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# Selected problems of social security provided outside the universal social insurance system to Ukrainian citizens residing in Poland

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The right to social security is recognised as a human right implemented through the activities of a particular country, and therefore one difficult to guarantee in complex situations regarding nationality or place of residence of singular persons or families. In order to regulate their situation, states create legal instruments at international or supranational level. Also the role of national law is important here. This study presents selected legal aspects of ensuring social security for Ukrainian citizens residing in Poland. It focuses on benefits outside the scope of the universal social insurance system, *i.e.*, mainly on social benefits that are not directly related to professional activity.

**Key words:** bilateral agreement on social security, international migrations, social security, social security system

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## Introduction. Legal framework of the social situation of Ukrainian citizens in Poland

The right to social security is now recognised as one of the basic human rights referred to as social rights. They are guaranteed by supranational legal acts. In implementing social rights, due to their subject, the role of the state or, more precisely, of individual states is immense. It is assumed that the state has an obligation to take actions to implement these rights. It does so by organising national social security systems. They are of a public and administrative legal nature, and thus closely related to the scope of the activity, territory, jurisdiction and competences of a given state. For example, according to Art. 67 and Art. 68(3) of the Polish Constitution, it is the citizen who has the right to social security and equal access to health care services financed from public funds, although everyone has the right to health protection (Art. 68[1]), and families are entitled to assistance from the state (Art. 71), without specifying their nationality.

For this reason, full implementation of the right to social security is problematic in the situation of migrants who are in a complex legal situation due to the potential impact of many legal systems. The effects of migration relate not only to individual migrants, but also to dependents, whom the legislation of individual states may provide with various rights. For example, consideration could be given to the situation of a family, in which the mother works in one country, the father in another, and the children live in yet another country (*e.g.*, with grandparents – the citizens of yet another country).

Solutions, satisfactory for migrants, their family members and the public interest of the states concerned can be adopted in international or supranational legal instruments. Then they are binding on the states involved. To an extent not resulting from international obligations, each state may independently arrange the conditions of a foreigner's stay in its territory and the granting of social security benefits. These legal regulations are distinct from those concerning the law applicable to employment relationships or other employment bases, legality of employment, taxes or jurisdiction in matters concerning a given category of persons. At the same time, it should be borne in mind that only the entirety of international and national legal regulations in many areas of law arranges the position of a migrant (foreigner) in a holistic manner, which ultimately determines a subjective sense of security. This may affect the process of making decisions on migration, and therefore undertakings in this area are particularly important for countries interested in recruiting foreign employees. Poland is currently in such a situation, and the citizens of Ukraine constitute the largest group of foreigners working in our country.

In terms of legal instruments affecting the social security of Ukrainian citizens in Poland, the following should be taken into account:

- Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (Official Journal EU L 161/3 of 29.5.2014); hereinafter referred to as the Association Agreement;

- Social Security Agreement between the Republic of Poland and Ukraine (Journal of Laws of 2013, item 1373; ratification: Journal of Laws of 2013, item 1378); hereinafter: the Social Security Agreement or the Agreement;
- national law, including selected legal acts regarding benefits aimed to ensure social security to their addressees.

Considerations will be carried out using a dogmatic and legal method, to determine whether, based on the current legal status, it can be concluded that Poland has adopted a coherent concept of ensuring social security for Ukrainian citizens as the most numerous of the groups of foreigners within the territory of the Republic of Poland. The study will focus on selected legal aspects of certain problems that fall outside the scope of the Polish universal social insurance system, covered or not by the Social Security Agreement with Ukraine<sup>1</sup>: unemployment benefits, farmers' social insurance system and – due to the scale of the problems observed in practice – the social rights of families of Ukrainian citizens.

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## Association Agreement

In the Association Agreement, which basically entered into force on 1 September 2017, there are practically no provisions that would directly relate to ensuring social security to migrant Ukrainian citizens. On the contrary, the content of the provisions on movement indicates that these issues have been deliberately left out of the scope of the agreement. For example, according to the wording of Art. 141(3) of the Association Agreement, the provisions of the chapter on the establishment, trade in services and electronic commerce, as well as of the indicated Annexes<sup>2</sup> do not apply to the parties' respective social security systems. In addition, nothing in this chapter shall be construed in such a way as to prevent a party, including its public entities, from exclusively conducting or providing in its territory activities or services forming part of a public retirement plan or statutory system of social security, except when those activities may be carried out, as provided by the party's domestic regulation, by financial service suppliers in competition with public entities or private institutions (Art. 130).

Art. 97 of the Agreement, included in Section 4 *Temporary presence of natural persons for business purposes* and determining the scope of the application of this Section, provides that this Section applies to measures of the parties concerning the entry into and temporary stay in their territory of categories of natural persons providing services, as defined in Art. 86(17) to (21) of the Agreement, *i.e.*, the categories of persons who are also specifically distinguished within the Polish Act of 12 December 2013 on foreigners<sup>3</sup>

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<sup>1</sup> See I. Kryśpiak, *Koordinacja bilateralna systemów emerytalno-rentowych. Umowy Polski z Ukrainą oraz Mołdawią*, "Ubezpieczenia Społeczne. Teoria i praktyka" 2013, No. 12, pp. 13–14.

<sup>2</sup> These are Annexes XVI-A, XVI-B, XVI-C, XVI-D, XVI-E, XVI-F and XVII to the Agreement.

<sup>3</sup> The Act of 12 December 2013 on foreigners (consolidated text: Journal of Laws of 2018, item 2094, as amended; see, *e.g.*, Art. 139a *et seq.*).

(key personnel, graduate trainees, business services sellers, contractual services suppliers, independent professionals). The reference contained in this Article clearly states that all other requirements of the parties' laws and regulations regarding entry, stay, work and social security measures shall continue to apply, including regulations concerning period of stay and minimum wages as well as collective wage agreements.<sup>4</sup> According to the title of the Section, it concerns only the "presence", *i.e.*, the rules of entry and residence, but not the social conditions of those resident. In the social sphere, we remain within the bilateral agreement and national regulations.

Although the provisions of the Association Agreement referring in any way to migrants indicate the intention that for the time being the social security of such persons should be left out of the arrangements, one should also bear in mind the indirect impact of the Association Agreement through the harmonisation of European and Ukrainian law (see Art. 289 *et seq.* of the Association Agreement). This process is leading to an extending similarity of the social situation of Ukrainian citizens in Ukraine and in EU Member States, including Poland. In accordance with Art. 419 of the Association Agreement, the parties shall strengthen their dialogue and cooperation on promoting the decent work agenda, employment policy, health and safety at work, social dialogue, social protection, social inclusion, gender equality and non-discrimination. Ukraine is undertaking to gradually approximate its legislation to the indicated EU regulations. Annex XL to Chapter 21 *Cooperation on employment, social policy and equal opportunities* indicates that the provisions of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security<sup>5</sup> shall be implemented within three years of the entry into force of the Association Agreement. It can be assumed that raising the standards of social protection in Ukraine, including in the field of equal treatment for men and women, should affect the attractiveness of economic emigration from this country, but also the expectations of migrants in relation to the level of security within the host country.

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## Benefits covered by the Social Security Agreement

### General remarks

According to the declarations accompanying the conclusion of the Social Security Agreement, its main addressees were to be repatriates and persons resettled to Poland outside of the repatriation procedure. Their interests were to be protected by the aggregation of Polish and Ukrainian insurance periods necessary to acquire the right to long-term benefits (pensions).

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<sup>4</sup> Commitments on the movement of persons do not apply in cases where the intent or effect of such a movement is to interfere in or otherwise affect the outcome of any labour/management dispute or negotiation.

<sup>5</sup> Council Directive of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in the field of social security (Official Journal L 006, 10.01.1979 p. 0024–0025).

The justification of the draft Act on the ratification of the Agreement, in the economic field, points out the obligation of the double payment of insurance contributions for Polish employees posted to work in Ukraine. These persons were insured in their state of permanent employment, *i.e.*, in Poland, and at the same time in their state of temporary employment, *i.e.*, in Ukraine. Such a double payment of contributions increased the operating costs of Polish enterprises in Ukraine, inhibited the flow of employees and reduced the profitability of Polish investments in Ukraine.

The relevant provisions of the Agreement were aimed to eliminate the double payment of social insurance contributions, and thus eliminate one of the obstacles to the development of Polish-Ukrainian economic relations.

No mention was made there of the posting of employees from Ukraine to Poland. The regulatory impact assessment only noted that:

The number of Ukrainian citizens taking up legal employment in Poland is increasing with every year, which increases the insurance contributions paid to the Polish system, and thus the income to insurance funds.<sup>6</sup>

Currently, the scope of benefits provided to Ukrainian citizens from the Polish social insurance system raises doubts being also the subject of parliamentary questions.

As mentioned above, concern for the situation of repatriates was cited as the main reason for concluding the Agreement. Such a justification does not fit to the development of the situation, *i.e.*, the occurrence of large scale labour migrations from Ukraine to Poland, often of a short-term nature. Nevertheless, the basic scope of social security was ensured to economically active migrants as well as to their family members, because the Agreement covers survivors' pensions and funeral grants. The Polish Ministry of Family, Labour and Social Policy does not plan to renegotiate the Polish-Ukrainian Agreement on social security or to amend the Polish domestic regulations in this respect.<sup>7</sup>

## Unemployment benefit

Unemployment benefit is coordinated pursuant to Art. 2(1)(2)(1), Art. 5(2)(2) and Art. 9 of the Social Security Agreement. In the Republic of Poland, it is granted outside of the universal social insurance system. The organisation and the rules for its granting are separate from other benefits covered by the Agreement: they are governed by the Act on employment promotion and labour market institutions.<sup>8</sup> Tasks related to unemploy-

6 Uzasadnienie projektu ustawy ratyfikującej Umowę [Justification of the draft Act ratifying the Agreement], Sejm Paper 634 of 23 July 2012, p. 3.

7 Reply of the Undersecretary of State in the Ministry of Family, Labour and Social Policy, Mr. Marcin Zieleniecki, to question No. 16546 on the old-age pensions of Ukrainian citizens paid out of Social Insurance Institution [Zakład Ubezpieczeń Społecznych, ZUS] funds, Warsaw, 9 November 2017.

8 The Act of 20 April 2004 on employment promotion and labour market institutions (consolidated text: Journal of Laws of 2018, item 1265, as amended), hereinafter referred to as the Act on employment promotion.

ment benefit are mainly performed by the minister competent for labour issues together with poviats (local) and voivodeships (provincial) labour offices. Unemployment benefit is treated as a result of loss of employment, and thus a source of income. For this reason it intrinsically does not fit into the general assumptions adopted in the Agreement and applied in determining the applicable legislation, which link social insurance coverage with the performance of work within the territory of the country concerned (Art. 6 of the Agreement). Nevertheless, this principle is maintained even in this situation.

The wording of Art. 9 of the Agreement is relevant when determining the right to the benefit in Poland. It provides that periods of insurance completed in accordance with the legislation of one of the Contracting Parties are taken into account if necessary<sup>9</sup> and if they do not overlap, but only when the person concerned can demonstrate that the periods of insurance completed immediately prior to the loss of employment under the legislation of the other Contracting Party established entitlement rights. Therefore, within the scope of the application of this provision of the Agreement, *i.e.*, regarding persons who acquire the right to unemployment benefit after aggregating Polish and Ukrainian periods of insurance, unemployment benefit is granted in Poland to persons who have lost their job in Poland for the last time.

To the extent not covered by the provision of Art. 9 of the Agreement, it should be assumed that persons subject to pension insurance in Poland, for whom contributions to the Labour Fund have been paid, acquire the rights provided for in the Act on employment promotion, possibly in the limited scope indicated in Art. 1(4)-(7). Therefore, the conditions for acquiring the rights depend on the status of the person concerned.

Ukrainian citizens intending to take advantage of unemployment benefit should also take into account the consequences of Art. 9(2) of the Social Security Agreement. The period of unemployment benefit payment is reduced by the period during which the unemployed person received unemployment benefit in the territory of the other Contracting Party during the 12 months prior to the date of filing the application. This corresponds to the regulation of Art. 73(5) of the Act on employment promotion. An unemployed person who had lost the status of being unemployed for a period shorter than 365 days due to taking up employment, other gainful employment, non-agricultural activity or obtaining income exceeding half of the minimum wage per month and has registered at a poviats labour office as unemployed within 14 days from the date of the cessation of employment or other activity, has the right to benefit for a period reduced by the period of receiving the benefit prior to the loss of unemployed status.

First of all, however, unemployment benefit is covered by an exception to one of the basic principles of coordination of social security systems – the principle of the export of benefits. It is expressed in Article 5(1) of the Agreement. Benefits from one party may not be reduced, suspended, revoked or withdrawn due to the fact that the beneficiary resides in the territory of the other party. However, pursuant to Art. 5(2),

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<sup>9</sup> A total period of at least 365 days is required during the period of 18 months immediately preceding the date of registration (Art. 71 of the Act on employment promotion).

that provision shall not apply to unemployment benefits. The scope of social security in the case of unemployment is therefore territorially limited and thus restricts the mobility of job seekers.

The exceptions are set out in the Act on employment promotion. Unemployed persons who stay abroad for a period of not more than 10 days or are in a different situation resulting in a lack of readiness to take up employment, are not deprived of the status of being unemployed, if they have notified the poviata labour office of their intended stay abroad or of remaining in a situation resulting in a lack of readiness to take up employment. The unemployment benefit is not granted for this period. The total period of the reported stay abroad and the lack of readiness to work for other reasons may not exceed a total of 10 days in a period of one calendar year. Besides, an unemployed person who has acquired the right to unemployment benefits in the Republic of Poland and goes to another EU or European Economic Area (EEA) country to look for a job (while meeting the requirements for legal entry and residence), retains the right to these benefits on the principles set out in the regulations on the coordination of social security systems (Art. 75[3] and [4] of the Act on employment promotion).

The provision of Art. 86(1) of the Act on employment promotion may also be useful for Ukrainian citizens covered by the Act. The documented periods of employment completed abroad with a foreign employer are taken into account when calculating the periods of employment in the Republic of Poland with regard to employee rights (in employment).

## Farmers' social insurance system

Until recently, the social insurance system for farmers, which is distinct from the universal social insurance system, only exceptionally covered foreigners. However, the Act amending the Act on social insurance of farmers and some other acts<sup>10</sup> introduced significant modifications to the system. Presently, farmers' social insurance covers foreigners who are entitled to work in the territory of the Republic of Poland pursuant to Art. 87 of the Act on employment promotion or are released from the obligation to have a work permit on the basis of special provisions. This often applies to Ukrainian citizens. The public has perceived these changes as mainly referring to Ukrainian citizens and, as in the case of Polish citizens who are engaged on the basis of harvest assistance contracts – as reducing the universal level of social protection in relation to persons providing work or services on a different legal basis.

The amendment of 2018 introduced a new type of civil law contract – the harvest assistance contract. With a certain simplification, the current wording of Art. 91a of the Act on social insurance of farmers<sup>11</sup> indicates that through the harvest assistance contract, the

<sup>10</sup> The Act of 13 April 2018 amending the Act on social insurance of farmers and certain other acts (Journal of Laws of 2018, item 858).

<sup>11</sup> The Act of 20 December 1990 on social insurance of farmers (consolidated text: Journal of Laws of 2017, item 2336, as amended).

farmer's helper undertakes to provide assistance for the harvest of agricultural products, as well as herbs and herbal plants at a specified place on the farm and for a specified period, while the farmer undertakes to pay the agreed remuneration for the assistance provided. An adult person with whom the farmer has concluded a harvest assistance contract is called a farmer's helper (Art. 6[2a]). They are covered by statutory compulsory accident, sickness and maternity insurance, but only to the extent ensuring flat-rate compensation in respect of accidents at work or occupational diseases, *i.e.*, to the minimum extent resulting from the Republic of Poland's obligations under the International Labour Organisation Convention concerning workmen's compensation in agriculture.<sup>12</sup>

Even more important than any potential right to flat-rate compensation is the fact that farmers' helpers are covered by the compulsory health insurance in Poland. This results from Art. 66(1)(1)(ba) and Art. 69(2a) of the Act on health care benefits financed by public funds.<sup>13</sup> At the same time, however, the obligation to register family members for health insurance in exchange only for the single contribution financed by the assistant has been excluded (Art. 67[3]). This exception applies both to Polish citizens and foreigners. However, it seems that its effects may be more severe for Ukrainian farmers' helpers, especially if both parents work as farmers' helpers in Poland and reside here with children.

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## Benefits granted under national law

### Health care benefits

The Social Security Agreement does not cover benefits in kind, which in Poland are mainly financed from public funds under health insurance. According to the justification of the draft Act ratifying the Agreement, during the Polish-Ukrainian consultations on concluding the Social Security Agreement, organised in Warsaw on 28-30 October 2008, the Ukrainian side informed that due to the internal legislation in force in Ukraine it was not possible to cover benefits in kind by the material scope of the Agreement and none of the bilateral social security agreements binding on Ukraine contained regulations regarding such benefits. In this situation, the Polish Ministry of Health took the position that benefits in kind (health care benefits) should not be included in the material scope of the Polish-Ukrainian Agreement.

This issue seems very important, as it is estimated that many Ukrainian citizens working in Poland are not registered for insurance, and thus they do not have access to health care financed from public funds.

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<sup>12</sup> The International Convention concerning workmen's compensation in agriculture, adopted on 12 November 1921 in Geneva at the General Conference of the International Labour Organisation of the League of Nations (ratified in accordance with the Act of 19 December 1923).

<sup>13</sup> The Act of 27 August 2004 on health care benefits financed by public funds (consolidated text: Journal of Laws of 2018, item 1510).

Polish regulations allow foreigners to be covered by health insurance, closely linking their participation in the system with gainful activity as well as the purpose and basis of their stay. First of all, according to Art. 3(1) of the Act on healthcare services, the insured persons include, *inter alia*, persons who do not hold the citizenship of an EU Member State, the European Economic Area or the Swiss Confederation, who reside within the territory of Poland on the basis of a visa with the purpose of employment, a temporary residence permit, permanent residence permit or a residence permit for a long-term EU resident, as well as a humanitarian residence permit or a permit for a tolerated stay (point 2), as well as citizens of such third countries – legally residing in an EU Member State or a European Free Trade Agreement country other than Poland (point 3), if they are covered, in accordance with Art. 66 of the Act, by compulsory health insurance (and this applies to the vast majority of legal forms of gainful activity) or if they insure themselves voluntarily.

The family members of such persons are also subject to health insurance in Poland, if they meet the conditions specified in Art. 3(2)(5) and (6) of the Act, respectively. Particular attention should be paid to the requirement of family member residence within the territory of Poland (point 6). This requirement is interpreted in the light of Art. 25 of the Civil Code, according to which the place of residence of a natural person is the place where the person stays with the intention of permanent residence.<sup>14</sup> Permanent residence in Poland is not necessarily the intention of family members of a Ukrainian citizen performing work here. The special situation of farmer's helpers has already been mentioned.

## Child care benefit

Child care benefit, commonly known as Rodzina 500+, is a universal Polish social benefit for families. Pursuant to the Act on state aid in raising children,<sup>15</sup> the purpose of the child care benefit is to partially cover expenses related to raising a child, including caring for the child and satisfying the child's life needs. It is granted to the mother, father, the child's actual guardian or the child's legal guardian.

The difference between the level of remuneration in Ukraine and Poland is one of the main arguments used by opponents of granting this benefit to foreigners (let us remember that Ukrainians constitute the largest group among them). In addition to Polish citizens, the child care benefit is also granted to foreigners from the groups indicated in the Act (to the extent of interest for us, outside the coordination under the Social Security Agreement: Art. 1[2][2][c]-[e]). They correspond to groups of persons coming legally to take up employment.

It should be emphasised that the right to the child care benefit is granted to foreigners if they reside in the territory of the Republic of Poland during the period in which they are to receive the child care benefit, unless the provisions on the coordination of social security systems or bilateral international social security agreements provide otherwise.

<sup>14</sup> See A. Sidorko [in:] *Ustawa o świadczeniach opieki zdrowotnej finansowanych ze środków publicznych. Komentarz*, ed. A. Pietraszewska-Macheta, Warszawa 2018, p. 41.

<sup>15</sup> The Act of 11 February 2016 on state aid in raising children (consolidated text: Journal of Laws of 2018, item 2134, as amended).

Despite this, the statutory definition of groups of foreigners entitled to the benefits has been also supplemented with the requirements regarding the length of the period for which a given person was admitted to the Polish labour market. Excluded are third-country nationals who have obtained a work permit in the territory of a EU Member State for a period not exceeding six months and citizens admitted to seasonal work, *i.e.*, for a period of up to 9 months (Art. 1[2][2][d]), and certain foreigners, who have been granted a permit to reside and work in the territory of the Republic of Poland for a period not exceeding 9 months (Art. 1[2][2][e]). These restrictions correspond to the time limits adopted when determining the simplified rules of residence and work in the Republic of Poland, which are used mainly when employing Ukrainian citizens (see Art. 87[3], [4] and Art. 88q of the Act on employment promotion). It seems that this is a significant obstacle to the integration of Ukrainian citizens in Poland in terms of social security.

## Family benefits

The rights provided for by the Act on family benefits<sup>16</sup> are intended to partially cover expenses for child maintenance (family allowance with supplements – Art. 4[1]), partially cover expenses resulting from the need to provide care and assistance to persons unable to exist independently (care allowance – Art. 16[1]) and provide funds to persons resigning from employment to take care of a dependent person (Art. 16a and 17) or a newborn child or infant (parental benefit – Art. 17c). As a rule, they depend on meeting the income criterion, including any income earned abroad.

Similarly as in the case of child care benefit (despite differences in the wording of the provisions), they are also granted to foreigners, with similar exclusions (especially referring to time periods), provided that they reside in the territory of the Republic of Poland during the benefit period in which they receive family benefits. The Act does not provide for a special procedure for verifying the place of residence of the family of persons claiming the benefit.

The Ombudsman during his activity, and courts in their rulings, have revealed the problem of a parent being a Ukrainian citizen applying for family allowance and supplements to family allowance for children who are Polish citizens. The benefit was qualified as financial assistance, the granting of which was clearly linked by the legislator to the situation of the child, whose parents or guardians are unable to provide for its maintenance due to insufficient income. Since the allowance in question is intended to meet the child's needs, it is to serve its welfare, although formally, for practical reasons, it is granted to the parent or guardian. These provisions should be interpreted in the light of the constitutional provisions relating to the family (Art. 71[1] and Art. 18). It was noted that the interpretation of the provisions of the Act, disregarding the Polish citizenship of children whose mother is a foreigner, puts them in a worse position than their peers – also Polish citizens. Such unequal treatment of minor children with Polish citizenship and

<sup>16</sup> The Act of 28 November 2003 on family benefits (Journal of Laws of 2018, item 2220, as amended).

residing in the territory of Poland, only because their mother has different citizenship, has been declared as violating Art. 32 of the Polish Constitution.<sup>17</sup>

The interpretation of the law recognising the obligation to hold a residence card by a foreigner who has a humanitarian residence permit as a condition for granting family benefits has also raised constitutional doubts, as an excessive, unnecessary, pointless requirement, and thus prejudicial to the principle of a democratic state ruled by law. Such a criterion unduly differentiates foreigners entitled to stay for humanitarian reasons in access to family benefits, which in turn also leads to a violation of the principle of equal treatment by public authorities.<sup>18</sup>

## Final remarks

The scope of rights of Ukrainian citizens in Poland, and thus the level of their social protection, is influenced by the status of individual persons and their family members with respect to the right of residence and access to the labour market within the territory of the Republic of Poland, as well as the basis for residence and, additionally, the period of residence in the territory of the Republic of Poland. With respect to particular benefits legal acts distinguish the legal position of foreigners from third countries (including Ukrainian citizens) in relation to the EU and EEA citizens in various ways. Against this background, there are visible problems for families whose members do not have identical status, *e.g.*, due to the Polish origin of only some of them.

There are practical problems with registration for social insurance and access to the social security system in the Republic of Poland. For example, many Ukrainian women work as nannies in households of Polish citizens who perceive the burden of registration for social insurance as excessive. Even if certain rights formally cover Ukrainian citizens and the obligations are similar to those applicable to Polish citizens, the detailed solutions prove too difficult to be applied in practice for ordinary families (or are subjectively perceived as such by the persons concerned). This applies in particular to the method of registration for social insurance and the calculation of the basis for contribution assessment (*e.g.*, when a family provides accommodation).<sup>19</sup> Many persons use this argument to justify resignation from the legal employment of Ukrainian citizens, even if it would bring benefits such as subsidising part of the social insurance contributions, as in the case of nannies.

Based on the above review of legal regulations, it would be difficult to conclude that they have adopted a uniform concept of integration of Ukrainian citizens in Poland in the field

17 See the judgement of the Voivodeship Administrative Court in Opole of 23 July 2015, II SA/Op 211/15 and the case-law referred to therein.

18 The judgement of the Voivodeship Administrative Court in Rzeszów of 9 September 2016, II SA/Rz 1643/15.

19 See Art. 3(3) of the Regulation of the Minister of Labour and Social Policy of 18 December 1998 on detailed rules for determining the basis for assessing contributions to pension insurance (consolidated text: Journal of Laws of 2017, item 1949).

of social security. Nevertheless, it seems that such a uniform concept should be adopted, communicated to Polish society and the Ukrainian community in Poland, with an attempt to convince them thereto. It is also a frequently occurring and very controversial topic in political discussions. Depending on the decision taken in the area of social policy, it would be possible to render the conditions for acquiring the right to social benefits in Poland more flexible or to renegotiate the Social Security Agreement, in particular to determine the rules for access of Ukrainian citizens residing in Poland (on various grounds) to health care benefits provided under health insurance and to determine the way in which the Ukrainian side would participate in their financing. However, both these solutions seem unlikely and one can expect the maintenance of the current approach, which strongly links the rights of foreigners with legal residence and legal work in the territory of the Republic of Poland. Such an approach is understandable from the point of view of attempts at maintaining legal order, however one can expect an increase in social problems related to the residence within the territory of Poland of persons and families with an irregular status. Methods of preventing such situations and the resulting problems need to be discussed. In view of the expected shortage of employees on the labour market and the declared needs for the work of Ukrainian citizens, an approach based on the current assumptions may not be sufficient to arrange practical situations desirably.

The European Union law in force in the Republic of Poland is an additional factor to be considered when adopting Polish legal acts. On the one hand, the citizens of Ukraine compare themselves with the citizens of the Member States residing and working in Poland, whose social rights are much broader. On the other hand, heated disputes over the relation of EU citizens' rights in the area of free movement and the obligations of Member States towards them in the social sphere have led to a clear distinction between citizens of other Member States moving for the purpose of work and those who do not move for that purpose. It was recognised that the Member States have quite broad competence in determining the social position of persons who do not stay in the territory of a given state in connection with performing work.<sup>20</sup> When making decisions on the social security of foreigners, including Ukrainian citizens, on its territory, the Polish legislator is obliged to take into account the EU legal framework.

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<sup>20</sup> See D. Dzienisiuk, *Glosa do wyroku TS z dnia 25 lutego 2016* [Commentary on the judgement of the Court of Justice of 25 February 2016], C299/14; *Glosa do wyroku TS z dnia 14 czerwca 2016* [Commentary on the judgement of the Court of Justice of 14 June 2016], C308/14, System Informacji Prawnej Lex oraz przywołane tam orzecznictwo; D. Thym, *The Elusive Limits of Solidarity: Residence Rights of and Social Benefits for Economically Inactive Union Citizens*, "Common Market Law Review" 2015, No. 52, pp. 33–36; H. Verschuere, *Preventing "Benefit Tourism" in the EU: A Narrow or Broad Interpretation of the Possibilities Offered by the ECJ in Dano?*, "Common Market Law Review" 2015, No. 52, p. 364.

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## **Wybrane problemy bezpieczeństwa socjalnego obywateli Ukrainy w Polsce zapewnianego poza powszechnym systemem ubezpieczeń społecznych**

Prawo do zabezpieczenia społecznego jest uznawane za prawo człowieka realizowane poprzez działania konkretnego państwa, a zatem trudne do zagwarantowania w sytuacjach złożonych pod względem przynależności państwowej lub miejsca pobytu poszczególnych osób i rodzin. Dla pożądanego uregulowania ich sytuacji państwa tworzą instrumenty prawne na szczeblu międzynarodowym lub ponadnarodowym. Istotna jest przy tym rola prawa krajowego. Niniejsze opracowanie przedstawia wybrane prawne aspekty zapewnienia bezpieczeństwa socjalnego obywatelom Ukrainy mieszkającym lub przebywającym w Polsce. Skupia się na świadczeniach pozostających poza zakresem powszechnego systemu ubezpieczeń społecznych, a więc głównie na świadczeniach socjalnych, które nie pozostają w bezpośrednim związku z aktywnością zawodową.

**Słowa kluczowe:** umowa dwustronna w sprawie zabezpieczenia społecznego, migracja cudzoziemców, bezpieczeństwo socjalne, system zabezpieczenia społecznego