-called Anti-Crisis Shield) with further regulations on foreign workers is evidence of the instability of the status of foreigners in the labour market during the COVID-19 pandemic (Florczak 2020). For example, most Ukrainians - the largest group of third-country nationals in Poland - were in Poland on the basis of visas, visa-free movement or were in the process of applying for a residence permit. Ukrainians without a residence permit did not have a few rights, including not being eligible for social assistance (Cope et al. 2021) or other forms of financial support provided under the Anti-Crisis Shield.

A comparison of the results of the MOBILEurope project with other institutional sources shows that the COVID-19 pandemic did not affect all sectors and the foreigners working in them equally. For example, data from Social Security Institution show that tourism and hospitality had to cope with the economic impact of the pandemic for longer, while transport and logistics already reported a 20% increase in demand for foreign workers in June 2020 compared to the previous year (Brzozowski et al. 2020).

Similarly, the increase in unemployment in Poland due to the pandemic was statistically lower than feared (6.2% in September 2020 compared to 5% the year before). However, one possible explanation is that the statistics do not reflect the impact of the lockdown on sectors of the economy where informal and undeclared work predominates, such as care work (Cope et al. 2021).

As for the impact of the COVID-19 pandemic on migrants' decisions to return to their home countries, according to Statistics Poland estimates, more than 223,000 foreigners left Poland between the end of February 2020 and the end of April 2020 (counting all migrants, including

those not working). This represents a relatively small percentage, i.e. 10% of the state at the end of February 2020 (Strzelecki 2020).

However, the COVID-19 period also revealed other dangerous phenomena. The organisation of agriculture driven by migrant workers can have disastrous consequences if mobility is restricted and can lead to legally questionable and unjustified actions, further endangering people's lives and health.

Recommendations

The need for increased education and information activities to break down stereotypes about migrants in relation to trade union activities was echoed in the interviews.

It would also be mutually beneficial to increase the level of unionisation in general, as the existence of a union in a workplace is a guarantee of the employer's respect for workers' rights. On the other hand, it increases the likelihood that mobile workers will firstly learn about the union, secondly join it, thirdly become involved and ultimately benefit from the union's support by having a greater say in working conditions and organisation.

Unions should put more emphasis on producing information material in migrants' mother tongues that clearly presents the benefits of unionisation, explains how to join, discusses workers' rights, etc.

Platforms and social media need to be used for this purpose, as, for example, platform workers - drivers, couriers - are alienated because they communicate with an app and do not know their colleagues. As the experience of the Confederation of Labour has shown, "the group on Telegram has become the main channel of communication for them, replacing a traditional canteen". Given that we have more and more such atypical forms of work, a great potential as communication channels to reach a wider range of mobile workers is precisely the platforms like Telegram, Signal and other social media to communicate to reach a wider range of mobile workers (Interview Z.5).

Another idea is to include representatives of migrant workers in works councils, especially in workplaces where they are a significant part of the workforce. With one or more representatives on the council, the voice of foreign workers will be better heard and they will have the opportunity to express and present their problems, needs and demands.

Finally, it should be stressed that in Poland there are more and more emigrants from Central Asia, from Muslim countries, from culturally distant countries, who are much less recognised and represented than, for example, Ukrainians or Belarusians. This makes it all the more important to support trade union initiatives set up by people with migrant experience, who can better identify and respond to their needs, while at the same time acting as a bridge between mobile workers, the host society, institutions and other trade unions.

Appendix

List of interviews with trade union representatives

- Z.1. NSZZ Solidarność, National Commission, Expert Office
- Z.2 NSZZ Solidarność, National Council of the Road and Road Transport Section
- Z.3 OPZZ, International Department
- Z.4 Inicjatywa Pracownicza, Komisja Pracownic i Pracowników Domowych
- Z.5 Konfederacja Pracy, Youth Structures
- Z.6 NSZZ Solidarność, Industry and Consultation Office of the National Commission
- Z.7 Inicjatywa Pracownicza
- Z.8 NSZZ Solidarność, Industry and Consultation Office of the National Commission
- Z.9 Związek Zawodowy Pracowników Zagranicznych w Polsce
- Z.10 NSZZ Solidarność, Food Industry Secretariat, Hotel Section
- Z.11 Związek Zawodowy Pracowników Zagranicznych w Polsce
- Z.12 NSZZ Solidarność, Food and Agriculture Secretariat, Tobacco Section

List of interviews with employers' representatives

- P.1 Fundacja Inicjatyw Społeczno-Ekonomicznych, vocational advisor
- P.2 Fundacja Inicjatyw Społeczno-Ekonomicznych, lawyer
- P.3 NESsT (Foundation for the Support of Social Entrepreneurship)
- P.4 Konfederacja Lewiatan
- P.5 Employment agency in Słupsk
- P.6 Employers of Poland
- P.7 International kindergarten
- P.8 Polsko-Ukraińska Izba Gospodarcza
- P.9 Chief operating officer, logistics company
- P.10 Temporary employment agency and hospitality industry
- P.11 State Labour Inspection
- P.12 Migration expert, NGO sector and academia

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