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## **Mapping of policies affecting female migrants and policy analysis: the Polish case**

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Policy Assessment and Policy Recommendations**

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## Introduction

Polish migration policy has been developing with varying dynamics since the onset of the systemic transformation, which is reflected on the one hand in legislation, and on the other in practical manifestations of social behaviours. Therefore, in 1997 a new law on foreigners was adopted (the previous one was from 1963 and was in force during communism), which was amended in 2001, and in 2003 a new law was created to determine the most important regulations concerning immigration in Poland.

Migration policy, part of which is immigration policy, includes the following main fields: policy towards immigration (regulations concerning the influx of long- and short-term migrants), together with the issues of security and protection of borders, and policy towards immigrants (policy regulating the status and rights of admitted immigrants, and especially integration policy). Therefore, immigration policy refers to the **policy towards immigration and towards immigrants**.

After 1989 Poland became part of a new European migration system, in which values, norms and rules are in place to handle the flow of people. They are shaped by historical, political, cultural and geographical factors as well as by situational ones (sudden events). On the other hand, the model of migration policy which is being created in Poland is influenced by the fall of communism and the process of European integration. Poland is participating in the creation of the common migration policy, but what should be strongly emphasized is that it expresses itself mostly in imitation of EU policy, rather than in the creation of its own regulations emphasizing the national distinction and humanitarian traditions of Poland. Therefore, literature on the subject indicates a clear Europeanization of migration policy in Poland.

Polish legislators create regulations which are restrictive towards foreigners, as if the country was flooded by immigrants. On the contrary, the scale of immigration is small, and Poland is becoming a country of immigration only very slowly. Right-wing parties in parliament sometimes suggest that these laws make Poland guard and supervisor to the Eastern border of the EU.

## **1. Policies targeting migrants**

### **1.1. Migration and naturalization policy, policy regulating residence and work (including the influence on illegal immigration)**

The basic legal act regulating the political, social and economic system, as well as competences of the central organs, is the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997). Chapter II – Liberties, Rights and Obligations of Persons and Citizens – contains a catalogue of the most important rights defining the legal situation of individuals within the territory of the Republic of Poland. Art. 37 point 1 of the Constitution lays down the general rule that

every person in the Republic of Poland enjoys the rights and liberties provided in the Constitution. However, in point 2 of the aforementioned Article is a note that exceptions to this rule referring to foreigners are determined by appropriate laws.

The basic normative acts regulating this matter are the following three laws:

**I Act of 13 September 2003 on Foreigners** (Journal of Law, 2003) laying down the (Art. 1) terms and conditions governing entry to, transit through, residence in, and departure from the territory of the Republic of Poland as they apply to foreigners. Article 2 of this act defines foreigners as persons who do not possess Polish citizenship. However, Article 3 of this act provides an exception to this law for the following categories of persons:

- diplomats and members of staff of diplomatic and consular posts
- repatriates
- citizens of the EU states and states associated with the EU which, on the basis of relevant agreements with the EU, enjoy free movement of persons – it is to them that the Act from **point 2** refers
- foreigners applying for protection and those who have been granted protection according to the Act in **point 3**

**II Act of 27 July 2002 on the terms and conditions of entry and stay in the territory of the Republic of Poland of the citizens of European Union Member States and members of their families** (Journal of Law, 2002).

**III Act of 13 September 2003 on granting protection to foreigners within the territory of the Republic of Poland** (Journal of Law, 2003), which regulates the following forms of protection which a foreigner may be granted within the Republic of Poland: refugee status, political asylum, permit for tolerated stay, temporary protection (Art. 3).

These three comprehensive regulations defining the situation of foreigners within the territory of the Republic of Poland are supplemented with numerous laws, which do not refer only to foreigners, but contain provisions determining their legal situation in a different way from Polish citizens, and legal executive acts to them.

Before analyzing the aforementioned normative acts, the terms of obtaining Polish citizenship by foreigners (**naturalisation**) should be presented, as laid down by the **Law of 15 February 1962 on Polish Citizenship** (Journal of Law, 2000):

In general (Art. 8), a foreigner may be granted Polish citizenship upon his/her request if he or she has been legally living in Poland on the basis of appropriate permits (residence permit, permit to

settle, long-term resident's EC residence permit) for at least five years. The granting of Polish citizenship may, however, depend on the submission of proof of loss of the previous citizenship. There are also special shortcuts to obtaining citizenship: a) if there are special circumstances – the discretionary competence of the President of the Republic of Poland; b) a foreigner who has been living in Poland for at least 3 years on the basis of the aforementioned permits, married to a person with Polish citizenship. Regulations governing the acquisition of Polish citizenship do not contain special provisions which might have an impact on the situation of women – these regulations are gender-neutral.

The most important state authority responsible for migrations and the legal situation of foreigners in the Republic of Poland is the President of the Office for Repatriation and Foreigners – the central body of state administration for repatriation, entry to, transit through, stays in and departure from the territory of the Republic of Poland, for granting of refugee status and asylum to foreigners, as well as for issues connected with Polish citizenship.

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#### **Ad. I Persons covered by the Law of 13 September 2003 on Foreigners.**

##### *Entry and departure from the territory of the Republic of Poland*

A foreigner may cross the border and stay within the territory of the Republic of Poland if he/she is in possession of a valid travel document and visa. Citizens of some countries are exempt from the obligation to possess a visa upon entry to the Republic of Poland. Below is the current<sup>1</sup> list of these countries:

Andorra, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Brunei, Bulgaria, Canada, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, El Salvador, Estonia, Finland, France, Germany, Greece, Guatemala, Honduras, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, North Korea., Latvia, Liechtenstein, Lithuania, Luxembourg, Macao, Malaysia, Malta, Mexico, Monaco, the Netherlands, Nicaragua, Norway, New Zealand, Panama, Paraguay, Portugal, Romania, San Marino, Singapore, Slovakia, Slovenia, Spain, Switzerland, Sweden, the United Kingdom, Uruguay, the USA, the Vatican, and Venezuela.

Citizens of other countries must be in possession of a valid visa in order to enter Poland. There are two kinds of visas:

1. short-term – up to 3 months
2. long-term – over 3 months

The authority entitled to issue residence visas is the consul. The authority competent entitled to prolong residence visas is the voivode operating in the place of residence of the foreigner.

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<sup>1</sup> April 2006, from: [www.msz.gov.pl](http://www.msz.gov.pl)

Fundamentally, every foreigner wishing to receive a visa and enter the territory of the Republic of Poland is obliged to present sufficient financial means for covering the costs of the stay, as regulated in detail by the Regulations of the Ministry of Interior of 29 September 2003 on the amount of financial means which a foreigner entering the territory of the Republic of Poland should possess, the documents which may confirm possession of such means and the purpose for crossing the border (Journal of Law, 2003). This obligation does not refer to all foreigners crossing the Polish border; exempt from it are e.g. persons crossing the border on the basis of relevant international agreements providing release from this obligation, a residence visa for the purposes of practising a profession, or a residence visa for the purposes of taking part in asylum proceedings. The most popular form of confirmation of possession of sufficient means for covering the costs of stay within the territory of the Republic of Poland by a foreigner is an invitation. This document may be issued by:

1. a Polish citizen residing within the territory of the Republic of Poland;
2. a foreigner legally residing in the Republic of Poland immediately prior to the issue of the invitation for a period of at least five years or a foreigner who has been granted a permit to settle;
3. a legal person or an organisational unit which does not hold the status of legal person, based within the Republic of Poland.

After entry to the territory of the Republic of Poland a foreigner is obliged to register for temporary residence in the Municipal (Communal) Office under the address where he/she is staying, within 48 hours from the moment of arrival in a given location.

A foreigner is obliged to leave the territory of the Republic of Poland within the period of residence indicated in the visa or before expiry of the visa, unless he/she has had his/her visa prolonged or has obtained a permit for one of the long-term stays.

### **Long-term stay within the territory of the Republic of Poland**

It is possible to obtain the following permits for a long-term stay:

#### **Permit for residence for a fixed period of time**

A foreigner may obtain the permit for residence only if he/she proves that the stay within the territory of the Republic of Poland is justified and presents sufficient means necessary to cover the costs of residence. Regulations define precisely circumstances of application for a temporary residence permit. These circumstances are, e.g.:

1. being in possession of a promise to issue the work permit or an employer's written declaration confirming the intention to employ the foreigner if no work permit is required
2. practice of economic activity on the basis of the regulations of Polish law. In this case, the foreigner must submit documents confirming economic activity within the territory of Poland,

its subject and scope, and especially information from the National Court Register, a notarized contract of partnership, and a certificate from the Inland Revenue confirming that he/she has not fallen into arrears with the payment of taxes

3. studies in a Polish tertiary-level school, provided that the foreigner has means for studying and maintenance
4. marriage to a Polish citizen or a foreigner possessing the permit to settle.

Permits for residence for a fixed period of time are issued every time for the period necessary to realize the purpose of stay within the territory of the Republic of Poland, no longer than 2 years.

Statistics for 2003-2005:

1. Overall number of applications: 85 532
2. Number of refusals: 5 199
3. Number of discontinued cases: 2 840

The most numerous citizenships were: Ukraine, Belarus, Vietnam, Armenia, Russia.

Source: The Office for Repatriation and Foreigners.

### **Permit to settle**

The permit to settle is granted upon request to a foreigner who:

1. is a minor, born within the territory of the Republic of Poland, the child of a foreigner possessing a permit to settle;
2. has been married to a Polish citizen for at least 3 years, if directly before submitting the application he/she had resided continuously within the territory of the Republic of Poland for at least 2 years on the basis of a residence permit for a fixed period;
3. directly before lodging the application has resided within the territory of the Republic of Poland continuously for at least 10 years on the basis of a permit for tolerated stay, or at least 5 years if he/she has been granted refugee status;
4. is a minor child of a Polish citizen, if the parent has custody of the child.

The permit to settle is issued for an unlimited period of time.

Statistics for 2003-2005:

1. Overall number of applications: 12 158
2. Number of refusals: 1 343
3. Number of discontinued cases: 626.

Again, the most numerous citizenships were: Ukraine, Belarus, Vietnam, Armenia, Russia.

### **Long-term resident EC resident permit**

A foreigner possessing a long-term resident EC resident permit of one of the EU Member States is entitled to obtain a permit for temporary residence in another Member State, if circumstances arise justifying his/her residence in that country and if he/she is in possession of a stable and regular source of income and health insurance. The same applies to family members of the aforementioned foreigner.

The long-term resident's EC resident permit is granted upon request to a foreigner who has been residing within the territory of the Republic of Poland legally and continuously for at least 5 years directly before lodging the application, and who is in possession of a stable and regular source of income sufficient to cover the costs of maintenance of him-/herself and supported members of his/her family.

**Ad. II Persons covered by the Act of 27 July 2002 on the terms and conditions of entry and stay within the territory of the Republic of Poland for citizens of the European Union Member States and members of their families.**

**Entry to and departure from the territory of the Republic of Poland**

EU citizens may enter the territory of the Republic of Poland on the basis of a valid travel document or any other document confirming their identity and citizenship (Art. 3 it. 1). For residence not longer than 3 months these persons do not need to apply for a residence permit or permit for temporary residence.

**Long-term residence**

A **residence permit** is granted to an EU citizen if he or she:

1. is planning to practise or practising a profession or economic activity within the territory of the Republic of Poland for a period of time longer than 12 months, or
2. is in possession of health insurance and means sufficient to cover the costs of residence, without having to claim social welfare benefits

and to persons in special situations (reaching the retirement age within the territory of Poland, who ceased working owing to inability to continue and remain within the territory of the Republic of Poland).

The residence permit is granted for 5 years, counting from the date of issue.

The permit for temporary residence is granted to EU citizens in possession of sufficient means and insurance who, within the territory of the Republic of Poland:

1. have undertaken studies, or
2. are planning to practise or are practising a profession or economic activity for a period of time from 3 to 12 months, or



3. are looking for a job.

Residence permits and permits for temporary residence granted to citizens of the EU also include the members of their families.

**Ad. III Persons under protection within the territory of the republic of Poland – according to the Act of 13 September 2003 on granting protection to foreigners within the territory of the Republic of Poland.**

The Act implements the following directives of the EU:

1. Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (Journal of Law, 2001).
2. Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (Journal of Law, 2003).

Moreover, with reference to the procedures of examining applications and granting refugee status, and the possibility of expelling foreigners who have been refused protection within the territory of the Republic of Poland, it also refers to the following acts of international law:

1. The Geneva Convention from 1951 on the status of refugees (Journal of Law, 1991)
2. The New York Protocol from 1967 on the status of refugees (Journal of Law, 1991)
3. The Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (Journal of Law, 2002).

An additional normative act binding directly not only within the territory of Poland, but in all countries of the EU, is:

- Council Regulation (EC) No 343/2003 of 18 February 2003 (Dublin II) establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

According to Article 3 of this law, foreigners may be granted protection within the territory of the Republic of Poland in one of the following forms: **refugee status, asylum, permit for tolerated stay, temporary protection.**

**Refugee status and tolerated stay**

The subject of the proceedings is to determine whether there are grounds to grant protection to the refugee who has lodged an application for refugee status. In the first place it is examined whether the applicant should be granted refugee status; that is whether the foreigner may be recognized as a refugee according to the definition from Art. 1A it. 2 of the 1951 Geneva Convention.

Applications for refugee status may refer to more than one person. Included in the application are minor children accompanying the foreigner. Spouses may lodge applications separately or may lodge a common application, which means that one partner applies for the refugee status, and their spouse is included in this application. This means that a separate proceeding will not be launched towards the person who does not lodge a separate application, but the decision issued will refer also to this person. In practice, the man is most often the one who lodges the application, in which all his family is included. In such situations he is the party to the proceedings and the situation of his family, including the accompanying women, is not accounted for in the decisions on granting refugee status. This raises justifiable objections on the part of non-governmental circles helping refugees. Rendering it difficult for women to have an influence on the proceedings (most often they do not decide to lodge a separate application and are included in the applications of their husbands), this leads to a situation in which their condition and reasons for leaving the country are anonymous. Applications for granting refugee status are lodged to the President of the Office for Repatriation and Foreigners, through the Commandant-in-Chief of the Border Guard, in the case of foreigners staying within the territory of the Republic of Poland, or a Commanding Officer of the Border Guard division upon entry to the territory of Poland. Decisions in this matter should be issued within 6 months from the date of lodging the application. *However, the greatest disadvantage of this procedure is its lengthiness and excessive prolonging of the procedure.* Every person applying for refugee status may testify personally. In order to do this foreigners are summoned to testify. The party may also submit other evidence during the proceedings which justify fears of persecution or the consequences of expulsion.

The institution of tolerated stay was introduced for the first time in the Polish legal system by the law discussed here. Its justification is commitments of the Republic of Poland to non-expulsion of foreigners to countries where their basic rights are threatened. Proceedings concerning the issue of permits for tolerated stay usually take place during the proceedings for the granting of refugee status. However, premises for granting refugee status are examined in the first place, and, if needs be, premises for issuing the permit for tolerated stay later. It is granted when expulsion might be effected only to a country where the person's right to life and to freedom and personal safety could be under threat, where he/she could be subjected to torture or degrading treatment or punishment, or could be forced to work or be deprived of the right to a fair trial, or could be punished without any legal grounds – within the meaning of the Convention on Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950.

Proceedings for granting refugee status and, if necessary, the permit for tolerated stay, conclude with the issue of one of the following decisions:

1. granting of refugee status;
2. refusal to grant refugee status and granting of the permit for tolerated stay;
3. refusal to grant the refugee status, not granting the permit for tolerated stay, and an order to leave the territory of the Republic of Poland within a period of time not longer than 30 days;
4. refusal to grant the refugee status, not granting the permit for tolerated stay, without the order to leave the territory of the Republic of Poland.

Appeals on refusals to grant refugee status are lodged within 14 days from the date of delivery or of announcement. Appeals on decisions concerning the granting of refugee status are lodged through the President of the Office to the Refugee Board. The Refugee Board is a higher-level authority than the President of the Office. Its decisions are final in the administrative course of the instance. The party may lodge a complaint on the decision of the Board to the Supreme Administrative Court in Warsaw, within 30 days of the delivery of the decision, if it deems that it is against the law. The complaint is lodged directly in the court.

According to the data of the Office for Repatriation and Foreigners for the year 2004, out of 8079 persons applying for the refugee status 3595 were women and 4484 men.

*Statistical data: refugee status and tolerated stays for the year 2005<sup>2</sup>:*

In 2005 the Office for Repatriation and Foreigners received altogether 6860 applications for refugee status. During the year 335 persons were granted refugee status. 1822 persons were granted permits for tolerated stay. Applicants came from 50 different countries; over 90 percent of them arrived in Poland from Chechnya (6244 persons). Significant groups of people applying for the status came to Poland also from Ukraine (84 persons), Belarus (82), Pakistan (69), Georgia (47) and India (36). Applicants for refugee status in Poland are very young. Almost one half (46 percent) are below 18 years of age, and 20 percent are children below 4 years of age. Also in the group granted refugee status the percentage of children and youth is large: 25 percent of those recognized as refugees in 2005 are children under 4 years of age, and over a half are minors. Among persons applying for refugee status are uncared-for children – without parents or guardians. In 2005 113 such children applied for protection. 11 of them were granted refugee status (six were below 4 years of age – such small children come to Poland usually without parents, but are in the care of relatives). The overwhelming majority of persons who were granted protection in Poland last year came from Chechnya. 305 persons from the overall number of 335 granted refugee status were Russian citizens of Chechen nationality. Among those granted the permit for tolerated stay, Chechens constitute over 98 percent.

## **Asylum**

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<sup>2</sup> Based on the data of the Office for Repatriation and Foreigners.

A particular form of protection, separate from refugee status, is political asylum – it is provided for in article 56 of the Constitution of the Republic of Poland. According to Art. 90 of the law discussed here, it is granted upon the request of the foreigner if it is indispensable for providing protection for him/her or if it is in the good interest of the Republic of Poland. A foreigner who has been granted asylum receives a permit to settle in the territory of the Republic of Poland. It is assumed that the decision to grant asylum falls completely within the competence of a given state. The right to grant asylum follows directly from the territorial authority of a state – also in Poland.

### **Temporary protection**

This is an institution whose objective is to regulate the situation of a mass influx of foreigners to Poland, as a result a specific situation in their country of origin. The provisions of the law discussed here distinguish between temporary protection granted by a decision of the Council of the European Union (Art.107), and by a decision of the Council of Ministers of Poland (Art. 108). The premises and terms of granting it overlap to a large extent (Art. 106).

Foreigners arriving in the Republic of Poland in great numbers, who have left their country of origin or specific geographical area owing to a foreign invasion, war, civil war, ethnic conflicts or serious violations of human rights, may be provided with temporary protection within the territory of the Republic of Poland, regardless of whether their arrival was spontaneous or aided by the Republic of Poland or by the international community. It is granted up to the day on which foreigners are able to return to their previous place of residence, but for no longer than one year. There is also the possibility of prolonging it twice by up to 6 months.

Analyzing all the normative acts discussed here from the perspective of their potential influence on the situation of women it should be noted that their provisions do not distinguish directly the category of foreigners. There are many regulations concerning family unification, and special provisions refer also to uncared-for minors. In general, such an approach is not understandable in the case of the first two laws discussed: the Act of 13 September 2003 on Foreigners and the Act of 27 July 2002 on the terms and conditions of entry to and stay in the territory of the Republic of Poland of the citizens of the European Union Member States and members of their families. However, we must look negatively at the lack of specific regulations concerning this matter in the law of 13 September 2003 on granting protection to foreigners within the territory of the Republic of Poland, as the procedures and institutions laid down do not allow for the often specific situation of women seeking protection within the Republic of Poland, especially victims of rape and other forms of violence. The practice of including women in the application for the refugee status of their husband is a flagrant example. To quote article 14 it. 4 of the aforementioned law: “The party in the procedure of granting of refugee status is the foreigner who submits an application for refugee status”, which raises serious controversies as a potential cause of restrictions of the rights of the spouse (therefore mostly the

woman) in participation in the procedure of granting refugee status or tolerated stay (Bernatowicz *et al*, 2006).

### **Work of foreigners within the territory of the Republic of Poland**

Issues concerning employment of foreigners within the territory of the Republic of Poland are laid down in the **Law of 20 April 2004 on the promotion of employment and institutions of the labour market (Journal of Law, 2004)**.

According to Art. 87 a foreigner may work within the territory of the Republic of Poland, if he/she is in possession of a work permit issued by the voivode empowered in the area of the employer's base.

From this obligation are exempt, among others, foreigners who:

1. possess refugee status granted in the Republic of Poland
2. possess a permit to settle in the Republic of Poland
3. possess a permit for tolerated stay in the Republic of Poland
4. are under temporary protection in the Republic of Poland
5. are exempt from the obligation to possess a work permit on the basis of separate regulations, and also in specific situations citizens of the EU and members of their families.

Therefore, all other groups of foreigners not mentioned above must obtain a work permit. A condition for issue of a work permit is a prior acquisition of a promise to issue the work permit by the employer and acquisition by the foreigner of an appropriate visa or residence permit for a fixed period within the territory of the Republic of Poland, or a permit issued for the EU citizens on the basis of the law of 27 July 2002 on the terms and conditions of entry and stay within the territory of the Republic of Poland of the citizens of the European Union Member States and members of their families. The promise and work permit for the foreigner are issued upon the request of the employer or a competent voivode, for a fixed period, for a given foreigner and employer, for a specified post or type of work. The permit is issued under the conditions stipulated in the promise, for a period of time no longer than the period of stay indicated in the appropriate visa or no longer than the period of validity of the residence permit for a fixed period or permit, on the basis of the law of 27 July 2002 on the terms and conditions of entry and stay within the territory of the Republic of Poland of citizens of the European Union Member States and members of their families. The voivode issues promises and permits allowing for the situation on the local labour market and the usefulness of the applicant to the labour market and economy.

In practice it must be demonstrated that the foreigner has the proper qualifications and education to take a given post, and proven that it was not possible, during the recruitment process, to find a Polish citizen capable of taking this post. This kind of approach makes it impossible for those who are exempt from obtaining a work permit to acquire such a permit. It is particularly difficult to obtain one in the case of jobs which require lower qualifications; that is where there is a potentially

large number of Polish citizens who could take the post. Considering the nationality structure of the people migrating to Poland and the often economic character of this migration (people from the poor parts of the former USSR countries), such restrictive regulations have a particularly negative influence on the chances of female immigrants on the labour market. The lack of employment prospects for persons applying for refugee status and/or the permit for tolerated stay is another negative factor. The length of these proceedings results in the loss of precious time which could otherwise benefit the future chances of integration of these people.

## **1.2. Integration policies concerning migrants (language, education, culture)**

The socio-cultural sphere is, according to experts, practically absent in the Polish immigration policy of the state, despite the emphasis put by the Council of Europe on programmes increasing social cohesion, therefore focusing on support of the weakest groups, in which also immigrants belong, in order to guarantee equal rights and the ability to fight social exclusion (Grzymała-Kazłowska, Okólski 2003:35). This is explained by a lack of tradition of immigration, the still small scale of the phenomenon, the fact that most immigrants stay only temporarily or treat Poland as a transit country, and by accumulation of other social and economic problems (Grzymała-Kazłowska, Okólski 2003:35). As a result, government programmes are directed only towards repatriates and refugees, but they are limited too due to a shortage of funds and staff. There are no programmes focusing on women.

With reference to refugees, key issues are: finding accommodation and a job, and learning the Polish language. The integration programme falls within the authority of **the Ministry of Social Policy**. Regulations concerning the integration of refugees have been included in the **Law on Social Welfare**, which came into force on **1 May 2004 (Journal of Laws No. 64 from 15 April 2004)**<sup>6</sup>. Integration of refugees into society is regulated by **Chapter 5** (Art. 91 – 95) of the law on social welfare. According to these regulations, a refugee may submit an application for welfare in the office of the district governor depending on place of residence within 14 days of the date of acquisition of refugee status. This welfare is granted from the month when the application was submitted. It comprises monetary living allowances, an allowance for covering the costs of Polish language courses (currently these are amounts from 420 PLN to 1149 PLN monthly per person), and payment of a health insurance premium and specialist counselling. The refugee should express his/her will to settle in a given area and readiness to start an integration programme. This programme should be prepared with regard to the particular situation of a given person. The refugee also submits a written declaration that he/she has not submitted the same application in another voivodeship (province). The application should be submitted with copies of the official decision on granting refugee status and the residence permit enclosed. Copies of other documents which may prove useful during the preparation of an

individual programme for the refugee may also be attached. This programme is agreed upon by an employee of the local centre for family assistance (PCPR), and the refugee him-/herself. The maximum duration is one year. The PCPR is obliged to provide the refugee with information concerning the planned welfare and conditions of refusing or suspending it. The employee should support the refugee in contacts with the local community, help with finding accommodation, and act according to the requirements of the particular situation of a given person. On the other hand, the refugee must register in the place of residence and in the powiat (county) employment agency, and actively search for a job. The foreigner is obliged to attend Polish language courses (if there is such a need), is obliged to co-operate with and contact, at least twice a month, the supervisor of the programme (employee of the PCPR responsible for the integration programme), to act as decided with the supervisor. The programme, after being agreed with the refugee, is sent to the voivode, who – after approving the programme and the cost estimate – transfers funds for its implementation. Accommodation for the refugee is set by the voivode in co-operation with the PCPR, allowing for, if possible, the choice made by the refugee. A refugee deciding not to settle in the set place is withdrawn from the integration programme. Changes in accommodation during the programme are possible only in particularly justified cases.

Suspension of the welfare granted takes place also when the refugee does not fulfil his/her obligations. Especially in cases of absence of active participation of the refugee in the integration process, persistent non-fulfilling of his/her obligations, use of welfare not according to the purpose for which it was granted, or provision of false information concerning his/her situation. Welfare is suspended also when the refugee has been staying for over 60 days in a health care facility (until departure), and when criminal proceedings have been initiated towards the refugee (until it is legally closed, unless the refugee has been sentenced by a legal and binding sentence of the court). If the refugee is deprived of refugee status, he/she is refused welfare in the form of living allowance and for Polish language courses (Marcin Ochmański 2006, [www.altercamp.org.pl](http://www.altercamp.org.pl)).

Welfare provided for immigrants is regarded in a rather critical way. The basic problem is lack of a long-term integration strategy: entering the labour market, obtaining a place of residence and means of support, as well as an appropriate level of linguistic and cultural competence. What is also criticised is the lack of preparation of officials in lower ranks for implementation of the integration programmes, although in this area the situation has been improved by training courses carried out thanks to European Union funds – see 2.3 (Grzymała-Kazłowska, Okólski 2003:35-37). Because, as has already been mentioned, the majority of those applying for refugee status do not intend to stay in Poland, this does even more to discourage creating a real integration system. As a result, refugees may obtain only sporadic and short-term support, sometimes from governmental organizations, and more often from non-governmental organizations (Grzymała-Kazłowska, Okólski 2003:37). On the other hand, it is important to emphasize that the small scale of the phenomenon is favourable in a situation when the integration system is still in its infancy (Marcin Ochmański 2006 [www.altercamp.org.pl](http://www.altercamp.org.pl)).

Repatriates may obtain financial aid for themselves and their families and assistance with learning Polish and finding a job (e.g. through rewarding of employers employing repatriates). The government is obliged to support communities (municipalities) admitting repatriates (Grzymała-Kazłowska, Okólski 2003:37). The programmes presented above may be helpful at the beginning; later on, however, there are no special programmes, while both these groups are faced with many problems: financial, connected with remaining on the labour market, with linguistic competences, and socio-cultural, such as a sense of alienation, bad experiences with officials and neighbours, and lack of social support (Grzymała-Kazłowska, Okólski 2003:37).

There are also no programmes directed towards Polish society, aimed at the propagation of tolerance and cultural pluralism, except for sporadic initiatives undertaken mostly by **non-governmental organisations** (see 4).

The Polish immigration policy, especially the policy concerning immigrant integration, seems to be so far only in its initial phase. An important problem is the lack of programmes focusing on women, although they are a group particularly exposed to exclusion. They have a lower level of education, lower or no job experience, or come from countries in whose cultures women are subjugated to men, do not enjoy the same rights as men, or are not encouraged to display (or are prevented from) independence and entrepreneurial attitudes.

Some legal issues connected with this topic are presented in the Annex.

### **1.3 Implementation in the national context of EU and employment policies, such as the INTEGRA and EQUAL programmes, aimed at the integration of migrants in the labour market**

The EQUAL Community Initiative Programme has operated in Poland since 2004. It seems that the projects realized within the framework of this initiative offer the chance to develop migrant integration policy. First of all they give the opportunity to overcome financial limitations that inhibit many activities. Secondly, they allow for cooperation with more experienced countries that faced the challenge of migration much earlier. Finally, the programmes are run jointly by several governmental, non-governmental and academic institutions. This can result in the launching of cooperative initiatives for the integration of immigrants. For instance, the initiator of the project entitled '@lterCamp' is the Polish Red Cross, and among the partners there are: the Institute of Social Policy of the University of Warsaw; The Association for Integration and Protection of Foreigners "Proxenia"; the Foundation "Ocalenie" ["Salvation"]; the Ministry of Social Policy, the Office for Repatriation and Foreigners; the Town Hall of Zgierz and the Polish Scouting and Guiding Association.



The competition for projects officially began on 7 June 2004. The deadline for submitting projects passed on 31 August 2004. Four applications were granted under Thematic Field I – “Support social and vocational integration of asylum seekers”:

**1. Partnership for Development @IterCamp (Initiator: Polish Red Cross)**

The partnership is aimed at supporting social and vocational integration of asylum seekers through the following activities: supporting integration (assistance and integration for protection seekers); migration research (diagnosis and prognosis of immigration); social campaigns for migration and immigrants; empowerment.

The Project takes into consideration horizontal issues through, among other things, establishing relations with the local community where the adaptation centre will be situated (promoting local development), multi-channel flow of information (promoting an informative society), and gender equality ([www.bkkk-cofund.org.pl](http://www.bkkk-cofund.org.pl)).

**2. Social and Vocational Integration of foreigners. You can learn to understand – MUR (Initiator – The Polish Humanitarian Organisation).**

The partnership is aimed at creating an effective system of social and vocational activation of asylum seekers, at building a system of support designed to integrate this group into the local community (in Poland, in countries of origin or in third countries) and at increasing their competitiveness in the local labour markets.

**3. Education for Integration – Partnership for Refugees (Initiator: Jagiellonian University Human Rights Centre) ([www.equal@juhrc.org](mailto:www.equal@juhrc.org))**

The Centre aims to support social and vocational integration of asylum seekers through individual legal assistance and general advocacy, language courses based on e-learning, informative activity, and consulting with state agencies. Another purpose of the Centre is the development of cooperation between organizations for people unprivileged or discriminated against in the labour market ([www.bkkk-cofund.org.pl](http://www.bkkk-cofund.org.pl)).

**4. Welcome – Project designed to familiarize refugees with Polish society and the labour market (Initiator: Caritas of the Archdiocese of Lublin)**

Caritas of the Archdiocese of Lublin initiated cooperation within the framework EQUAL CIP in order to raise refugees’ awareness of the rights and opportunities that they can enjoy in Poland. This project is particularly important since it is focused mainly on women. The fact that women are more frequently than men subject to exclusion is clearly underlined. The programme encompasses children as well as youth ([www.bkkk-cofund.org.pl](http://www.bkkk-cofund.org.pl)).

Under Thematic Field A the following projects were granted:

**1. Intercultural Centre of Vocational Adaptation (Initiator: Warsaw School of Social Psychology)**

The Project aims to facilitate the entrance onto the labour market of culturally distinct people. The target group consists of immigrants, repatriates, refugees and settled non-European cultural minorities. The principles of EQUAL are realized through the participation of partners and target groups in both the decision and evaluation process, maintenance of gender equality in the Centre Council and among participants of training, programmes aiming to assist women's participation, cooperation based on partnership.

**2. IRIS – social and vocational reintegration of women – victims of trafficking in women (Initiator: the La Strada Foundation against Trafficking in Women)**

The aim of creating PRR is to facilitate access and/or return to the labour market for those women who are victims of human trafficking and therefore were excluded from the labour market for a long time.

Among the applications examined under additional procedures is one concerning Thematic Field I – “How to live together? – Social adaptation of refugees – Model solutions”. The Michel de Montaigne Polish-French Foundation of New Democratic Practices is the initiator.

**1.4 Policy giving access to political rights and participation and enabling migrants to establish associations**

**Possibility of establishing associations**

Art. 58 of the Constitution of the Republic of Poland guarantees everyone the right to associate; it prohibits only such associations whose objective or activity is contrary to the Constitution. It is confirmed by Art. 4 of the **Law of 7 April 1989 on Associations (Journal of Law, 2001)** providing that foreigners possessing a place of residence within the territory of the Republic of Poland may form associations, according to the regulations binding for Polish citizens. There are certain controversies as to whether the place of residence means permanent or temporary residence. These are, however, usually settled in favour of immigrants, as one of the approaches says that two months' residence is a period long enough for entitlement to establish an association, while another, based on the Civil Code, assumes that the place of residence of a person is the location in which this person is currently staying with the intention to settle permanently. Therefore, immigrants have rather free access to the establishing of associations. All possible limitations (according to Art. 2 of the Law of 7

April 1989 on Associations, the right to associate may be limited only to the extent provided by legal acts, if it is necessary to protect the interests of the state's safety or public order, as well as the protection of health and public morality or the protection of the rights and liberties of other persons) refer to immigrants to the same extent as to Polish citizens. They may, therefore, establish both so-called ordinary associations (minimum 3 members, legal character, without the possibility of performing economic activity) and register associations (minimum 15 members, legal character, possibility of practising economic activity).

*It is worth highlighting that complicated and lengthy procedures of registration of associations in the register court may pose a certain difficulty for immigrants, especially considering the fact that the only language of the proceedings concerning registration is Polish. Establishing ordinary associations is much more simplified.*

### **Voting rights**

#### *Voting rights to the European Parliament*

According to the **Law of 23 January 2004 on Elections to the European Parliament (Journal of Law, 2004)**, citizens of the European Union who are not Polish citizens are also entitled to stand for election and vote. The right to elect members of the European Parliament is held by those citizens of the European Union who are not Polish citizens and who – at the latest on the day of voting – have had their 18<sup>th</sup> birthday and, in compliance with the law, reside permanently in the Republic of Poland and are included in the register of constituents (Art. 8 point 1). The right to stand for election, meanwhile, is given to any person possessing the right to elect members of the European Parliament in the Republic of Poland who – at the latest on the day of voting – has had his/her 21<sup>st</sup> birthday, does not have a criminal record for an intentional offence, prosecuted by public prosecution, and has been living permanently in the Republic of Poland or within the territory of another European Union Member State for at least 5 years (Art. 9).

#### *Voting rights to communal councils*

On the same terms, citizens of the European Union have the right to stand for election and to franchise to communal councils (in the municipalities – basic units of the administrative division in Poland) – Art. 6, 6a and 7 of the Law of 16 July 1998 on elections to communal councils, poviats councils and voivodeship assemblies (Journal of Law, 2003).

*Only citizens of the European Union have voting rights in the territory of the Republic of Poland.*

## **1.5 Anti-racism, anti-discrimination, equal opportunities and affirmative action policy**

Polish legislation contains numerous regulations whose objective is to fight racism, eliminate discriminatory practices and ensure equal chances. As a result of implementation to the Polish legal order of the Directives of the EU Council: 76/207/EEC of 9 February 1976, 2000/78/EC of 27 November 2000, 2000/43/EC of 29 June 2000, as well as under the influence of international law in force in Poland, special regulations on positive discrimination have also been introduced (affirmative action). These regulations do not refer directly to migrants; they may, however apply also to them in specific aspects of social life (criminal proceedings, relations resulting from the labour law, etc.).

### *The Constitution of the Republic of Poland*

In the constitution, a general prohibition of discrimination and equality of everyone before the law is provided (Art. 32). Prohibited too is the functioning of political parties and other organisations invoking in their manifestos racism or fascism or involved in an activity involving racial and national hatred (Art. 13).

### *Penal law*

**The Law of 6 June 1997 Penal Code (Journal of Law, 1997)** contains many provisions penalizing offences inspired by racial, ethnic and national hatred. For instance Article 118 – crime against humanity, Art. 119 – violence or unlawful threat towards a person or persons owing to their national, racial or ethnic origin, Art. 256 – public propagation of the fascist system, inciting to racial hatred, Art. 257 – public insulting of a person or persons owing to their national, racial or ethnic origin.

In practice it turns out, unfortunately, that the authorities prosecuting persons committing crimes very rarely classify a given crime as one dictated by racial or ethnic hatred. Often, for example, assaults on dark-skinned persons are classified as ordinary assaults, and the law enforcement authorities ignore more difficult to prove racial and ethnic motives.

### *Labour law*

On 1 January 2004 a large amendment of the **Law of 26 June 1974 Labour Code (Journal of Law, 1998)** came into force, implementing a significant part of the aforementioned EU Council Directives. Prohibition of direct and indirect discrimination was introduced, as well as the rule of equal treatment with reference to entering into and dissolving of labour relations, terms of employment, promotion and access to training in order to raise professional qualifications especially irrespective of sex, age, disability, race, religion, nationality, political views, trade union membership, ethnic origin, denomination, or sexual orientation. Apart from the definition of direct and indirect

discrimination, the terms victimization and harassment were introduced. In Art. 18 3b provisions of the Directives were implemented concerning the transfer of the burden of proof in cases concerning discrimination by the employer, and the basis was created for the application of positive discrimination (affirmative action) – actions undertaken for a fixed period of time, aimed at equalising the chances of persons belonging to groups previously discriminated against, through reduction of actual inequalities in favour of such persons, are not deemed to be in breach of the rule of equal treatment in employment. The person whom the employer has infringed upon in terms of the rule of equal treatment is entitled to compensation.

The bulk of the EC Directives concerning the fight with discrimination was implemented in the law of 26 June 1974 labour code. However, legitimate reservations arise in the doctrine that the very method of implementation is not appropriate, referring especially to the letter of the definitions introduced to this law which – interpreted literally – may bring about a worse situation for the victims of discrimination than is provided in the Directives. These regulations, despite the fact that they came into force two years ago, are still rare in the Polish labour courts, therefore it is difficult to assess their application and effectiveness in meeting their objectives. Currently, within the EU programme “For Diversity. Against Discrimination”, numerous training courses for lawyers and employees of non-governmental organisations are taking place on this law. Finally, significant concern has arisen due to the lack of full implementation of the so-called racial directive (2000/43/EU of 29 June 2000). Poland has not implemented it either with reference to the fight with discrimination in access to publicly provided goods and services. Moreover, on 3 November 2005 the position of the Government Plenipotentiary for the Equal Status of Women and Men, in charge of fighting all kinds of discrimination and which undertook initiatives preventing racism, was closed down. One of its tasks was work on the preparation of the establishment of a special office dealing with discrimination. The attitude of public authorities to affirmative action must also be appraised negatively – as yet programmes addressing it have not been planned; there is only the aforementioned provision, which does not translate into appropriate legislative regulations or policies promoting employment.

## **1.6 Policies combating illegal immigration**

### *Control of the legality of residence, expulsion of foreigners*

During residence within the territory of the Republic of Poland all foreigners are subject to the control of the legality of residence and should – upon the demand of competent authorities – present documents and residence and employment permits valid within the territory of Poland, as well as presenting financial means necessary to cover the costs of residence within the territory of the Republic of Poland, transit through and departure from the Republic of Poland, or documents enabling acquisition of such financial means. Staying within the Republic of Poland without the required visa,

residence permit for a fixed period or permit to settle, or the long-term resident's EC permit, as well as carrying out work or taking up economic activity contrary to the regulations in place exposes the foreigner to the risk of expulsion from the territory of the Republic of Poland and being barred from arriving again for a period of 3 to 5 years. The consequence of not meeting the conditions above is the expulsion of the foreigner. Decisions on expulsion are issued ex officio or upon request of the voivode competent with respect to the place of residence of the foreigner or the place of disclosure of the fact or the event which are the basis for lodging the petition to expel the foreigner. The following subjects are entitled to lodge requests to the voivode to expel a foreigner: Minister of National Defence, Chief of Internal Security Agency, Chief of the Intelligence Agency, Commandant-in-Chief of the Border Guard, Commandant-in-Chief of the Police, commanding officer of the Border Guard division, commanding officer of the voivodeship police, commanding officer of the Border Guard checkpoint or officer of Customs Service agency. Specifics of the expulsion of foreigners are regulated by the Law of 13 September 2003 on Foreigners (Art. 88-100).

According to the statistics of the Office for Repatriation and Foreigners, in 2003 8410 decisions on expulsion were issued, in 2004 there were 6696, and in 2005 4898.

#### *Expulsion of foreigners*

The specifics concerning the expulsion of foreigners are regulated by the Law of 13 September 2003 on Foreigners (Art. 88-100).

According to Art. 88 of the Law of 13 September 2003 on Foreigners, a foreigner is given a decision on expulsion from the territory of the Republic of Poland if he/she:

- resides within this territory without the required visa, residence permit for a fixed period, permit to settle or long-term resident's EC permit;
- carried out work contrary to the provisions of the Law of 20 April 2004 on Employment, Promotion and Institutions of the Labour Market, or took up another economic activity contrary to the laws in force within the territory of the Republic of Poland;
- does not possess the financial means necessary to cover the costs of residence within the territory of the Republic of Poland and is not able to indicate credible sources of obtaining those means;
- has data registered in the index of foreigners whose residence within the territory of the Republic of Poland is undesirable, if the entry of the foreigner into this territory occurs while this registration is in force (e.g. as a result of a prior entry or a ban to enter owing to previous illegal residence within the territory of the Republic of Poland);
- constitutes a threat with his/her continued residence to the defence of state security or defence of the public order, or it thereby threatens the interests of the Republic of Poland;

- has crossed or has attempted to cross the border illegally;
- has not left the territory of the Republic of Poland voluntarily within the period of time specified in the previous decision (e.g. in decisions on refusal to grant the residence permit for a fixed period, withdrawal of the residence permit for a fixed period);
- does not comply with fiscal obligations to the State Treasury;
- has completed a sentence of imprisonment given in the Republic of Poland for committing an intentional or fiscal offence.

The decision on expulsion is not rendered to foreigners who possess a permit to settle or long-term resident EC residence permit; nor it is not rendered, and the rendered decision is not executed, if there are grounds for granting the permit for tolerated stay, the foreigner is a spouse of a Polish citizen or of a foreigner possessing a permit to settle or a long-term resident EC residence permit, and his/her continued residence does not constitute a threat to the defence or safety of the state or to safety and public order (unless it is proved that such a marriage was entered into in order to avoid expulsion); the foreigner is in the course of proceedings to grant refugee status. The foreigner should voluntarily leave the territory of the Republic of Poland within the period of time indicated in the decision on expulsion (usually up to 14 days). However, in such a decision the route of travel to the border may be specified, and freedom of movement within the territory of the Republic of Poland may be limited until the execution of the decision (a specified place of residence or the obligation to report at specified intervals to the authority indicated in the decision). However, if he/she has not voluntarily left the territory of the Republic of Poland within the period of time specified in the decision on expulsion or in another decision obliging him/her to leave the country, and it is required owing to the state safety or defence, or the protection of safety and public order or the interests of the Republic of Poland, or he/she is staying in a guarded centre or is under arrest for the purpose of expulsion, then he/she may be escorted by the police to the border of the Republic of Poland or to the airport. The costs of expulsion are covered by the foreigner him-/herself, or alternatively by the person who invited him/her to Poland, or the employer for whom he/she worked illegally.

The system of control of the legality of residence of foreigners and combating illegal immigration is supplemented with the aforementioned **guarded centres and arrests for the purpose of expulsion**.

A foreigner may be detained for a period not exceeding 48 hours if there are circumstances justifying the decision on his/her expulsion or if he/she does not fulfil the obligations specified in the decision on expulsion. Within this period of time the detainee should be put at the disposal of the court, which decides on his/her placement in a guarded centre or arrest for the purpose of expulsion within 24 hours from the moment when the foreigner was put at its disposal. A foreigner is placed in a guarded centre if:

1. it is necessary for the effectiveness of the proceedings on his/her expulsion or the withdrawal of the permit to settle or the long-term resident's EC permit;
2. there is a well-founded fear that he/she will evade the enforcement of the decision on expulsion or the withdrawal of the permit to settle or the long-term resident's EC residence permit;
3. he/she has crossed or attempted to cross the border illegally, if he/she was not immediately escorted to the state border.

On the other hand, a foreigner is placed under arrest for the purpose of expulsion if there is a fear that the foreigner will not observe the rules of stay in the guarded centre. It is worth mentioning that a foreigner is entitled to compensation in the case of unjust placement in such a centre or arrest. In both establishments both men and women are placed; special protection is given to pregnant women, who may stay in such establishments only up to the 7<sup>th</sup> month of their pregnancy.

### **1.7 Policies combating trafficking of human beings**

To analyse Polish policy combating trafficking of human beings it is necessary to describe some legal norms from the Polish Penal Code.

#### **The Polish Penal Code of 6 June 1997**

##### **Art. 253**

§ 1. Anyone who traffics in persons, even with their consent, is subject to a sentence of imprisonment for a period of time not shorter than 3 years.

§ 2. Anyone who, with the purpose of obtaining a material benefit, organizes adoption of children contrary to the provisions of the Act, is subject to a sentence of imprisonment for a period of time from 3 months to 5 years.

Additionally, the battle with human trafficking is subject to numerous regulations of international law. International agreements ratified by Poland are:

- International Agreement for the Suppression of White Slave Traffic – Paris 18.05.1904; Journal of Laws 1922.87.783 T. 1904
- International Convention for the Suppression of White Slave Traffic – Paris, 4.05.1910; Journal of Laws 1922.87.783 T. 1904
- International Convention for the Suppression of Traffic in Women and Children – Geneva, 30.09.1921; Journal of Laws 1925.125.893 T. 1921
- Convention for the Suppression of the Traffic in Women of Full Age – Geneva 11.10.1933; Journal of Laws 1938.7.37 T. 1933



- Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others - Lake Success 21.03.1921; Journal of Laws 1952.41.278 - T. 1950 ([www.strada.org.pl](http://www.strada.org.pl)).

Due to the clandestine nature of the phenomenon, statistics on the scale of trafficking are few and questionable. According to estimates of the La Strada Foundation, up to 10,000 women are trafficked yearly out of Poland to the West, and approximately 60 percent of 2,500 foreign prostitutes in Poland have been trafficked. They are brought in across borders like other migrants, with false passports, on tourist visas, or through smuggling. Minors are transported with manipulated passports; one passport may be re-used by several girls; passports from visa-free countries such as Poland are used for girls from a visa-requiring country of origin such as Russia. All end up in an illegal situation and most do not understand their status. Once within Polish borders, they are transported to another country or between cities within the territory of Poland. Once within the EU borders, they are often transported between countries in order to maintain a legal visa, staying three months in each country. At this point they no longer have independent freedom of movement. ([www.strada.org.pl](http://www.strada.org.pl))

**The migration and deportation laws** often work to the advantage of traffickers. Firstly, provision of appropriate travel documents, such as passports, is very difficult in many EU countries. High bribes or the use of criminal networks are common methods of obtaining papers. Secondly, traffickers keep all travel documents of their recruits as a method of control and orchestrate all transportation. Thirdly, transportation of recruits across borders is relatively risk-free due to a lack of specific laws and techniques to halt trafficking. Unlike the smuggling of drugs, arms or stolen cars, women themselves are not illegal and it is nearly impossible to stop them at the border. Fourthly, when arrested on the road for illegal work or stay, women, and not their traffickers, are the criminals. Traffickers may even threaten to turn their victims in to the police and have them deported ([www.strada.org.pl](http://www.strada.org.pl)).

**Deportation practices** in Poland make incrimination of traffickers difficult. Illegal migrants must be repatriated within forty-eight hours of the time of arrest, during which time they are kept in prison-like detention centres. In most cases, police do not assume that an illegal migrant prostitute may be a victim of trafficking. A hectic deportation process, language barriers and the prevalent negative attitude to prostitution prevent attempts to understand her situation. She is usually not aware that she has recourse to aid or to indictment of her trafficker. Instead, she is immediately repatriated. Upon arrival in her home country, without money or decent clothes, a trafficker may be waiting at the bus or train terminal to return her back into the trade ([www.strada.org.pl](http://www.strada.org.pl)).

If a girl is recognized as a **victim of trafficking**, the Polish policy makes it uncomfortable for her to testify. She will be given a temporary visa for the duration of the court proceedings but no safe shelter, allowance for living expenses, work permit or protection from traffickers. The hearings force her to relive the most traumatic parts of her experience and give her little reward for her co-operation.

Instead, she may decide to provide written testimony and return home. Written testimony is much less effective in court than oral testimony. Without key witnesses, it is difficult to convict traffickers. Unfortunately, the Polish government is not willing to spend money to cover the living expenses of foreign prostitutes during their court proceedings in Poland. Nearly all of the few prosecution cases against traffickers in Poland took place in German courts where the deportation process is more accommodating ([www.strada.org.pl](http://www.strada.org.pl)).

Poland's lack of a serious will to fight trafficking allows it to continue and grow. The phenomenon of trafficking is linked to issues of women's rights and the unequal status of women in society. Although gender inequalities do not themselves produce trafficking, it is difficult to imagine how trafficking could function without them. Unfortunately, public opinion in Poland ignores the reality of prostitution's links with trafficking and relegates it to the margins of society.

## **2. Specific institutions designing migration and migrant integration policy**

In Poland, several basic structures designing migration and immigrant integration policies can be distinguished. They are created and run by the establishments of:

### **I Legislature**

In the Parliament of the Republic of Poland there is a *Commission for National and Ethnic Minorities*, which, since 2006, is responsible for (among other things):

- issues connected with the preservation and development of the identity of national and ethnic minorities, integration of these minorities residing/ settling in particular regions of Poland
- investments connected with the economic activity of minorities, and the scope to which public funds should participate in them
- issues connected with the presence of minorities in public media and selected journals
- preparation of rules for the Common Commission of Government and National and Ethnic Minorities (MNE)
- assessment of the realization of the programme for the Roma community.

In the second Chamber of Parliament, the Senate, the Commission for Emigration and Relations with Polish People Abroad operates. Generally, the Senate does not deal with immigrant issues.

The subject of the commission's work are e.g. relations of Poles and people of Polish origin residing abroad with Poland and their legal situation, initiating and coordinating cooperation of *Polonia* circles, protection of the heritage of Polish culture and history abroad, care for *Polonia* and Polish people abroad.

It should be emphasized that parliamentary commissions are bodies of parliamentary control within the scope defined by the Constitution and by respective laws.

## **II Institutions of state administration on the national, regional, and local level**

The main executive bodies responsible for migration policy and the integration of immigrants are:

a) **The Ministry of Internal Affairs and Administration (MSWiA)**, within which there are two important bodies:

- **The Office for Repatriation and Foreigners** ([www.uric.gov.pl](http://www.uric.gov.pl)). This comprises Departments and Offices for: *Repatriation and Citizenship, Asylum Procedures, Legalisation of Stay and Register of Foreigners, Censuses, Statistics and European Information, and International Cooperation.*

The Office for Repatriation and Foreigners was opened on 29 June 2001. The creation of this office is the result of an amendment to the Act on Foreigners of 11 April 2001. It deals in a comprehensive way with issues connected with foreigners (before there was a Department of Migration and Refugees in the MSWiA). The President of the Office for Repatriation and Foreigners is responsible for tasks connected with citizenship, repatriation, administrative proceedings referring to the granting of refugee status and legalisation of stay of foreigners within the territory of the Republic of Poland. The office follows in its work solutions adopted in other EU countries.

The Office was created also with the aim of facilitating solutions to difficult repatriation problems, connected with the increasing desire of Poles without Polish citizenship to return to their home country, e.g. from Kazakhstan or Ukraine.

The President of the Office is a central organ of state administration for repatriation, entry of foreigners, transit through the territory of the Republic of Poland, residence in and departure from it, granting of refugee status and asylum, assistance for repatriates, running centres for foreigners applying for refugee status, keeping a register of data on acquisition and withdrawal of Polish citizenship. In 17 voivodeships appropriate Citizen Affairs and Migration Departments (regional sub-departments), are located in Voivodeship Offices.

- **The Department of Religious Denominations and National and Ethnic Minorities.**

This is responsible for (of the issues connected with this subject): national and ethnic minorities and regional language, the official register of municipalities in which an auxiliary language is used, the register of municipalities within the territory of which names in a minority language are used, scope of cooperation of the Minister with the European Centre for Monitoring Racism and Xenophobia, as well as organisational and

technical services for the Common Commission of Government and National and Ethnic Minorities.

Active here is a *Team for National Minorities*, which was appointed in 2002 as an advisory body to the Prime Minister. It is composed of representatives of ministries responsible for: administration, education, labour, justice, interior affairs, foreign affairs, the European Integration Committee, the President of the Office for Repatriation and Foreigners, and the Border Guard.

The Team's main responsibilities are:

- to develop government measures conducive to the creation of adequate conditions for minorities
- to coordinate activities pursued by the government administration bodies dealing with national minority issues
- to assess and propose solutions aimed at ensuring the rights and satisfying the needs of national minorities
- to prevent any infringement upon minority rights
- to encourage research on the situation of national minorities
- to publish and promote national minority issues and problems in Polish society.

#### **b) The Ministry of Labour and Social Policy**

In the Ministry of Labour and Social Policy, which is a leader in immigrant integration activities, a document has been published concerning the creation of a comprehensive policy for the integration of immigrants in Poland, which was adopted by the European Committee. Four elements of the integration policy were highlighted: political, legal, institutional and social. The following groups of foreigners are encompassed by the integration activities:

1. those who have been granted refugee status / are in the course of the proceedings for being granted such status
2. those who have been granted a permit for tolerated stay
3. those staying within the territory of the Republic of Poland legally, but working illegally
4. the people staying and working legally
5. those staying legally within the territory of Poland – spouses of Polish citizens
6. those who are staying legally and whose stay is temporary.

On 3 September 2004 a new body was appointed to further the integration of immigrants: the *Interdepartmental Team for the Social Integration of Foreigners*. It focuses on the preparation of

integration policy and exchange of opinions on the course and direction of the activities pursued by public institutions and non-governmental organisations. The Team is composed of representatives of the departments of social policy, interior and administration, economy and labour, education, health, culture, the Office of the Committee of the European Integration, and lastly, closed down in 2005, (after *Prawo i Sprawiedliwość* came to power) the Office of the Government Plenipotentiary for the Equal Status of Women and Men.

*The Department of Assistance and Social Integration* of the Ministry of Labour and Social Policy organizes courses in immigrant integration in cooperation with the IOM.

A Group of National Contact Points on Integration has been appointed, cooperating with the European Commission. In 2004 this Group prepared a “Handbook on Integration”, in which systems and solutions referring to the integration policy were presented. Actions of the state institutions are based on the most important legal tools serving the empowerment of immigrants and their incorporation into social life, which are the European Convention on Human Rights together with protocols such as the one on non-discrimination, the Convention on the Status of a Migrating Worker and the Convention on the Participation of Foreigners in Public Life on the local level.

The objective is to prepare a Framework Policy on Integration, determining legal measures connected with the status of immigrants, citizenship, the right to stay, employment, access to education, and social services. In 2004, following the decisions of the Council of Europe (the so-called Hague Programme), the Council for the Judiciary and Internal Affairs, accepting integration issues, adopted a set of common rules concerning immigrant integration in the *Principles on Immigrant Integration*. Their objective is to design measures in the sphere of the integration policy on the regional and local level. Therefore, initiatives in Poland result from common basic rules of immigrant integration in the EU countries.

A particular category of immigrants is refugees. The following institutions and organizations are responsible for them in Poland. Institutions:

1. The Minister of the Interior and Administration
2. The Office for Repatriation and Foreigners
3. The Border Guard
4. The Minister of Foreign Affairs
5. The Minister of Labour and Social Policy
6. The Council for Refugees
7. The Supreme Administrative Court
8. The Ombudsman
9. The UNHCR

Non-governmental Organisations:

10. The Polish Red Cross

11. The Helsinki Foundation for Human Rights.
12. Caritas Poland
13. The Polish Humanitarian Organisation
14. Counselling Centres
15. The One World Association (branch of the international organisation Service Civil International)

### **III Non-governmental organisations, also on the regional and local level (see chapter 4)**

#### **IV Transnational institutions and organisations**

A presentation of institutions dealing with immigrant issues cannot ignore the role of the International Organisation for Migration (IOM), which has been functioning in Poland since 2002. It deals with issues such as: voluntary returns, information for migrants, prevention of human trafficking, immigrant integration, economic migrations, humanitarian and social programmes.

IOM organizes training courses in Poland for the employees of the institutions responsible for the preparation and realisation of integration programmes, social workers working with immigrants, employees of employment agencies, centres for social welfare, pedagogues and activists of non-governmental organisations.

An incredibly important institution functioning in Poland since 1998 is the Office of the United Nations High Commissioner for Refugees (UNHCR), with its Branch Office in Warsaw. The Branch Office of the UNHCR in Poland was opened in 1992. Initially its task was to assist in the creation of legal regulations concerning refugees and supervise their compliance with the Geneva Convention concerning the status of refugees. Nowadays the UNHCR monitors the course of the refugee status-granting procedures and compliance with the Convention. Refugees and persons applying for refugee status in Poland have the right to contact the UNHCR Branch Office in Warsaw. Functionaries of the Office participate in the actions of bodies handling refugee status-granting procedures as observers. The UNHCR also provides relevant support for the participants of the proceedings and administrative bodies in particularly complex refugee cases. In addition, the Branch Office of the UNHCR in Poland provides information and promotes knowledge about refugees in society and shapes attitudes of understanding and acceptance towards refugees. For seven years the UNHCR has been organizing in Poland “Refugee Day”, issuing publications (including the quarterly *Z obcej ziemi* – “From the Foreign Land”), and getting involved in educational initiatives.

### **3. Bottom-up activities (NGOs, associations of female migrants, human rights movements, women’s movements, public discourses)**

Non-governmental organisations involved in migration and refugee issues can be divided into two subgroups, depending on their main scope of activities:

I Organisations directly involved in helping immigrants and refugees

II Organisations supporting immigrants and refugees indirectly. These are organisations whose aim is to promote tolerance and civil society. To this group belong numerous Human Rights Movements and women's movements.

**I Organisations directly involved in helping immigrants and refugees:**

- **UNHCR** ([www.unhcr.pl](http://www.unhcr.pl)) – a branch of the United Nations High Commissioner for Refugees in Poland. Monitors refugee status-granting procedures and compliance with the Convention. It informs and promotes knowledge about refugees in society and shapes attitudes of understanding and acceptance towards refugees. It publishes the quarterly “From the Foreign Land”.
- **The Polish Humanitarian Organisation (PAH)** ([www.pah.org.pl](http://www.pah.org.pl)) – material support, educational initiatives addressed to Polish society: meetings with youth, contests whose objective is to promote the attitude of tolerance. **The Refugee Counselling Centre**, functioning as part of PAH, provides counselling and social welfare for refugees and applicants for refugee status. It also organizes integration programmes: Polish language courses, vocational training, assistance in finding and renting accommodation, and searching for a job. The Centre also has a programme for children: it organizes holidays and a year-round day nursery. In 1996 the Centre opened the Refugee House – the only such non-governmental establishment.
- **The Polish Red Cross (Polski Czerwony Krzyż)** ([www.pck.org.pl](http://www.pck.org.pl)) – material support and assistance in contacts with the authorities.
- **Caritas Poland (Caritas Polska)** ([www.caritas.pl](http://www.caritas.pl)) – social welfare, as well as legal and psychological counselling for refugees and applicants for refugee status. Organisation of Information Bureaux for Immigrants in Lublin, Białystok and Wrocław.
- **@lterCamp** (<http://www.altercamp.org.pl/index.php>) – supports social and occupational integration of foreigners seeking protection in Poland and empowerment of foreigners.
- **Helsinki Foundation for Human Rights (Helsińska Fundacja Praw Człowieka)** ([www.hfhrpol.waw.pl](http://www.hfhrpol.waw.pl)) – legal assistance for foreigners applying for refugee status. Participation in the process of creation of refugee law, national and international cooperation concerning refugee and asylum issues, supervision of the execution of Convention regulations by Poland.
- **Human Rights Division of the Counselling Centre of Jagiellonian University** ([http://www.juhrc.org/o\\_nas](http://www.juhrc.org/o_nas)) and the **Law Clinic – Student Centre for Legal Counselling**,

**Department of Law and Administration of Warsaw University** ([www.klinika.wpia.uw.edu.pl](http://www.klinika.wpia.uw.edu.pl)) – legal counselling centres dealing with refugee law and the legal situation of foreigners in Poland. They provide legal counselling, offer agency services in contacts with state agencies and non-governmental organisations, and act as legal representatives for uncared-for children.

- **Polish Association for Legal Education (Polskie Stowarzyszenie Edukacji Prawnej)** – legal counselling for refugees, courses in Polish law, procedures of applying for refugee status, opportunities for obtaining social welfare. Workshops for children of refugees. Promotion of tolerance and information about foreigners in Poland (<http://www.psep.pl>).
- **The Halina Nieć Human Rights Association (Stowarzyszenie Praw Człowieka im. Haliny Nieć)** – provides psychological counselling and legal assistance to asylum seekers.
- **Volunteers of the Polish Medical Mission (Wolontariusze Polskiej Misji Medycznej)** (<http://pmm.org.pl>) – medical care for foreigners living in refugee centres in Poland; preparation of report assessing health condition and access to diagnostics and health care system for foreigners staying in refugee centres.
- **The La Strada Foundation (Fundacja La Strada)** – helping foreigners: female victims of human trafficking. The organisation has set up a helpline in Russian, and undertakes efforts to change legal regulations in order to create tools for helping *aggrieved female foreigners* ([www.strada.org.pl](http://www.strada.org.pl)).

## **II Human rights organisations supporting immigrants and refugees indirectly:**

- **Amnesty International** ([www.amnesty.org.pl](http://www.amnesty.org.pl)) – promotion of human rights through education, teaching about human rights and about national and international standards of protection of human rights, as well as developing skills and shaping attitudes of tolerance, which is necessary in building civil society; monitoring of the situation of refugees.
- **The “One World” Association (Stowarzyszenie ‘Jeden Świat’)** – promotion of peace and understanding among people of different nations, cultures and religions. The association runs the Educational Programme “Different – Equal” in Polish secondary schools, the objective of which is to raise consciousness among young people on issues connected with refugees (<http://www.jedenswiat.org.pl>).
- **The “Proxenia” Association (Stowarzyszenie ‘Proxenia’)** – an organisation supporting integration of foreigners through dissemination of models of humanitarian aid, influencing public opinion, supporting employment of foreigners ([www.proxenia.org.pl](http://www.proxenia.org.pl)).



### **a. Women's movements:**

- **The Centre for the Promotion of Women (Fundacja Centrum Promocji Kobiet)** – organisation of training courses for female refugees, integration workshops for them and their children. The objective is social and linguistic adaptation, transferring basic information about Poland and everyday life, information about the labour market, psychological counselling and openness to communication in the Polish language.
- **The Women's Rights Centre (Centrum Praw Kobiet)** – legal counselling for female refugees, e.g. on social welfare and violence in the family (<http://free.ngo.pl/temida/>).

### *b. Immigrants' Associations:*

Poland has some organisations of immigrants and/or refugees in which women too are involved. There are, however, no women's organisations of this type.

- **The "Ocalenie" Foundation (Fundacja "Ocalenie")** – assistance for people involved in the procedures of granting refugee status, legal and psychological counselling, sport activities and medical treatment for refugees, organisation of Polish language courses, representing and interpreting during contacts with various institutions and organisations within the Republic of Poland. Foreigners (refugees), who form a part of the organisation's authorities, are involved in its activities (<http://www.altercamp.org.pl/index.php?p=ocalenie>).
- **The Association of Married Couples of Poles with Foreigners (Stowarzyszenie Małżeństw Polaków z Obcokrajowcami)** – support in difficult situations when dealing with unfavourable legal regulations determining the legal status of such families ([www.obcokrajowcy.republika.pl](http://www.obcokrajowcy.republika.pl)).
- **The Association of Refugees in the Republic of Poland (Stowarzyszenie Uchodźców w Rzeczypospolitej Polskiej)** – organisation publishing the magazine "Refugee's Voice", informing about refugees in Poland and publishing selected artistic works of refugees. In addition, the association has undertaken the initiative of organizing the European Week against Racism, which takes place every year between March 21 and 28 (<http://www.voiceofexile.go.pl/>).
- **The Union of Belarusian Political Refugees in Poland (Związek Białoruskich Uchodźców Politycznych w Polsce)** – organisation created by Belarusian opposition members. The goal of the association is to provide legal, psychological and financial support as well as legal assistance to people applying for refugee status, and for people who have been granted refugee status, or reside in Poland temporarily.
- **The Kazakh Community Association (Stowarzyszenie "Wspólnota Kazachska")** – promotion of unity among people of different nations, cultures and religions.

- **Armenian Cultural Association (Ormiańskie Towarzystwo Kulturalne)** – organizes cultural and social events in order to bring together immigrants from Armenia. It also offers legal advice to “new immigrants” coming to Poland and operates a weekend school where children may learn about the Armenian language, history, culture and dance ([www.otk.armenia.pl](http://www.otk.armenia.pl)).
- **Association of Vietnamese in Poland (Stowarzyszenie Wietnamczyków w Polsce)** - supporting fellow nationals in the most difficult situations and providing them with financial support and legal advice during contacts with Polish authorities

#### **4. General policy and its effects on female migrants:**

##### **4.1 Policies regulating employment in sectors with a high participation of migrant women**

###### **4.1.1 Policies regulating domestic and care work**

Poland is currently at the very beginning of the process of creating policies regulating domestic and care work. A new law, passed on 28th July 2005, changed effectively the former bill concerning the Promotion of Employment and Institutions of the Labour Market (Dz. U. No 164, pos. 1366). The new law took effect on January 1 2006 by introducing a new mechanism to activate the unemployed by supporting paid domestic and care work performed in households (Art.61b - 61d Law concerning Promotion of Employment and Institutions of the Labour Market).

**Paid domestic and care work** is defined as performing, for the sake of the persons living in a household and sharing the responsibilities of maintaining it, tasks related to keeping this household or taking care of a person living in it. Under these regulations, the following job positions were created:

- persons taking care of children, the elderly or the disabled
- cooks
- housemaids
- cleaning persons
- chambermaids
- housekeepers
- footmen
- gardeners
- maintenance persons

Paid domestic and care work is performed by a registered unemployed person on the basis of a written contract of paid services called ‘the activating contract’ regulated by the Polish Civil Code.

Unfortunately, no data is available on how these modifications have affected the situation of domestic and care workers within the labour market.

Hitherto, domestic and care work in Poland existed only within the so-called 'black economy'. The domestic and care work sector of the labour market has been dominated by female immigrants, the vast majority of whom are illegal workers<sup>3</sup>. A reliable evaluation of the real impact of the law's modification on the situation of domestic and care workers will only be possible after a certain amount of time. Yet reactions of public opinion in Poland are negative as the employers are now obliged to deal with more formalities than before while the 'black economy' is functioning much more efficiently. Norms and standards for performing domestic and care work are now being formulated.

Three new positions within the field of social services were created on the motion submitted by the Ministry of Labour. The Decree of the Ministry of National Education of 29th March 2001 changed the former law regulating the classification of the professions of vocational education. (Journal of Law, 2001) New positions in the field of social services were included in professional group No 346:

1. assistants to disabled persons – education carried out during a one-year programme in an institution of further education
2. custodian – education carried out during a one-year programme in an institution of further education
3. social worker in a social services' institution – education carried out during a two-year programme in an institution of further education

Education opportunities for these professions have existed since the academic year 2001/2002. There are also educational opportunities for babysitters and for people caring for the elderly. However, this offer is directed more at people working in the social services than for those willing to perform paid domestic and care work within households.

#### **4.1.2 Policies controlling prostitution**

Part 1.1 of the report is generally focused on topic 1.1.2, because of the lack of a fundamental policy regulating domestic and care work. We must first show the norms of the Polish Penal Code.

##### **The Polish Penal Code of 6 June 1997**

##### **Art. 204.**

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<sup>3</sup> An illegal worker is understood in the whole report as a person who works without the knowledge of the government.

§ 1. Anyone who, with the purpose of obtaining a material benefit, incites a person to prostitution or facilitates prostitution of a person is subject to a sentence of imprisonment for a period of time of up to 3 years.

§ 2. The sentence specified in § 1 is applicable to a perpetrator who is profiting from another person's prostitution.

§ 3. If the person referred to in § 1 or 2 is a minor, the perpetrator is subject to a sentence of imprisonment for a period of time from 1 to 10 years.

§ 4. The sentence specified in § 3 is applicable to a perpetrator who entices or abducts a person for prostitution abroad (Penal Code, 1997).

Prostitution is not punishable in Poland, although this does not mean that it is legal. Subject to punishment provided by the Polish Penal Code are persons committing crimes connected with prostitution, such as **procurement** – or inciting another person to prostitution (Art. 204 § 1 of the Penal Code); **kuplerstwo** – deliberately facilitating another person's prostitution in order to obtain material benefit (Art. 204 § 1) and **sutenerstwo** – obtaining material benefits from another person's prostitution - Art. 204 § 2 (1997).

We can distinguish four types of approach of the legal system to prostitution: prohibitionist, regulationist, neo-regulationist and abolitionist. The International Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, signed in Lake Success, New York, on 21 March 1950, to which Poland was a party, introduces an **abolitionist system**. What this means in practice is that all forms of registers of prostitutes are abolished, houses of prostitution are banned, the stress is put on prevention and education ([www.strada.org.pl](http://www.strada.org.pl)).

In Poland, about 40 percent of street prostitutes are foreigners; Polish women have been promoted to brothels or to hotels. In the border region, sexual services are offered mostly by immigrants from Russia, Bulgaria and Ukraine. Citizens of the former USSR usually work on access roads to large border towns, occasionally on border crossings. Women from other countries, for example from the Far East or from African countries, work mostly in escort agencies (Interpol Data cited in Zadumińska, 2004).

Brothels are illegal in Poland, but escort agencies and massage parlours are numerous. The problem is that the positions of “masseuse” or “escort lady”, although they means in practice the same as prostitute, require a work permit, and the majority of women – immigrants with a tourist visa – do not have the opportunity to acquire one.

From the point of view of the penal law the functioning of escort agencies is also controversial. The owner of an escort agency is, according to the penal code, a pimp, and his activity is subject to prosecution. However, even in such unfavourable legislative conditions, effective methods of circumventing the law have been invented – at the expense of the employee. Every woman signs a clause in her employment contract saying that she has been informed about the ban on having sex with the customer, and that in case she should breach this ban she will be dismissed by way of punishment.

It is the employee herself, and not the employer, who is supposed to prove compliance of her actions with the binding regulations (2004).

Prostitutes are not subject to labour law; therefore they do not have health or pension insurance. Prostitutes require constant gynaecological protection. Female immigrants from behind the Eastern border use cheaper health care services in their home countries in order to work in Poland for the next three months of validity of the tourist visa without having to pay for expensive medical treatment, according to Zadumińska (2004).

It might seem that the abolitionist granting of the *status quo* to prostitution should entail regulations indispensable for removing this sphere of professional activity from lawlessness and defiance of elementary rights of human dignity. However, the absence of any kind of public debate on prostitution in a context other than that of moral decline together with proposals to close down all escort agencies (a project of the President of Warsaw Lech Kaczyński from 2005) makes changes in legal regulations slow in coming.

## **4.2 Unemployment policies**

Chapter 1, Art. 1, point 3 of the **Law on Employment Promotion and Institutions of the Labour Market** (J.L. of 1 May 2004 No. 99, item 1001 with subsequent amendments) specifies whom it applies to:

1. Polish citizens searching for a job and taking up employment or other paid work within the territory of the Republic of Poland, as well as employment or other paid work at foreign employers;
2. Citizens searching for a job and taking up employment or other paid work within the territory of the Republic of Poland, who:
  - a) are citizens of the European Union Member States,
  - b) are citizens of the countries with which the European Union has signed agreements about the free movement of persons,
  - c) have the status of refugees granted in the Republic of Poland
  - d) have a permit to settle in the Republic of Poland
  - e) have a permit for tolerated stay in the Republic of Poland or are under temporary protection in the Republic of Poland;
3. foreign family members of the foreigners referred to in point 2 a and b;
4. foreign family members of Polish citizens and foreigners referred to in point 2 c–e who have been granted a residence permit for a fixed period within the territory of the Republic of Poland;
5. foreigners who have been granted a work permit within the territory of the Republic of Poland by a competent authority.

6. On grounds laid down by law allowances and other unemployment benefits are available for persons referred to in passage 3 point 1 and 2 a–d, and foreign family members of Polish citizens.

Therefore, immigrants staying legally in Poland may use the same **programmes established to combat unemployment and alleviate its consequences** as Polish citizens. Among these programmes are:

- employment training allowance
- interventionist work
- community service work
- internship and professional training in the place of work
- training loans
- public work
- grants to continue education
- training courses
- support in running business
- reimbursement for travel expenses and accommodation ([www.mps.gov.pl](http://www.mps.gov.pl)).

The problem of unemployment among immigrants is not a priority in the state policy combating unemployment. They are though – as a group threatened by social exclusion – one of the beneficiaries of the Community Initiative EQUAL:

“Support will be granted to enterprises for the purposes of employment of the unemployed and persons from groups at particular risk. Support may be granted for the employment of groups including the long-term unemployed and economically inactive persons, with a low level of education and qualifications, living in rural areas and in areas under restructuring. Support also extends to the youth, especially juvenile delinquents, disabled, persons entering or leaving correctional facilities, and **refugees and members of national and ethnic minorities**”. On 9 August 2005 **the Minister of Economy and Labour issued a regulation on precise conditions and the course of granting support for employment** within an operational programme – the programme of the Community Initiative EQUAL for Poland 2004-2006 ([www.funduszestrukturalne.gov.pl](http://www.funduszestrukturalne.gov.pl)). **It remains to be seen to what extent those in charge of the projects are interested in recruiting participants.**

A problem, however, is not unemployment itself, as it is relatively small among immigrants (see fig. 1 and 2 in Annex). It seems that a longer period of stay in Poland is conducive to taking up employment or setting up a business (therefore the fact that most immigrants treat Poland as a transit country may be a partial explanation). Unfortunately, irrespective of the length of stay, a significant

portion of immigrants do not start any activity on the labour market; one of the reasons is policies hindering the acquisition of work permits, especially with reference to immigrants from the East – a very important part of immigration to Poland. The immigrants come mostly from Ukraine and Belarus but also from Kazakhstan, Armenia and Vietnam. People who migrate to Poland from the East find it difficult not only to enter the country but also to find legal work because of formal obstacles. It is hard not to notice a negative attitude towards them: the residence permit is often issued by way of an exception, regardless of the fact that the immigrants have a good potential that could be used for common benefit (good level of education, young age).

Therefore it seems that the basic problem concerning unemployment among immigrants, as well as reintegration on the labour market, discussed in the next chapter, is the fact that many immigrants in Poland remain outside formal working activity. Foreigners from Western countries work mostly legally and in high-ranking posts, whereas immigrants from Eastern Europe and Asia have problems finding legal employment, and also work more frequently in lower-ranking positions. The situation of women is unfavourable. The typical, legally employed immigrant is male (74 percent in 2001), and has also completed higher education (54 percent). It is mostly women that are involved in illegal employment (Grzymała-Kazłowska, Okólski 2003:15).

#### **4.3. Social policies for re-entering the labour market**

In the field of policy for re-entering the labour market, as in the case of subsection 1.2., there are no programmes focusing particularly on immigrants.

One opportunity is created by projects implemented by the government, local government and non-governmental institutions within the Community Initiative EQUAL:

“The Community Initiative EQUAL is a part of the European Union strategy for creation of a larger number of better workplaces and for ensuring wide access to them. EQUAL means new methods of solving problems of discrimination on the labour market”.

Financed by the European Social Funds (ESF), its objective is to test and promote new ways of combating all forms of discrimination and inequality on the labour market, affecting the employed and jobseekers alike. EQUAL also includes activities for social and professional integration of asylum seekers.

The general objectives of the partnership are:

1. To increase opportunities for getting out of social isolation and getting involved in social and professional activity by persons remaining for a long time on the margins of social life.
2. Preparation, spreading and promotion of effective forms of social and professional reintegration. ([www.pfs.pl](http://www.pfs.pl))

Of particular significance here are Theme A – facilitating access and return to the labour market for those who have difficulty in being integrated or reintegrated into the labour market open to all – and Theme G – reconciling family and professional life, as well as the reintegration of men and women who have left the labour market, by developing more flexible and effective forms of work organisation and support services ([www.bkkk-cofund.org.pl](http://www.bkkk-cofund.org.pl)).

A problem may be the fact that the participation of immigrants in the EQUAL projects is often limited due to lack of work permit.

It is also important that, although the immigration policy concerning the issues discussed in point 1.2 and 1.3 basically **does not target women in any special way**, among the EQUAL projects there are such projects which focus mostly or particularly on them (see e.g. the IRIS project – subsection 2.3.).

Immigrants may also be beneficiaries of projects concerning re-entering the labour market within the **Cohesion Fund**. This puts emphasis on, for example, the prevention of social exclusion, also with reference to immigrants and refugees, as well as on the increase of access and participation of women in the labour market.

It seems, however, that the projects' designers are focusing more on the Polish population, less often preparing projects oriented towards immigrants. It is also important to address the question of how the projects are promoted, and whether immigrants have a chance to learn about them. This is especially important considering the fact that women more often remain in isolation from the receiving society and perhaps do not know that they might have a chance to take part in the projects of reintegration on the labour market.

#### **4.4 Policies combating illicit work**

According to the data of the National Employment Agency there are about 40 thousand foreigners working in Poland legally. The document which regulates their employment is the Act of Promotion of Employment and Institutions of the Labour Market (20 August 2004).

However, all state institutions agree that illegal work of foreigners is becoming an increasingly serious problem. Although throughout the past year only 1795 illegal workers were apprehended, this is only



the tip of the iceberg. Very cautious estimates of the National Employment Agency mention 100 – 150 thousand foreigners employed in the black economy. However, independent experts estimate that there might be several times more foreigners working illegally, from 250 thousand to as many as 1.5 million people, depending on the month. Therefore, we can assume with a large degree of certainty that in the black economy – including temporary and seasonal workers – there are probably 1 million, or even 1.5 million foreigners employed. **However, it should be emphasized that the available data are not fully reliable and are approximate in character. Both the official and the approximate statistics do not include data by sex. It is assumed that women constitute about 30 percent of persons from abroad working in Poland.**

Legal acts regulating the employment of foreigners in the country focus in the first place on the protection of the national labour force. Complicated and lengthy procedures for obtaining a permit for legal work are an effective barrier blocking access to the Polish labour market for many foreigners. The most important include:

- The complicated procedure involved in employing a foreigner.
- The fact that the law allows the issue of the work permit only for a short, strictly specified period of time, for a narrow group of professions.
- The high risk of refusal of the permit.
- The need to provide many documents indispensable for the submission of the application.
- A relatively large fee charged for the permit (200 EUR for every new permit; half of this price for prolongation).

Persons seeking employment in Poland can be divided into three groups:

- Highly qualified professionals sought-after by Polish employers.
- Persons working for foreign companies.
- Immigrants searching for a job on their own or wanting to set up their own business.

Of particular interest for our analysis is the third group. The vast majority of them are workers with low qualifications seeking access to the Polish labour market through a well-organized network of middlemen. Informal support groups play a key role in this process. Qualified workers often choose the model of shuttle migration. Of those taking up illegal employment in Poland the citizens of the former USSR prevail (mostly Ukrainians and Belarusians). There are many reasons for this. These are first of all:

- Geographical proximity (the largest number of instances of illegal work performed by foreigners was revealed and registered by the inspectors of the Department for Inspection of the Legality of Employment in Eastern Poland: in the eastern *lubelskie* voivodeship alone – 756).

- Simple procedures of crossing the border (cheap or free multiple-entry visas).
- A well-developed network of middlemen.

They are employed in the private sector of the economy in fields such as: construction, agriculture, small frontier trade or household services (keeping the house, cleaning or childcare). They can be included in the category often described as accepted illegal (as well as those running cheap ethnic fast food businesses, mostly Vietnamese).

It should, however, be emphasized that foreigners working illegally constitute only a part of the grey area of the Polish economy which – according to the Central Statistical Office – provides work for over 900 thousand Poles (The Polish Confederation of Private Employers estimates that this number may be even bigger) and produces about 15 percent of the GNP. Due to the inspections of the legality of employment<sup>4</sup>, although irregular by necessity, it is possible to outline a general picture of the issues discussed (see tab. 1, 2 in annex).

## **5. Summary (the main questions)**

As was emphasized at the beginning, Poland is slowly becoming a country of immigration, and is faced with serious challenges connected with multiculturalism and the emergence of an integration policy. We are observing a “becoming”, so far to a basic extent only (more formal), of the Polish policy towards immigration and towards immigrants, which is under the strong influence of European norms and institutions. The policy was created without a public debate and without politicizing. In the election manifestos of political parties from both 2001 and 2005 there are no references to immigration policy.

In the legislative processes in Poland a rather conservative and institutional orientation towards the regulation of migration issues prevails, not emphasizing the significance of the integration process of foreigners and reference to broader social and economic processes. However, the importance of replacement migration is definitely appreciated, in the given demographic situation, namely a decrease in the population number, the ageing of society and projection of social and economic processes.

Analysing institutions and organisations designing migration and policies for migrant integration it should be underlined that in Poland more emphasis is put on institutional and administrative solutions, based on the strong presence of the state in the regulation of immigration,

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<sup>4</sup> In 2004 inspections of the legality of employment were carried out pursuant to the provisions of the law of 14 December on employment and prevention of unemployment (J.L. 2003 No. 58, it. 514 with subsequent amendments) and since 01.06.2004 provisions of the law of 20 April 2004 on employment promotion and institutions of the labour market (J.L. No. 99, it. 1001). The executive acts, binding since 2004, specifying the organisation and the course of inspections, were provisions of the regulation of the Council of Ministers of 23 September 2003 concerning the organisation and the course of inspections by voivodes and customs authorities, and the terms of co-operation with other bodies (J.L. No. 176, it. 1710) and 18.09.2004 provisions of the regulation of the Council of Ministers of 31 August 2004 concerning the organisation and the course of inspections by voivodes and customs authorities and the means of co-operation with other bodies (J.L. No. 198, it. 2037).

ethnic and national issues and problems. So far there has been no strategy connected with managing migration resources and putting emphasis on effective development of integration initiatives by the immigrants themselves within so-called community action.

**The lack of explicit regulations concerning prostitution, resulting from the fact that this phenomenon is not legal in Poland, but is not illegal either, leads to a situation in which female immigrants working as prostitutes are pushed onto the streets, as there is no space for them even in the grey area of half-legal escort agencies.**

The phenomenon of **human trafficking** is associated in Poland with prostitution, and none of these phenomena is a subject of public debate. There is no political will to combat the trade of human trafficking, and therefore there are no trained civil servants to work with the victims of this trade. The structure of Polish law also renders particular criminal cases concerning this issue difficult, failing to provide appropriate protection and care to victims from abroad.

Poland has participated in the Community Initiative EQUAL only recently. However, there are more and more projects aimed at the integration of immigrants in Poland, a consequence of which may be an improvement in the current situation and, as already mentioned, facilitate cooperation between different organizations. **Moreover, there is an increase in the number of projects aimed mainly or exclusively at women, who are subject to exclusion.** Taking into consideration the limited amount of activity of this kind in Poland's immigration policy, such initiatives are particularly important.

The Polish policy towards foreigners is "European"; it does not have the features of the global policy, determined by the relevant UN documents concerning, among other things, the rights of migrants (human rights), fighting with discrimination of this category, particularly visible in correlation with gender, race, and the category male migrant/ female migrant. In numerous documents concern with the rights of female migrants is emphasized. In Poland, legislators do not pay attention to the sociological aspect of the issue. **Detailed data concerning women are completely lacking.** Poland has neither implemented policies with reference to the fight with discrimination in access to publicly provided goods and services, nor has a competent central body been appointed to support the fight against discrimination. Moreover, on 3 November 2005 the position of **the Government Plenipotentiary for the Equal Status of Women and Men was closed down**, whose tasks included fighting all kinds of discrimination and which undertook initiatives preventing racism, while one of its tasks was work on the preparation of the establishment of a special office dealing with discrimination. The attitude of public authorities to affirmative action must also be viewed negatively – so far no programmes have been planned concerning it; there is only the aforementioned provision, which unfortunately does not translate into appropriate legislative regulations or a policy promoting employment.

## **6. ANNEX:**

### **Legal issues connected with point 2.2 Integration policies addressing migrants**

The situation of persons with refugee status is regulated in a different way and exceptional enough to be discussed comprehensively below.

#### **I Social welfare.**

The system of social welfare is comprehensively regulated by the **Law of 12 March 2004 on Social Welfare (Journal of Law, 2004)**. According to Article 5 point 2 welfare benefits are available also to: foreigners with a place of residence and staying within the territory of the Republic of Poland on the basis of a permit to settle, long-term EC resident's permit, permit for tolerated stay, or refugee status. These people are eligible to apply for appropriate welfare on an equal basis with Polish citizens.

#### **II Access to education**

This is regulated by **the Law of 7 September 1991 on the Education System (Journal of Law, 2004)** and **the Law of 27 July on Tertiary-level Education**, as well as by two executive acts:

- 1) Regulation of the Minister of National Education of 4 October 2001 concerning admission of non-Polish citizens to public kindergartens, schools, teacher training centres and establishments (Journal of Law, 2001)
- 2) Regulation of the Minister of National Education of 24 April 2002 concerning enrolment on courses of studies by foreigners and their participation in academic research and training.

According to article 94 of the law of 7 September 1991 on the education system, non-Polish citizens may study at public educational establishments on an equal basis to Polish citizens, but only the following categories of foreigners may do this free of charge:

- migrating workers who are citizens of the European Union Member States or of associated countries
- persons who have been granted a permit to settle within the territory of the Republic of Poland
- persons who have been granted refugee status
- persons possessing a permit for tolerated stay
- persons under temporary protection within the territory of the Republic of Poland;
- persons who have been granted the long-term resident's EC permit to stay within the territory of the Republic of Poland;
- children of persons applying for refugee status.

Other foreigners have paid access, or access on the basis of a scholarship from the minister of education.

Similar regulations are laid down in the law of 27 July 2005 on tertiary-level education. Additionally, according to this law students of tertiary-level schools have access to all monetary benefits for students from the state budget on an equal basis with Polish citizens.

Non-Polish citizens, subject to mandatory education (which starts at 7 years of age and lasts until the end of junior high school, but no longer than 18 years of age), who do not know the Polish language or know it insufficiently to study, are entitled to additional, free-of-charge Polish-language classes. Additional courses of Polish for these persons should be organized by the community (municipality) of the place of residence.

According to article 13 of the law of 7 September 1991 on the system of education, schools and public establishments are obliged to enable pupils to maintain a sense of national, ethnic, linguistic and religious identity, especially through instruction of their language, as well as their history and culture.

### **III Persons applying for refugee status and recognized as refugees**

#### **Persons applying for refugee status**

Foreigners in the course of the refugee status-granting procedures are granted – upon request – assistance for the duration of the proceedings. The applicant must demonstrate that he/she does not possess sufficient financial resources to cover the costs of stay within the territory of the Republic of Poland, and does not have any other way to provide himself or herself with accommodation and maintenance.

The assistance may include: 1) placing the foreigner in a centre for foreigners applying for refugee status, 2) granting a monetary benefit so that he or she may cover the costs of staying in the Republic of Poland, 3) granting health care services, and 4) assistance with voluntary departure from the territory of the Republic of Poland. Such an application may also cover the family of the applicant. The majority of social benefits are realized through placement of the refugee in the centre. Currently there are 15 such centres. The foreigner placed in the centre is provided with food, tickets for public transport, educational materials for children learning and under the care of public educational establishments and reimbursement of costs of their education, as well as a small, regular monetary allowance.

#### **Persons recognized as refugees**

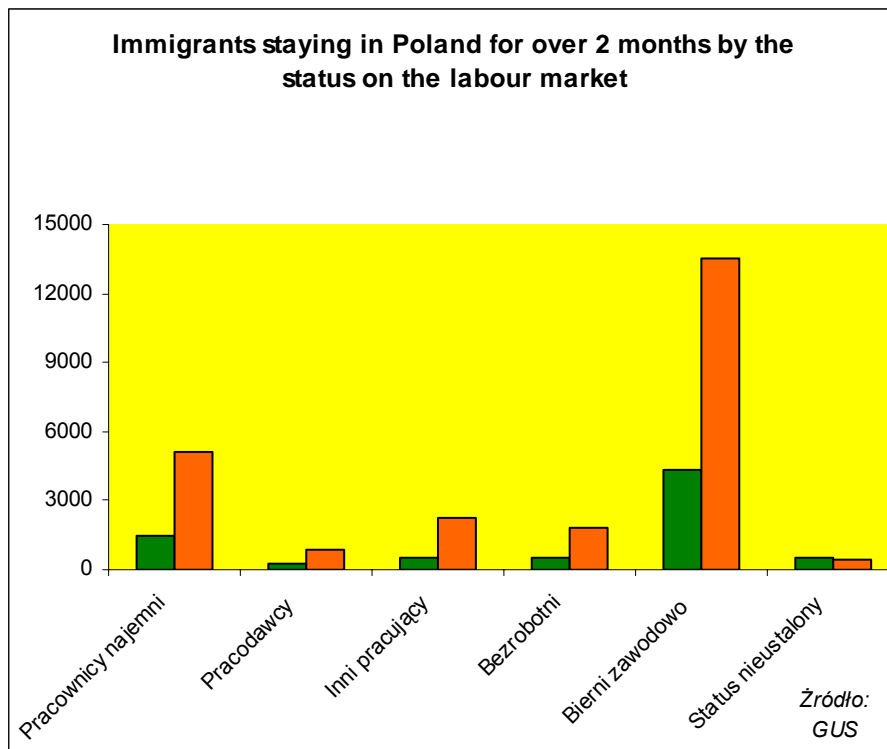
According to Chapter 5 of the law of 12 March on social welfare, a foreigner who has been granted refugee status is granted assistance to support the process of his/her integration during a period not longer than 12 months. Assistance for the refugee is granted upon his/her application lodged within 14 days since reception of the decision to grant the refugee status. Assistance is provided within an individual programme of integration which determines mutual obligations, amount, scope and forms of assistance, depending upon the individual situation of the refugee and his/her family. The authority examining the application and realising the assistance programme is the district governor competent with respect to the place of residence of the applicant.

The programme of integration is determined individually for every person. It defines obligations of the governor, e.g. to cooperate with the refugee, support him/her in contacts with the local community, assist in finding accommodation, perform social work with the refugee, and appoint an employee as “executor of the programme”. The foreigner commits him-/herself in particular to registering in the place of residence and in the poviats employment agency and to actively search for work opportunities. The refugee is entitled to monetary allowances for maintenance and covering the costs connected with the Polish language courses. The amount of the allowances depends on the number of people in the foreigner’s family and the time of providing assistance. Assistance also includes payment of the health insurance premium and specialist social counselling.

Despite the small number of people granted refugee status in Poland, not everyone is covered by the integration programme. Due to insufficient knowledge about this opportunity and the fourteen-day period for lodging the appropriate application not all foreigners actually do apply for the integration programmes. The length of the programme itself is also a drawback, as the period of one year is not always long enough to create conditions supporting the integration of this group of immigrants.

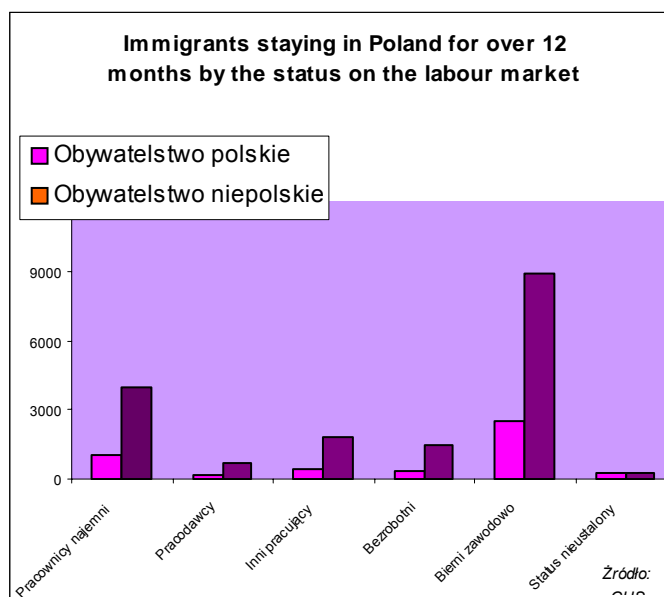
## **7. TABLES**

**Fig. 1. Immigrants staying in Poland for over 2 months by status on the labour market.**



pracownicy najemni - employees hired  
 pracodawcy - employers  
 inni pracujący – other working  
 bezrobotni - unemployed  
 bierni zawodowo - passive in the labour market  
 status nieustalony – unknown status

**Fig. 2 Immigrants staying in Poland for over 12 months by the status on the labour market.**



pracownicy najemni - employees hired  
 pracodawcy - employers  
 inni pracujący – other working  
 bezrobotni - unemployed  
 bierni zawodowo - passive in the labour market  
 status nieustalony – unknown status

**Table 1 Inspections of the legality of employment (by the type of activity)**

| Specification  |   | Total                        | of which     |                            |                |            |            |
|--|---|------------------------------|--------------|----------------------------|----------------|------------|------------|
|  |   |                              | Construction | Wholesale and retail trade | Other services | Other      |            |
|  |   | during the accounting period |              |                            |                |            |            |
| 0  |   | 1                            | 2            | 3                          | 4              | 5          |            |
| Units in which illegal employment or other illegal work was registered             | 01  | 3 731                        | 409          | 1 813                      | 868            | 641        |            |
| Registered instances of illegal employment or other illegal paid work (w.03+05+06) | 02  | 7 441                        | 1 214        | 2 451                      | 1 727          | 2 049      |            |
| of which   | without concluding of the employment contract             | 03                           | 4 277        | 883                        | 926            | 1 165      | 1 303      |
|  | of which with the unemployed (with w.03)                  | 04                           | 2 191        | 522                        | 499            | 593        | 577        |
|  | non-reporting of the employed person for social insurance | 05                           | 1 369        | 270                        | 356            | 342        | 401        |
|  | <b>Illegal work performed by foreigners</b>               | <b>06</b>                    | <b>1 795</b> | <b>61</b>                  | <b>1 169</b>   | <b>220</b> | <b>345</b> |



**Table. 2 Registered instances of illegal work performed by foreigners in 2004 by citizenship**

| Citizenship |                 | Registered instances of illegal work performed by foreigners | Citizenship |                     | Registered instances of illegal work performed by foreigners |
|-------------|-----------------|--|-------------|---------------------|--|
| 0           | 1               | 2  | 0           | 1                   | 2  |
|             | <b>Total</b>    | <b>1 795</b>   | 18          | Ireland             | 2  |
|             |                 |  | 19          | Israel              | 1  |
| 01          | Armenia         | 103  | 20          | Japan               | 3  |
| 02          | Australia       | 1  | 21          | Jordan              | 1  |
| 03          | Azerbaijan      | 2  | 22          | Lithuania           | 3  |
| 04          | Belarus         | 406  | 23          | Lebanon             | 3  |
| 05          | Bosnia          | 1  | 24          | Kazakhstan          | 2  |
| 06          | Brazil          | 1  | 25          | Congo               | 1  |
| 07          | Bulgaria        | 126  | 26          | North Korea         | 1  |
| 08          | China           | 10   | 27          | Macedonia           | 1  |
| 09          | Croatia         | 1  | 28          | Moldova             | 5  |
| 10          | Denmark         | 7  | 29          | Mongolia            | 34   |
| 11          | Egypt           | 2  | 30          | Germany             | 14   |
| 12          | Finland         | 1  | 31          | Norway              | 1  |
| 13          | France          | 11   | 32          | N. Zealand          | 1  |
| 14          | Spain           | 2  | 33          | Pakistan            | 1  |
| 15          | The Netherlands | 5  | 34          | Russia              | 31   |
| 16          | India           | 6  | 35          | Romania             | 5  |
| 17          | Iraq            | 4  | 36          | Serbia - Montenegro | 4  |

|    |             |   |    |               |     |
|----|-------------|---|----|---------------|-----|
| 37 | Slovakia    | 2 | 43 | Turkey        | 13  |
| 38 | Singapore   | 1 | 44 | Ukraine       | 886 |
| 39 | Slovenia    | 2 | 45 | USA           | 8   |
| 40 | Syria       | 5 | 46 | Italy         | 9   |
| 41 | Sweden      | 1 | 47 | Vietnam       | 54  |
| 42 | Switzerland | 1 | 48 | Great Britain | 10  |

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