
Citizens of Ukraine in the Polish social insurance system

This paper is an attempt to introduce the reader to the dynamics of changes in the registration of Ukrainians for the Polish social insurance system and to link this phenomenon first of all with the signing of the Polish-Ukrainian social security agreement and its entry into force in 2014. The author seeks an answer to the question as to whether there is a relationship between the increase in the number of persons of Ukrainian origin registered for social insurance in recent years and the entry into force of the aforementioned international agreement.

Key words: aggregation of periods, international migration, Polish-Ukrainian agreement on social security, social insurance, Ukrainians on the Polish labour market

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Introduction

Immigration to Poland is a much more recent phenomenon than the labour emigration of Poles to Western countries. Polish literature on the migration and staying of foreigners in Poland pays relatively much attention to the analysis of such areas as migration policy,¹ the legal and economic aspects of international migration (including their presence on the Polish labour market),² discrimination of foreigners,³ problems of adaptation and integration of foreigners in Poland⁴ or the individual problems of national and ethnic groups.⁵ There is no doubt, however, that economic reasons are the main reasons for the immigration of foreigners to Poland, and that Ukrainians are the most numerous group of foreign job-seekers in Poland.

In recent years, the situation on the Polish labour market has changed. Until recently, Ukrainians were present only in a few selected areas of the labour market: agriculture, horticulture, construction or domestic services. Moreover, work in these sectors was not registered in the vast majority of cases. At present, the growing numbers of Ukrainians are turning to other industries, such as the food industry (shop staff, salesmen), catering (waiters, bartenders), trade (employment in supermarkets, including DIY and horticultural supermarkets), other services, with the work they undertake being legal. When working legally, they are registered for social insurance and the social insurance contributions paid guarantee them social protection. These trends will certainly evolve, especially after the end of the downtime in the labour market caused by the COVID-19 epidemic.

The aim of this paper is to show the most important aspects of access as selected of foreigners from Ukraine into the Polish social insurance system.

The main research hypothesis, which the author undertakes to prove in this text, is that since 2014 there has been a steady increase in the number of Ukrainian citizens registered for social insurance. The basic question to be asked concerns the reasons for this situation. Being aware of the complexity of the problem of migration decisions and of numerous factors that affect these decisions (including, of course, the economic situation of the sending and receiving countries, the labour market situation of both countries, segmentation of these markets, adaptation of education systems to any changing

1 *Współczesne migracje: dylematy Europy i Polski. Publikacja z okazji 15-lecia Ośrodka Badań nad Migracjami UW*, ed. M. Duszczyk, M. Lesińska, Warszawa 2009.

2 B. Samoraj-Charitonow, *Pracownicy spoza Unii Europejskiej na polskim rynku pracy w okresie spowolnienia gospodarczego* [in:] *Polityka społeczna w kryzysie*, ed. M. Książkowski, C. Żołędowski, B. Rysz-Kowalczyk, Warszawa 2009; B. Samoraj-Charitonow, *Zatrudnić cudzoziemca legalnie. Zmiany prawne w 2009 r.*, "Monitor o Unii Europejskiej" September 2009.

3 W. Klaus, K. Wencel, *Dyskryminacja cudzoziemców w Polsce. Diagnoza sytuacji*, "ARE" 2008, No. 7; *Równość i dyskryminacja na polskim rynku pracy. Ustawodawstwo polskie w świetle dwóch dyrektyw Rady Unii Europejskiej*, "Prawo Europejskie w Praktyce" 2006, No. 5 (22)/May.

4 *Przystanek Polska. Analiza skuteczności programów integracji dla uchodźców w Polsce*, ed. J. Frelak, W. Klaus, J. Wiśniewski, Warszawa 2007.

5 S. Łodziński, *Równość i różnica. Mniejszości narodowe w porządku demokratycznym w Polsce po 1989 roku*, Warszawa 2005.

professional reality, the dynamics of labour market changes associated with the use of new technologies, access to social security systems – also to health care and social protection systems, but also the family situation, demographic and other factors), the author assumes that the number of Ukrainian citizens performing work in Poland has not changed significantly over recent years. On the other hand, the job structure has started to change (which is related to changes on the Polish labour market) with the process of leaving the shadow economy and of employment legalisation beginning. It is this last aspect that is reflected in the increase in the number of Ukrainian citizens registered for social insurance in recent years (especially after 2014). In the author's opinion, in view of the labour market changes, the upturn in the economy and the increased demand for the legal work of employees from beyond the eastern border, factors noticeable over the past few years and ones which have taken place in smoothly, it was the signing of the bilateral agreement on social security, which entered into force on 1 January 2014, that was a clear turning point, coinciding with a dynamic increase in applications to the social insurance system. Thus, according to another hypothesis, although the demand for the legal work of foreigners in Poland is not going to increase without a favourable situation on the labour market, the signing of the bilateral agreement (*i.e.*, aggregation of insurance periods and the perspective of receiving benefits from the system also for any period worked in Poland) is the key premise explaining the dynamic increase in the number of applications to social insurance after 2014.

The subject literature, the results of statistical analyses, materials from selected research projects relating to the work of Ukrainian citizens, which have been implemented in Poland in recent years,⁶ as well as legal acts have been employed in the analyses herein presented.⁷ The applied research methods can be defined as descriptive and comparative. Intensity and structure indicators have been also used as has a legal and dogmatic analysis, because in the author's opinion the legal position of foreigners (including Ukrainian citizens) in the Polish social insurance system should be distinguished by means of an analysis of the legal acts containing norms covering also the indicated group of foreigners. Therefore, account should be taken of the personal scope, *i.e.*, the catalogue of persons who are covered by social insurance, as well as the material scope, in order to determine what benefits are available under the social insurance system. Receiving a benefit from this system is closely related to the occurrence of a specific social risk and the fulfilment of conditions for acquiring the benefit.

6 For example, research carried out by the Institute of Social Policy at the Faculty of Political Science and International Studies of the University of Warsaw, research carried out by the Centre of Migration Research [Ośrodek Badań nad Migracjami] of the University of Warsaw or the Centre for International Relations [Centrum Stosunków Międzynarodowych].

7 *Ziemia obiecana? Warunki pracy cudzoziemców w Polsce*, ed. W. Klaus, Warszawa 2011; B. Samoraj-Charitonow, *Przedsiębiorczość kobiet na polskim rynku pracy na przykładzie cudzoziemek zatrudnionych nielegalnie w sektorze usług domowych*, 2007; *eadem*, *Rola instytucji rynku pracy w kształtowaniu pozycji cudzoziemców na rynku pracy w Polsce, przykład Ukrainek pracujących w Polsce jako pomoc domowa*, Warszawa 2005–2008; P. Sobiesiak-Penszko, *Niewidzialna siła robocza. Migranci w usługach opiekuńczych nad osobami starszymi*, Warszawa 2015; B. Samoraj-Charitonow, *Wybrane aspekty zatrudniania w Polsce cudzoziemek w szarej strefie*, 2015–2016.

The right to benefit from the Polish social insurance system

When considering the conditions for foreigners acquiring the right to benefits from pension insurance (old-age pensions, disability and survivor's pensions), as well as sickness and accident insurance (sickness allowances, maternity allowances, accident allowances), it is necessary to distinguish those legal acts which compose the social insurance system.

In Poland, Ukrainian citizens may benefit from the social insurance system if they are:

- subject to Polish social insurance legislation;
- covered by the European Union regulations on the coordination of social security systems, whereby every Ukrainian who stays in Poland and has employment here may not meet the condition of Polish citizenship if he/she is a citizen of any other Member State, or – not being a EU citizen – if he/she is a member of a citizen's family;
- covered by the provisions of the Polish-Ukrainian agreement on social security;
- registered for social insurance and have paid contributions in due course.

When considering the entitlement to benefits from the social insurance system to which the Ukrainian citizens are entitled, attention should be paid to the specific relationship between the materialisation of a given risk and participation in the social security system. Insurance participation is closely related to legal gainful employment – whether in the form of work based on an employment relationship, a civil law contract or some business activity (sole proprietorship).⁸

Benefits are payable on the conditions and in the amount specified under Polish legislation. They are paid from the Social Insurance Fund [Fundusz Ubezpieczeń Społecznych, FUS], which is managed by the Polish Insurance Institution [Zakład Ubezpieczeń Społecznych, ZUS] and are due both to the insured person and the survivors or survivors of any person eligible for cash benefits from pension insurance.⁹ The insured person¹⁰ is defined as a person who is subject to pension insurance,¹¹ as well as a person who has been subject to social insurance or pension provision before the date of entry into force of the Act, excluding social insurance for farmers. The second part of the definition refers to persons whose insurance situation before 1 January 1999 was governed by the laws listed in Art. 195(1)-(8) of the Act of 17 December 1998 on pensions from the Social Insurance Fund (hereinafter also referred to as: the Pension Act). A person who is only subject to sickness insurance may also be defined as the insured person.

Pursuant to the Act of 13 October 1998 on the social insurance system (Journal of Laws 1998 No. 137, item 887), the following are covered by compulsory pension insurance: employees (excluding public prosecutors), out-workers, members of agricultural

8 J. Jończyk, *Prawo zabezpieczenia społecznego*, Zakamycze 2006, p. 14.

9 Art. 2 of the Act on pensions from the Social Insurance Fund; see also: I. Jędrasik-Jankowska, K. Jankowska, *Prawo do emerytury (komentarz do ustaw z orzecznictwem)*, Warszawa 2011, p. 26 *et seq.*

10 G. Szpor, *System ubezpieczeń społecznych (zagadnienia podstawowe)*, Warszawa 2009, p. 147.

11 Art. 4(1) of the Act on the social insurance system.

production cooperatives and cooperatives of agricultural circles, persons carrying out non-agricultural activity and persons cooperating with them, persons carrying out work under agency or mandate contracts or another contract for the provision of services, which, in accordance with the Civil Code, is covered by regulations on mandate contracts, and persons cooperating with them.¹²

The Act on the social insurance system also provides for the right to voluntary insurance for the spouses¹³ of employees who are sent to work in diplomatic missions, consular posts, permanent representations to the United Nations and other special missions abroad, institutes, information and cultural centres abroad; persons who, because of the care of a family member who meets the conditions for being granted a nursing allowance, are not subject to pension insurance; students and participants in doctoral studies if they are not covered by pension insurance under another title; alumni of clerical seminars, novices, postulants and juniors up to the age of 25; applicants who, under unpaid civil law contracts, undergo adaptation internships in the procedure for the recognition of qualifications to pursue a regulated profession or activity – within the meaning of the provisions on the recognition of professional qualifications acquired in the Member States of the European Union; Members of the European Parliament elected in the Republic of Poland.

When looking at the above range, it is necessary to distinguish those functions which constitute any title of insurance not attainable for those with citizenship other than Polish.

If a Ukrainian citizen is not insured, they may apply for pension benefits under the Act on pensions from FUS as a family member of the insured person. The term “family member” refers to survivors – *i.e.*, persons who are entitled to pension benefits after the death of the insured person or a person eligible for benefits. The term “survivors” is important here: it suggests under what circumstances a family member is entitled to benefits, *i.e.*, in the event of the death of an insured person or a person eligible for benefits, irrespective of being subject to such insurance, *i.e.*, having (or not) the status of an insured person. However, this is not entirely accurate. This is due to the fact that family members are also entitled to social insurance benefits if they are indicated as recipients of benefits by persons during a period of the deprivation of liberty or temporary detention.¹⁴

The term “family member” covers persons who are connected with the insured person (with the entitled person, beneficiary) through a relationship of kinship, affinity, marital status and closeness. The following may constitute entitled persons after whose death a family member acquires the right to benefits:

- a) persons meeting the conditions required to obtain benefits from social insurance, *i.e.*, insured persons or persons not subject to pension, sickness and accident insurance at the time of meeting the conditions, who do not exercise their rights, or

12 Art. 6 of the Act on the social insurance system, which contains an extensive catalogue of persons who are covered by compulsory pension insurance.

13 Art. 7 of the Act on the social insurance system.

14 Art. 2 of the Pension Act; see also: I. Jędrasik-Jankowska, K. Jankowska, *op. cit.*, p. 27.

- b) persons who have an established right to these benefits, *i.e.*, pensioners who have claimed a benefit and the pension authority has established their right to a pension by decision, however, they do not have to exercise their rights – they may confine themselves to establishing the right (*i.e.*, calculating the amount of the benefit) or not receive the benefit due to its withdrawal/suspension.

Recipients of pensions are also defined as entitled persons¹⁵.

Acquisition of rights by Ukrainian citizens to social insurance benefits

The rules for determining the rights to pension benefits payable from FUS in accordance with the applicable regulations are laid down in the Pension Act. The Act defines the conditions for acquiring the right to cash benefits from pension insurance, the rules for determining the amount of these benefits, as well as the methods and procedures of their granting and payment.

The specific types of long-term benefits from pension insurance, which are paid out exclusively from the Social Insurance Fund, include:¹⁶ old-age pension from the so-called “old” pension system for insured persons born before 1 January 1949 and for some insured persons born after 31 December 1948 and before 1 January 1969, who have fulfilled certain conditions;¹⁷ old-age pension instead of disability pension – after the pensioner has reached the retirement age of 60/65 years; mining pension – after the pensioner has reached the retirement age and has proved an appropriate period of mining work or the very period of underground mining work in the case of an old-age pension granted irrespective of age; disability pension – after a ZUS certifying doctor/medical board has issued a certificate of incapacity for work, after proving an appropriate period of insurance (contributory and non-contributory), with the exception of situations when the incapacity for work was caused by an accident on the way to or from work and after the incapacity for work has occurred within the required periods or no later than 18 months from their cessation; survivor’s pension – after the fulfilment of certain statutory conditions by members of the deceased’s family, *i.e.*, one’s own children, children of the second spouse and adopted children, children accepted for upbringing and maintenance before reaching the age of majority, grandchildren, siblings and other children, including within

¹⁵ *Ustawa o emeryturach i rentach z Funduszu Ubezpieczeń Społecznych (komentarz)*, ed. K. Antonów, Warszawa 2009, pp. 39–40.

¹⁶ I. Jędrasik-Jankowska, K. Jankowska, *op. cit.*, p. 31 *et seq.*

¹⁷ According to Art. 46–47 and 50 of the Pension Act, until the end of 2008 – reaching the retirement age and demonstrating an adequate period of insurance (contributory and non-contributory periods and, in the case of some categories of persons, periods of work in special conditions or of a special nature) or the period of insurance in case of the old-age pension granted for teachers regardless of age.

the foster family, spouses (widow and widower) and parents (here also stepfather, stepmother, adopter).¹⁸

In accordance with the legal status in Poland, it should be stated that the only legal criterion on which the possibility of taking advantage of these benefits by foreigners, including Ukrainian citizens, depends, is the criterion of being covered by social insurance and participating in the system (registration and fulfilment of the conditions specified by law, among which there is no *sine qua non* condition of holding Polish citizenship). Therefore, these are entitlements which cover to the same extent and scope both persons with Polish citizenship and foreigners (including foreigners of Ukrainian origin) – both within the rules of participation in the Polish social insurance system, acquiring the right to benefits, determining the amount of the benefit, overlapping of rights, and revocation of rights or indexation of benefits.

Polish-Ukrainian agreement on social security

Bilateral social security agreements concluded by Poland open up an additional way for foreigners to acquire the right to pension benefits paid from FUS. Thanks to the basic principles of coordination of social security systems contained therein, a foreigner is treated in the Polish pension system on an equal footing with a Polish citizen. This is due to the fact that the coordination of the systems is based on four main pillars, *i.e.*, principles of: equal treatment, application of a single legislation, aggregation of insurance periods and maintenance of acquired rights (export of benefits). According to the provisions of the bilateral social security agreements which are based on the above mentioned coordination principles, a citizen of another country who has not completed the required periods of insurance to acquire the right to a pension exclusively on the basis of the Polish social insurance system, but who can demonstrate periods completed in the countries with which Poland has concluded these agreements, is treated by the Polish pension system as if they had completed all the periods of insurance in Poland.

This legal protection allows for all periods of insurance completed in countries with which Poland has concluded social security agreements to be aggregated in order to acquire the right to a benefit. The same applies to the establishment of the right to an old-age, disability or survivor's pension. These benefits are guaranteed by the material scope of bilateral social security agreements. This means that the materialisation of risks and taking into account the insurance periods in both countries covered by the agreement allows foreigners to claim the right to a pension.

To sum up, in the event of the migration of foreign citizens to Poland, if their home countries have concluded social security agreements with Poland, the legal position of

18 I. Jędrasik-Jankowska, K. Jankowska, *op. cit.*, pp. 34–36.

the foreigner and the Polish citizen has been equalised with regard to participation in the social insurance system. Each state is obliged to establish benefits as if all events covered by these agreements took place on its own territory.

An agreement on social security between the Republic of Poland and Ukraine was signed on 18 May 2012 (Journal of Laws of 2013, item 1373) and entered into force on 1 January 2014. Its personal scope covers citizens of the contracting states and persons who are not citizens of those states (third-country citizens, refugees, stateless persons), who are or have been subject to the legislation of at least one contracting state and are in a situation with the so-called international element (*i.e.*, a situation concerning both contracting states). The agreement also applies to the survivors of the above mentioned persons claiming a survivor's pension. For the purposes of being covered by the Polish-Ukrainian agreement, it does not matter in which country the person concerned resides.

The material scope of the agreement on the Polish side covers the following money benefits from social insurance: old-age pensions, disability benefits due to general health condition, survivors' pensions, benefits due to accidents at work and occupational diseases, funeral grants and sickness and maternity benefits. However, the agreement on the Polish side does not apply to, *inter alia*, health benefits in kind, benefits from the pension scheme of uniformed services, salaries of retired judges and prosecutors, social assistance benefits, benefits for combatants, benefits for victims of war and its consequences (including pensions for war and military invalids), social pensions, pre-retirement benefits.

On the Ukrainian side, the Polish-Ukrainian agreement applies to the general state social insurance concerning: sickness (temporary incapacity for work), pregnancy and childbirth (maternity), accidents at work, occupational diseases or death due to these causes, unemployment, old-age and disability pensions, loss of the breadwinner, seniority, in accordance with the legislation on the general state pension insurance and funeral grant.

The agreement contains regulations preventing simultaneous social insurance coverage in two contracting states (double insurance). Its provisions indicate the state whose social insurance legislation is applicable to the person who performs work simultaneously in both contracting states.

The specific provisions of the Polish-Ukrainian agreement concerning old-age, disability pensions due to general health condition and survivors' pensions after the death of persons eligible for these benefits are based on standard coordination principles: equal treatment, aggregation of contribution periods, maintenance of rights during acquisition, maintenance of acquired rights and cooperation between the institutions of the contracting states.

Thus, in accordance with the principle of equal treatment, unless otherwise provided for in the agreement, persons covered thereby enjoy the same rights and are subject to the same obligations under the legislation of each contracting state as is the case for its nationals. This means that the Polish-Ukrainian agreement prohibits direct and indirect discrimination. Direct discrimination occurs when the laws of one state explicitly

limit access to benefits or their payment on the grounds of nationality or residence. And indirect discrimination occurs when the laws of one state provide for conditions for the acquisition of the right to benefits or for their payment that are difficult for non-nationals to meet, or when they provide for conditions that are apparently non-discriminatory but whose application has discriminatory effects. Another important principle resulting from the provisions of the Polish-Ukrainian agreement concerning pensions is the principle of the maintenance of rights during acquisition, on which the techniques of the recognition of events and circumstances and of taking into account foreign insurance periods are based. According to the Polish-Ukrainian agreement, if the facts and events which affect the acquisition of the right to a pension, as well as the suspension of payment of these benefits or their amount, have occurred in the territory of one state, they are taken into account as if they have also occurred in the territory of the other state.

The technique for the recognition of events and circumstances has been formulated explicitly in the Polish-Ukrainian agreement. For this reason, for example, the right to an old-age pension established by ZUS is suspended regardless of the amount of income received by the pensioner from continued employment without prior termination of the employment relationship, because the Polish-Ukrainian agreement requires the termination of the employment relationship established with the employer in Ukraine.

The most important instrument resulting from the agreement is the technique of taking into account foreign insurance periods, which is used in determining old-age pensions, disability pensions due to general health condition and survivors' pensions for persons entitled to these benefits. It consists in aggregation of foreign insurance periods completed in the other contracting state when determining the right to benefits and calculating their amount. Therefore, if, when determining the right to a Polish old-age pension, a disability pension due to general health condition and a survivor's pension, it turns out that the Polish period of insurance is too short to acquire such a right, the Polish competent institution will also take into account Ukrainian periods of insurance which do not overlap with Polish ones. If, on the other hand, the Ukrainian period of insurance is insufficient to acquire the right to a Ukrainian pension, the Ukrainian competent institution will take into account Polish periods of insurance that do not overlap with the Ukrainian periods.

In addition, the agreement provides for taking into account, in specific cases, insurance periods completed in a third country, *i.e.*, a country that is not a party to the agreement. It follows from the Polish-Ukrainian agreement that if after aggregating the Polish and Ukrainian periods of insurance a person does not acquire the right to a pension, the insurance institution of the contracting state takes into account the period of insurance completed in a third-party country with which both contracting states are bound by an international agreement providing for the aggregation of insurance periods. It should be noted that this concerns only the aggregation of periods from such third-party countries with which both contracting states have concluded international agreements providing for the aggregation of insurance periods. In this respect, the term "international agreements" includes, on the Polish side, not only bilateral international agreements in the

field of social insurance binding Poland, but also EU regulations on the coordination of social security systems.

Thus, when determining the right to a pension, the Polish institution determines in the first instance the periods of insurance to be taken into account which were completed in Poland, their type and size, as well as the order in which they are to be taken into account as determined by Polish legislation. Then, if the periods of insurance completed in Poland are not sufficient to acquire the right to a Polish benefit, the Polish institution shall aggregate, on the basis of the Polish-Ukrainian agreement, the periods of insurance completed in Ukraine, and if they are also insufficient when aggregated, it shall additionally take into account periods from third-party countries with which Poland and Ukraine are bound by agreements providing for aggregation of insurance periods.

If the entitlement to Polish benefits depends on the completion of periods of insurance in a particular profession (for example, miner, teacher) or employment (for example, work in special conditions or of a special nature), the Polish institution shall take into account, on the basis of the Polish-Ukrainian agreement, the Ukrainian periods of insurance completed in these forms of work. On the basis of the Polish-Ukrainian agreement, insurance periods completed in Ukraine are taken into account when determining the right to a Polish old-age pension, a disability pension due to the general health condition, even if their aggregation is possible upon meeting the condition of the occurrence of insurance risk while being insured or meeting the condition of the duration of insurance periods within a certain period of time.

In the case of a benefit depending on incapacity for work, the competent institution of each contracting state shall determine the degree of incapacity for work in accordance with the legislation it applies. This means that Polish competent institutions are not bound by the findings regarding any incapacity for work made by the Ukrainian insurance institution.

The rules for calculating the amount of an old-age pension, disability pension due to general health condition and the survivor's pension under both agreements are similar. Where insurance periods completed in both contracting states are aggregated for the purpose of determining the right to benefit, benefit calculation is also based on the aggregated insurance periods completed in both states. In order to calculate this benefit, the competent institution establishes the theoretical amount of the benefit which a person concerned could claim if all the periods of insurance had been completed under the legislation applied by that institution, and then the actual amount (the so-called *pro rata* benefit) on the basis of the theoretical amount. To this end, the theoretical amount is multiplied by the so-called proration factor, *i.e.*, the fraction reflecting the ratio between the period of insurance completed in one contracting state and the total duration of the periods completed in both states.

The competent institution calculates the *pro rata* benefit in this way not only if the right to a pension has been acquired only after taking into account foreign insurance periods completed in the other state, but also if the benefit calculated using the mechanism of

the aggregation of insurance periods is higher than the benefit determined for an “own” insurance period alone. If the period of insurance completed in one contracting state is sufficient to acquire the right to a pension, the competent institution:

- first of all, calculates the amount of the national benefit in respect of periods of insurance completed exclusively in the state whose institution determines the benefit;
- secondly, calculates the amount of the *pro rata* benefit, taking into account foreign periods of insurance completed in the other state;
- then compares the amount of the national benefit and the *pro rata* benefit in order to choose the more favourable option for the person concerned.

If, when determining the right to the above-mentioned benefits, the competent institution took into account the insurance period completed in a third country with which both contracting states have concluded an international agreement providing for the aggregation of insurance periods, these insurance periods are also taken into account when determining the amount of the *pro rata* benefit (in the theoretical amount of the benefit and in the denominator of the proration factor). It should be noted that the principle of taking into account foreign periods of insurance provided for in the agreement does not apply for the calculation of an old-age pension, whose amount does not depend on the duration of insurance periods.

In addition, it should be noted that, pursuant to the provisions of the Polish-Ukrainian agreement, where a Polish period of insurance is shorter than one year and based on that period there will be no eligibility for the Polish pension, the competent institution is not under any obligation to award such benefits. Similarly, if the Ukrainian period of insurance is shorter than one year and based on that period there will be no eligibility for the Ukrainian pension, the competent institution is not under any obligation to award such benefits.

On the other hand, if the Ukrainian insurance period being shorter than one year was taken into account when determining the right to the Polish pension, the Polish institution calculates the amount of the Polish pension in a proportional amount – reflecting the ratio between the duration of the Polish insurance period and the total duration of the Polish and Ukrainian insurance periods.

The agreement covers pensions in respect of accidents at work and occupational diseases. According to the agreement, these benefits are granted under Polish legislation if the insured person was subject to Polish legislation at the time of an accident at work or during the performance of official duties resulting in an occupational disease. The amount of these benefits is calculated on the basis of the national legislation of the contracting states only. The agreements do not modify the national legislation in this respect, but they contain regulations on the aggravation of an occupational disease in accordance with the legal provisions of the first contracting state during the performance of work in the territory of the second state, which may aggravate this disease. In such a case, the agreement provides that the institution of the first state continues to pay the benefit granted without taking into account the aggravation of the insured person’s health

condition. And the institution of the second state grants a benefit equal to the difference between the amount of the benefit which is payable after the aggravation of the occupational disease and the amount of the benefit which would have been granted before its aggravation, in accordance with the legislation it applies.

Under the provisions of the Polish-Ukrainian agreement, benefits awarded before its entry into force may – at the request of the person concerned – be re-established in accordance with the agreement if the change results exclusively from its provisions. However, this cannot be done for the period before the date of entry into force of the agreement. The re-establishment of a pension from ZUS on the basis of the agreement at the request of the party concerned relates to:

- persons who are not Polish repatriates from Ukraine and who can demonstrate periods of insurance in Poland or in Ukraine (regardless of their place of residence) and to whom a previous benefit from ZUS or from a Ukrainian institution has been determined – in the absence of an agreement between those states – on the basis of periods of insurance completed in only one state, or who have been refused a pension due to too short a period of insurance completed in one state;
- Polish repatriates from Ukraine for whom, before the entry into force of the agreement, periods of employment in Ukraine were taken into account as Polish insurance periods, when determining the right to and the amount of the Polish pension.

The pension granted to Polish repatriates from Ukraine before the entry into force of the agreement is also re-established *ex officio* (after ZUS receives information that the repatriate has been granted the right to a Ukrainian pension).

The discussed Polish-Ukrainian agreement also provides for the transfer of benefits to beneficiaries residing in the other contracting state. This means that upon the request of a beneficiary residing in Ukraine, the Polish pension may be transferred to his/her bank account in Ukraine. And the Ukrainian pension may be transferred to Poland by the insurance institutions of these states to a person residing in Poland. On the Polish side, however, the principle of benefit transfer in both agreements does not apply to *e.g.*, benefits awarded under a special procedure or by way of exception.

The number of foreigners in social insurance

In recent years, there has been a constant increase in the number of foreigners registered for the Polish social insurance system. This situation is illustrated by the data presented in Table 1.

The data presented in Table 1 clearly show that the number of foreigners registered for social insurance has systematically increased for several years. However, it is amongst citizens of Ukraine that the highest growth dynamics can be observed. This situation is illustrated by Graph 1.

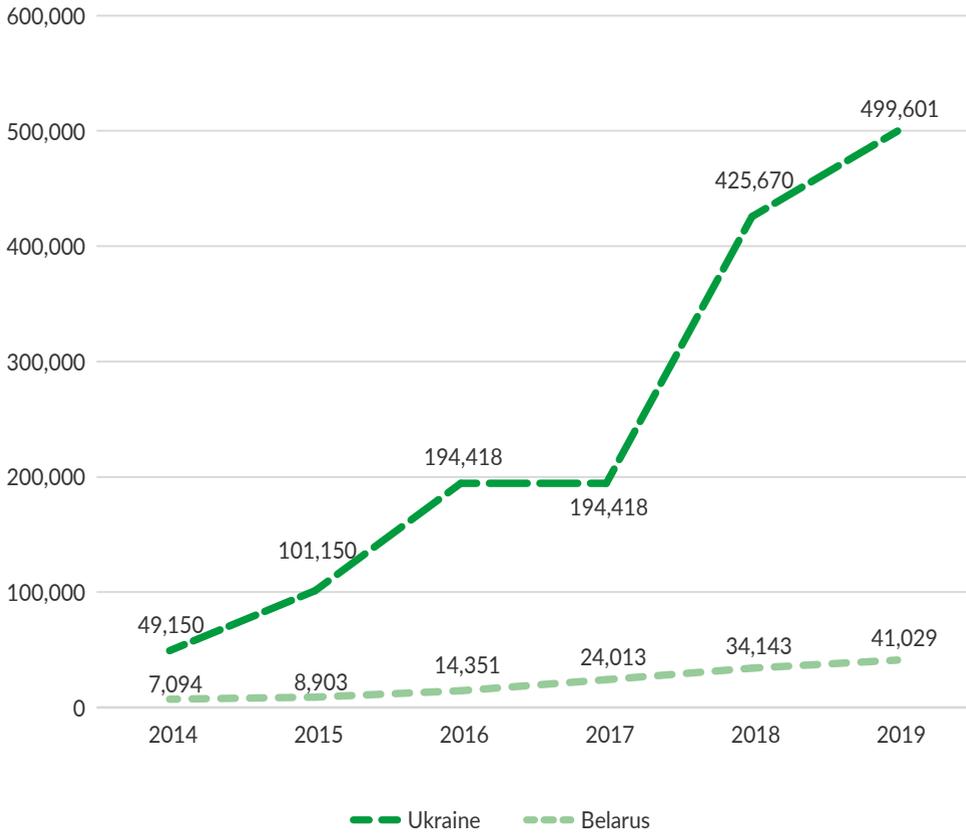
Table 1. Number of foreigners registered for pension insurance by country of citizenship – as of the end of the year (selected nationalities)

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018*
Total	65,041	69,813	78,608	88,423	93,012	101,083	124,349	184,188	293,188	440,255	569,724
Citizenship of EU countries	16,350	17,138	19,048	20,591	22,242	24,656	27,349	29,421	31,694	34,116	35,581
Citizenship of non-EU countries, of which:	48,691	52,675	59,560	67,832	70,770	76,427	97,000	154,767	261,494	406,139	533,535
Ukrainian	16,237	18,602	21,777	27,659	29,713	32,989	49,150	101,150	194,418	316,474	425,670
Belarusian	4,184	4,320	4,927	5,512	6,035	6,387	7,094	8,903	14,351	24,013	32,632
Vietnamese	3,004	3,481	3,951	4,451	4,655	5,267	6,041	6,146	6,528	7,592	8,101
Moldovan	789	643	817	967	994	1,217	1,767	2,628	5,024	6,510	7,337
Russian	3,018	3,201	3,448	3,558	3,661	3,832	4,178	4,692	5,691	6,654	7,255

* As of 30 September 2018.

Source: ZUS data 2018

Graph 1. Number of foreigners registered for pension insurance by country of citizenship – as of the end of each year (selected nationalities)

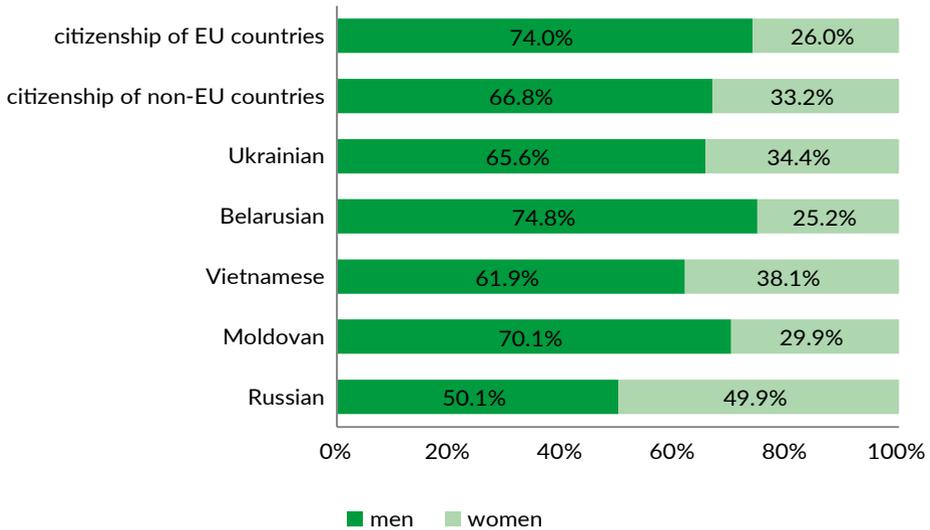


Source: ZUS data

In 2019 (as of 30 September), 665,602 foreigners, including 499,601 Ukrainian citizens, were registered for social insurance. This means that in relation to 2014 (changes in regulations on access to the labour market and entry into force of the Polish-Ukrainian bilateral agreement on social security) this is a 10-fold increase. It should be emphasised that this increase concerns the last six years (2014–2019). Within a few dozen years no such dynamic growth has been recorded in relation to any other nationality. However, the question arises whether these are newcomers from Ukraine or whether we are dealing with the legalisation of the long-term economic migration to Poland, which has so far been maintained in the shadow economy (builders, carers, people working in horticulture and agriculture). It seems that these are mostly new immigrants, however, though an answer to this question requires in-depth empirical research.

In the case of most nationalities, the majority of immigrants are men (about 2/3 of the total population). Only in the case of those of Russian nationality is this number more or less an even divide. This situation is illustrated by Graph 2.

Graph 2. Foreigners in the Polish social insurance system by gender (as of 30 September 2018)



Source: ZUS data

It is worth noting, however, that the number of women from Ukraine exceeds 1/3 and constitutes almost 35% of the total population of Ukrainians working in Poland. However, it should be borne in mind that the considerations apply to persons registered for social insurance, *i.e.*, working legally. At present, employers very often register for social insurance persons employed in transport or construction services due to the high risk of accidents at work (construction) or the control of employment legality (transport, especially international). On the other hand, care services and house cleaning remain in the shadow economy, and this sector is dominated by women from Ukraine. As of 30 September 2019, only five people were registered in this sector¹⁹ for pension insurance, all of whom were Ukrainian nationals. According to an analysis of unofficial job placement services, the market for care services and house cleaning is still largely dominated by Ukrainians, hence it can be assumed that the actual gender distribution of people working in Poland and coming from Ukraine is closer to an equal balance (half women, half men).

If one looks at the distribution of foreigners registered for pension insurance in Poland, in each of the analysed periods by voivodship, the highest number of persons (as of 30 September 2018) were registered in voivodships: Masovian (93,574), Lower Silesian (43,924), Greater Poland (42,831) and Silesian (35,129). These voivodships have dominated for many years in their reception of foreigners and no changes have been observed here (of course, except for the increase in numbers). This is shown in Table 2.

¹⁹ Section of the Polish Classification of Activities [Polska Klasyfikacja Działalności, PKD]: *Households as employers of domestic personnel, goods- and service-producing activities of private households for own use.*

Table 2. Number of foreigners registered for pension insurance by voivodship – place of residence of the insured person – as of the end of each year

Voivodship	2015	2016	2017	2018*
Total	184,188	293,188	440,255	569,116
Lower Silesian	14,588	21,980	34,873	43,924
Kuyavian-Pomeranian	4,576	6,195	10,346	13,340
Lublin	3,630	5,238	6,575	10,192
Lubusz	3,952	7,081	10,825	13,878
Łódź	7,406	11,202	17,123	22,475
Lesser Poland	10,497	15,748	21,847	27,687
Masovian	43,200	55,571	77,493	93,574
Opole	3,501	5,471	8,566	10,141
Podkarpackie	2,805	3,853	5,496	6,947
Podlaskie	3,195	3,890	5,673	7,176
Pomeranian	6,522	11,786	17,174	23,916
Silesian	8,997	16,549	26,527	35,129
Świętokrzyskie	1,779	2,374	3,065	3,957
Warmian-Masurian	2,073	3,523	5,668	6,881
Greater Poland	11,472	20,689	32,542	42,831
West Pomeranian	5,210	9,186	13,760	18,314
Undetermined	50,785	92,852	142,702	188,754

* In 2018 as of the end of September.

Source: ZUS data

It is also worth noting that a large number of foreigners taking up employment in Poland and registered for pension insurance are people employed on the basis of the most “safe” and “social” form of employment, which is the employment contract according to the Labour Code. In the case of persons of EU Member States nationalities, this group constitutes as much as $\frac{3}{4}$ of all employees registered for pension insurance. Similar figures apply to foreigners from: Vietnam (77.2%), Russia (74.8%) or Belarus (69.7%). Among people of Ukrainian and Moldovan nationality, these proportions are not yet as favourable. Only half of Ukrainians are employed on the basis of employment contracts and the remaining part on the basis of civil law contracts, while fewer than 40% of Moldovans work on the basis of the Labour Code, and the remaining part – almost 60% – on the basis of civil law contracts. This situation is illustrated in Table 3.

Table 3. Structure of foreigners registered for pension insurance by country of citizenship and selected insurance titles (as of 30 September 2018)

Citizenship	Employees	Persons running business outside the agriculture	Persons performing work on the basis of civil law mandatory or agency contracts	Unemployed
Russian	74.8%	9.1%	14.9%	1.2%
Moldovan	39.3%	0.7%	59.9%	0.1%
Vietnamese	77.2%	12.8%	9.9%	0.1%
Belarusian	69.7%	3.9%	26.0%	0.4%
Ukrainian	51.8%	0.9%	47.1%	0.2%
Citizenship of non-EU countries	55.4%	2.2%	42.2%	0.2%
Citizenship of EU countries	68.7%	17.5%	13.4%	0.4%

Source: ZUS data

The situation discussed above, related to the registration for insurance under which long-term benefits (pensions) are paid, is similar to the circumstances of registration for insurance under which short-term benefits can be obtained. Sickness insurance, under which it is possible to take advantage of sickness allowances (stoppages at work due to sickness and other random events listed in the Sickness Act), maternity, rehabilitation, compensatory or care allowances, also records a significant increase in the number of applications. Over the past four years, there has been an almost threefold increase in the number of applications for sickness insurance, with the highest increase being observed among non-EU citizens. Among people coming from countries covered by the coordination of social security systems and free movement of goods, services and workers, in the period between 2015 and 2018 we can observe an increase in the number of applications for sickness insurance by only less than 20%, while in the case of foreigners coming from third-party countries the increase is more than ten times higher and exceeds 200%. Ukrainians are characterised by the highest dynamics of applications for sickness insurance among all nationalities. In their case, the period of 2015–2018 saw an increase in applications by almost 300%, from 66,861 in 2015 to 263,804 in 2018. This situation is presented in Table 4.

Table 4. Number of foreigners registered for sickness insurance by country of citizenship (as of the end of each year)

	2015	2016	2017	2018*
Total	137,723	207,193	299,089	378,816
Citizenship of EU countries	23,855	25,675	27,425	28,861
Citizenship of non-EU countries of which:	113,868	181,518	271,664	349,955
Ukrainian	66,861	123,591	197,232	263,804
Belarusian	7,704	12,017	19,299	25,372
Vietnamese	5,762	6,108	6,952	7,364
Moldovan	2,280	4,017	4,340	3,963
Russian	3,920	4,795	5,574	6,036

* In 2018 as of the end of September.

Source: ZUS data

Among all those covered by sickness insurance in 2019,²⁰ most people took advantage of sickness allowances (1,321 persons), of which almost 77% were of Ukrainian origin (1,007 persons). Also as regards all other benefits from sickness insurance, Ukrainians constituted the majority of beneficiaries. This situation is presented in Table 5.

Table 5. Number of insured persons who declared non-Polish citizenship and who in the period from January to September 2019 received a short-term benefit

Citizenship	Sickness allowance	Maternity allowance	Rehabilitation benefit	Care allowance
Total	1,321	282	44	341
Ukrainian	1,007	181	28	235

Source: ZUS data

Therefore, it should be noted that both foreigners from European Union countries and third-party country nationals are increasingly visible in the Polish social insurance system. Among the third-party country nationals, the most numerous group are Ukrainian citizens, who dominate both among persons registered for social insurance and among persons taking advantage of short-term benefits. The number of old-age pension recipients is currently small, but taking into account the increase in the number of persons registered for pension insurance, it can be expected that within the perspective of several years the number of old-age pension recipients will increase. Today, the basic condition for determining the right to an old-age pension is to register for insurance and pay at least

²⁰ The data refer to the period until 30 September 2019.

one contribution, but it is necessary to collect as many contributory periods as possible, so that the benefit has any real income dimension.

In connection with the epidemic caused by COVID-19 and the closure of many workplaces in March and April 2020, and – as a result – a mass exodus of Ukrainians from Poland, it is currently difficult to predict how many contributory periods will be completed by Ukrainian employees and how much they will pay by means of contributions. As a result, it is difficult to assess the amount of old-age pensions from the Polish pension system for Ukrainians, but this is certainly a situation that requires monitoring in the upcoming years.

Summary

The analyses covering the participation of foreigners in the Polish social security system show that in recent years the number of persons registered for social insurance who have non-Polish citizenship has been systematically growing. The analyses of the number of Ukrainians registered for the system show clearly that since 2014, when the bilateral agreement on social security came into force, with its provisions allowing for the aggregation of insurance periods and the possibility to benefit from the Polish social insurance system, their number has been increasing not only systematically, but also very dynamically, considerably exceeding foreigners of other nationalities.

Allowing Ukrainians to participate in the Polish social insurance system has had a great impact both on the legalisation of previously undeclared work and on new migration decisions and “new” arrivals of Ukrainians to Poland. It was, *inter alia*, thanks to the provisions of the last bilateral agreement that it was possible to fill the shortages on the Polish labour market, where the lack of a domestic labour force is more and more noticeable in a growing number of industries.

However, it seems worthwhile to launch additional instruments of active migration policy and try to introduce facilitations for professional groups where we still experience shortages, such as doctors. There is a shortage of specialist doctors in Poland, further outpatient care facilities and hospitals are being closed. This finding also leads to the conclusion that it is necessary to accelerate work on a government document which would set out the main directions and assumptions of Polish migration policy. This would allow one to develop a real and systematic method of filling the shortages on the labour market. These actions seem even more urgent as the downtime on the labour market in Poland caused by the COVID-19 epidemic will have huge negative consequences for the Polish economy.

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Obywatele Ukrainy w polskim systemie ubezpieczeń społecznych

Artykuł stanowi próbę przybliżenia czytelnikowi dynamiki zmian w zakresie zgłaszania Ukraińców do polskiego systemu ubezpieczeń społecznych oraz powiązania tego zjawiska przede wszystkim z podpisaniem i wejściem w życie w 2014 r. polsko-ukraińskiej umowy o zabezpieczeniu społecznym. Autorka szuka odpowiedzi na pytanie, czy istnieje relacja między wzrostem liczby osób pochodzenia ukraińskiego zgłaszanych w ostatnich latach do ubezpieczeń społecznych a wejściem w życie wspomnianej umowy międzynarodowej.

Słowa kluczowe: sumowanie okresów, migracje międzynarodowe, polsko-ukraińska umowa o zabezpieczeniu społecznym, ubezpieczenia społeczne, Ukraińcy na polskim rynku pracy