

# Disability, Unemployment, Immigration: Does Solidarity Matter in Times of Crisis? The Polish Case<sup>1</sup>

*Janina Petelczyc*

## *Introduction*

“Solidarity in its legal forms in three areas – labour, disabilities and migration – has been challenged by socio-economic development. On the one hand, the economic crisis has not officially affected Poland; the country did not have a huge influx of immigrants during the “European refugee crisis” either. But on the other hand, growing numbers of vulnerable citizens on the labour market, difficult situations regarding disabled people as well as new waves of migrants, especially from Ukraine, in addition to the discussion on accepting refugees have put the principle of solidarity to the test. This begs the question: is solidarity a real and important principle in the country of “Solidarity”?”

The Polish economy has been relatively resistant to the global economic crisis. With a GDP increase of 19% during the period of 2008-2014, Poland’s GDP growth level was ranked first in the EU (ETUI 2015). In 2009, the ruling party Platforma Obywatelska (PO, Civic Platform) introduced the public discourse regarding Poland as a “green island” of economic growth in the midst of falling GDP elsewhere in the EU. However, the opposition and some economics experts have contested this rhetoric (Modrzejewski 2011; Reichardt 2011; Rae 2013; Mrozowski 2014).

Poland developed its response model to the European economic crisis by using various economic and social policy instruments and taking advantage of its EU membership (Duszczyk 2014). However, despite Polish GDP growing during the crisis, the country is still in the process of catch-

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ing up with the economies of western EU countries. Poland’s GDP per capita in purchasing power parity is still the fifth lowest in the European Union, and Poland has yet to reach the economic standards of the western EU member states (Reichardt 2011). Moreover, the country has been undergoing various economic, social and political problems (such as massive precarious employment among youth, migration outflows and political scandals due to secret recordings in 2014) which could have contributed to the victory of the right-wing party Prawo i Sprawiedliwość (PiS, Law and Justice) with an overwhelming majority in the 2015 parliamentary election.

Core indicators of Poland’s economic situation are presented in the tables below. The continuous GDP growth slowed in 2008/2009 and 2012/2013 (during the first and second waves of the crisis). The slowdown, however, was transitory and milder than in the other EU member states.

Table 1: Real GDP growth rate – volume in Poland

	2008	2009	2010	2011	2012	2013	2014	2015
<b>Poland</b>	4.2	2.8	3.6	5.0	1.6	1.4	3.3	3.9
<b>EU 28</b>	0.4	-4.4	2.1	1.7	-0.5	0.2	1.6	2.2

Source: Eurostat (2015 b)

During the global economic crisis, Poland managed to avoid growing inequality. From 2008 to 2015, the Gini coefficient, which measures income inequality, declined from 32% to 30.6%. Therefore, due to the growing inequality in Europe, Poland now has lower income inequality than the average for the EU 28.

Table 2: GINI index

	2008	2009	2010	2011	2012	2013	2014	2015
<b>EU 28</b>	-	-	30.5%	30.8%	30.5%	30.5%	30.9%	31%
<b>Poland</b>	32%	31.4%	31.1%	31.1%	30.9%	30.7%	30.8%	30.6%

Source: Eurostat (2015 b)

Moreover, in contrast to the other EU28 member states, the rate of people at risk of poverty and social exclusion in Poland has decreased. As presented in Table 3, the percentage of people at risk of social exclusion sank

from 30.5% in 2008 to 23.4 in 2015. However, it is worth noting that the rate of people in extreme poverty grew (see Table 4) and that poverty among the working population was ca. 2% higher than the EU average and has been slightly increasing since 2012 (see table 5).

*Table 3: People at risk of poverty or social exclusion; percentage of total population.*

	2008	2009	2010	2011	2012	2013	2014	2015
<b>EU 28</b>	-	-	23.7	24.3	24.7	24.5	24.4	23.7
<b>Poland</b>	30.5	27.8	27.8	27.2	26.7	25.8	24.7	23.4

Source: Eurostat (2015 c)

*Table 4: People living in extreme poverty (the subsistence minimum).*

	2008	2009	2010	2011	2012
<b>Poland</b>	5.6%	5.7%	5.7%	6.7%	6.7%

Source: Central Statistics Office (GUS)

*Table 5: Working population at risk of poverty in EU28 and Poland; percentage of total population.*

	2008	2009	2010	2011	2012	2013	2014	2015
<b>EU 28</b>	-	-	-	7.7	8.2	8.4	8.3	8.7
<b>Poland</b>	11.6	11.0	11.4	11.1	10.4	10.7	10.6	11.2

Source: Eurostat (2015 b)

The “extreme poverty” and “Working population at risk of poverty” rates show that even with positive economic and social indicators, the most vulnerable groups have borne the brunt of the crisis. This can be seen by analysing the target groups of this study: the unemployed, migrants and disabled people.

The unemployment rate in Poland increased gradually from 7.1% in 2008 to 10.3% in 2013 and started to decrease in 2014, reaching 9% (Eurostat). The worst ranking was the condition of unemployed people under

25 years old, for whom unemployment was 17.2% in 2009 but gradually increased to 27.3% in 2013. In 2014, it decreased to 23.9% but was still above the EU28 average (with Portugal, Cyprus, Italy, Croatia, Spain and Greece being the only countries with youth unemployment rates exceeding those in Poland) (Eurostat).

When writing about the Polish labour market in times of crisis, it is necessary to draw attention to the increasing number of temporary and civil law contracts, which do not guarantee full protection of workers. The precise numbers are unknown, but an estimated one out of six Polish workers is employed on a civil law contract, equalling approximately 1.6 million employees (Kowalski 2014).

The incentives for employers to hire people with disabilities in Poland are boosted by the quotas, penalty system and other legislative solutions and measures aimed at increasing the self-employment opportunities among people with disabilities. However, when looking at the statistics, one can see that these measures are ineffectual. At the EU level, about 47% of persons with disabilities are employed, in comparison to 72% of persons without a disability. The activity gap amounts to 23.5% in all EU countries, whereas it is even higher in Poland and reaches 35.6%. This problem intersects with the gender gap because the activity rate of disabled women is even lower than that of disabled men (Grammenos 2013). The percentage of persons with disabilities at risk of poverty or social exclusion is at the highest level ever [in Poland], at 35.2%". (compared to the average of 30.5% in the EU). One reason is the low employment rate among disabled persons. This is the result of both the general labour market conditions and the few employment opportunities for disabled persons in Poland. Thus, people with disabilities may be partially excluded from the benefits enjoyed by the rest of the population from the GDP and salary increases.

Emigration is a more dominant phenomenon in Poland than migration. An estimated 1.8 million Poles live in the other EU member states. During the economic crisis, the number of Poles in other member states was relatively stable until 2011, when it started to rise (see: table 6).

*Table 6. Number of emigrants from Poland in the other EU member states, in thousands*

	2008	2009	2010	2011	2012	2013
Number of migrants to the other EU member states	1820	1690	1607	1670	1720	1789

Source: Central Statistics Office (GUS, 2014)

Despite the growing level of returning migrants, the migration balance is still negative. The issue of migration has been evident in public discourse for the last several years. The emigration of youth to other EU countries has been, first and foremost, regarded as part of a “demographic crisis” in Poland. The very low fertility rate in Poland (1.32 in 2014 compared to 1.58 for the EU28, according to Eurostat) accompanied by the high level of emigration has been perceived as catalysing the shrinking and ageing of the Polish population, economic problems, difficulties in providing care services and instability of the pension system (CEED 2015). Secondly, the opposition (especially the right-wing party Law and Justice, which was in parliamentary opposition during 2007-2015) has used the high number of emigrating young Poles, in particular to the UK, to prove the ruling party’s failure to promote growth and social stability.

Immigration to Poland is very low compared to other EU countries. According to the Office for Foreigners, 121,219 foreigners received a residency permit in Poland in 2013, which is 0.3% of the Polish population. Thus, immigrants in Poland are a marginal phenomenon (Konieczna-Salamatin 2015). Among the immigrants, the largest groups are of Ukrainian, Vietnamese, Russian and Belarusian origin. However, the information on the number of foreigners holding residence permits is an incomplete picture of immigration to Poland. Many foreigners from outside the EU come to work in Poland for a relatively short time.

Compared to other EU countries, the number of refugees seeking asylum in Poland is low, and the share of accepted requests is below 3% (6621 requests in 2014, of which 262 have been accepted) (see: Table 7).

Table 7. Submitted and accepted requests of refugees seeking asylum in Poland, 2007-2013

	Request submitted	Request accepted
2007	10048	180
2009	10587	133
2011	6887	153
2013	15253	213

Source: Office for Foreigners (2015).

### Unemployment

Poland’s primary means of addressing labour are the Constitution of the Republic of Poland and the Labour Code (Act of 26 June 1974)<sup>2</sup>. As Article 24 of the Constitution states: “*Work shall be protected by the Republic of Poland. The State shall exercise supervision over the conditions of work.*” However, the Polish labour market became increasingly divided into regular employed and the unemployed as well as vulnerable workers, who are not subject to the labour legislation. This is clear when looking at the impact of the anti-crisis solutions on employees. Although Poland was only slightly affected by the economic crisis, its impact on the labour market was significant. As stated before, unemployment—especially youth unemployment—rose, and growing numbers of people were forced to work on “civil contracts”, deprived of labour and social security rights, including unemployment benefits if they lose their job. The government has introduced two so-called “anti-crisis” packages protecting employers rather than employees, which has resulted in the outbreak of conflict in social dialogue because employees, precarious workers and the unemployed were paying the price for the crisis (Theiss et al. 2017). The austerity measures included cut funds for public employment services, including unemployment benefits, as well as salary freezes for some groups of public-sec-

2 The future of this act is unknown, since the "codification commission" consisting of scientists, politicians and social partners is working on new legislation. The new code should be presented in March 2018. It could probably change Polish labour market legislation completely (e.g., by abolishing all contracts other than working contracts and proposing changes to leave and vacation as well as new rules on social dialogue).

tor workers. The government has also introduced a more flexible system of public unemployment services. Additionally, the state introduced some non-austerity measures, like the possibility of combining income from work with social assistance benefits (for those who signed so-called social contracts) and regular increases in the minimum salary.

The liberalisation of labour legislation has not carved out a new direction. In post-communist countries, the labour market is marked by a weak sense of class interests, so employees do not organise themselves, especially in the private sector. Hence, without strong representation, their voices have no meaning during negotiations (Ost 2000). Moreover, according to some scholars, the EU has exported a more “market-radical” variant of neoliberalism to its new member states (Bohle 2006). Therefore, after the transformation of 1989’s so-called liberal “shock therapy”, consensus dominated Polish public policy. When making international comparisons, the Polish model of social policy is often classified as minimalistic, liberal or hybrid, with certain privileged groups in the labour market (Szelewa 2014; Cerami 2008). Thus, the Eastern European model could be called “flexi-insecurity” (Meardi 2012).

The representatives of stakeholders and grassroots organisations interviewed for the project<sup>3</sup> also emphasised these aspects. They most often stated that the economic crisis did not affect Poland directly, and they did not refer to the legislation on this matter. Fights with the unemployed for a fairer labour market were often perceived as a continuation of a long liberal Polish transition after 1989. However, the results of the global economic crisis and the Polish slowdown are notably headed in both positive and negative directions regarding work. Firstly, the level of solidarity has grown. Organisations are open to new groups; trade unions fight for non-workers’ rights, and other organisations focus on the most vulnerable groups of unemployed (like women and the poor) increasingly often:

*“We answer to all the changes connected to flexibilisation and precarisation; for us, an employee is each person who sells their work”.<sup>4</sup>*

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3 Based on the TransSol research project’s tasks, we carried out 30 in-depth interviews with representatives/participants of transnational solidarity organisations (TSOs) in Poland, from selected community settings from each of TransSol’s target groups (disabled, unemployed and migrants/refugees).

4 Interview conducted on 18th October 2016.

They also have more members than before. Organisations reported increases in their sense of solidarity with other groups in the country and abroad. However, this points to the coexistence of economics and migration as well as the fact that the extreme right has used the crisis to decrease solidarity at the ethnic borders:

*“From my perspective, those crises are linked. The extreme right redirects crises into xenophobia. All that the economic crisis has changed positively regarding the economy and solidarity is now being lost. Solidarity is decreasing and limited only to ethnic boundaries. From our perspective it is a disaster because it literally replays the 30s”<sup>5</sup>.*

Finally, the lack of dialogue is a significant problem from the perspectives of Polish stakeholders and other grassroots organisations. They focused on the need to make a real influence with their policies. Also, they emphasised how they are not treated as real partners, and although their voice is heard, their ideas are not taken into account.

### *Legislation Changes*

The main act regulating matters related to unemployment is the Law on Employment Promotion and Labour Market Institutions of 20 April 2004<sup>6</sup>. In Article 1, the act defines the tasks of the State in the fields of employment promotion, unemployment impact relief and unemployment prevention. Unemployment policy underwent several changes in Poland. In 2009, under the Act of 19 December 2008 amending the Act on Employment Promotion, the duration of unemployment benefits was shortened from 18 months to 12 for those living in the areas with the highest unemployment rates (Kłos 2008). Moreover, the generosity of the system was further shrunk by reductions in public employment funds. Firstly, the funds for public employment (guaranteeing service for persons seeking a job) were significantly cut in 2011. Then, funding for vocational activation was reduced (part of the Labour Fund was unfrozen in 2012).

In turn, the Employment Office reform in 2014 (based on the Act of 14 March 2014 amending the Act on Employment Promotion and Labour Market Institutions) introduced some new rules. Through data collection

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<sup>5</sup> Interview conducted on 18th October 2016.

<sup>6</sup> In short: Act on Employment Promotion.



and profiling of unemployed persons, those who were out of work were divided into three categories. The first category includes the active unemployed who do not need any specialised help and only need access to job offers. The second group encompasses the unemployed requiring support who are willing to participate in training or internship programmes. The third group includes the unemployed who are not integrated into the labour market; that is, people in danger of social exclusion as well as those who, of their own choice, are not interested in getting a job or who work within the shadow economy. These selective measures deteriorate the positions of some groups of unemployed on the labour market. In turn, the accompanying changes could improve the situation of certain groups. For example, the period during which an employment office is required to find a job, an internship or a qualification development offer for the young unemployed has been reduced from 6 months to 4. Moreover, employers hiring unemployed individuals under the age of 30 who were referred from an employment office are exempt from paying into the Labour Fund and the Guaranteed Employee Benefits Fund for 12 months. They can also receive a refund of social security contributions and a subsidy for the remuneration of the unemployed individuals they hire. Similar privileges are offered to those hiring an unemployed person age 50+. This reform has also introduced new kinds of vouchers and activation benefits, like a grant for telework, a settlement voucher and training programmes. As for the unemployment benefit, the biggest issue is the low rate of persons entitled to it. To be entitled to the unemployment benefit, claimants (Polish, EU, EEA or Swiss citizens) must fulfil many conditions. Among them are requirements to be involuntarily unemployed, registered with the employment agency and capable of working; to not be receiving any rehabilitation, sickness, maternity or child allowances; and to have worked for at least 365 days in the last 18 months for at least minimum wage. Due to these strict conditions, only 14.1% of unemployed people are eligible to receive benefits – among the total number of unemployed registered at the local labour offices, 85.9% were unemployed without the right to unemployment benefits (GUS 2016). In the judgement of the Administrative Court in Łódź of 1 January 2014 (III Sa/Łd 116/13), the court dealt with the restrictive nature of the provisions regulating entitlement to the unemployment benefit. The court ruled that a failure to comply with the requirements set out in the Act on Employment Promotion excludes the possibility of obtaining the unemployment benefit. The provisions of the act which regulate the terms and conditions of entitlement to unemployment benefits

are mandatory and do not allow for discretionary decisions. Even when an unemployed person is a few days short of fulfilling the statutorily required period of employment, the authorities are bound by law to refuse the benefit.

Moreover, according to the Act on Employment Promotion, an unemployed person is obliged to appear at the appropriate local labour office on the indicated date to confirm his or her readiness to work; otherwise, the person is no longer entitled to the status of unemployed person and loses privileges related to that status. Failure to appear at the local labour office without a justifiable reason and failure to inform the relevant office about the reason for the absence within seven days from the day of the absence will result in depriving that person of the status of unemployed person for a period of 120 days in case of first non-appearance (failure to appear), 180 days for the second non-appearance and 270 days for the third and each subsequent non-appearance. With this in mind, the Administrative Court in Poznań expressed in the judgment of 7 August 2013 (IV SA/Po 477/13) that a lack of financial resources for journeys to the local labour office in order to confirm readiness to work does not constitute a justifiable reason for failing to observe this obligation. The court adjudged that the appeal by persons concerning the administrative authority to deprive them of the status of unemployed persons cannot be upheld. In the court's opinion, a 'justifiable reason' for non-appearance at the appropriate local labour office is one which could not have been foreseen or which was caused by an unemployed person. Moreover, it has to be a real obstacle; the case law recognises the following: sudden illness, unexpected interruptions in public transport or other sudden events like fire or flood. Unjustifiable reasons must in all circumstances be caused by the unemployed persons, even if only as a result of their recklessness or negligence. According to the court, the unemployed should organise their personal matters so that they appear at an appropriate local labour office on a particular date. Lack of money cannot be the unforeseen reason for non-appearance.

Even though the government effectively denied the existence of an economic crisis in Poland, it introduced two "anti-crisis" packages to avoid the negative consequences of an economic slowdown. The first one was the Law of 1 July 2009 to mitigate the effects of the economic crisis for employees and entrepreneurs in gainful employment from 2009 to 2011. The second (which is permanent) is the law on the amendments to the 11 October 2013 law on specific regulations related to job protection. Contrary to the first anti-crisis package, the second one was introduced with-

out the accordance of all social partners. Trade unions suspended their participation in the Tripartite Commission, which weakened workers' role in the creation of the new rules. According to trade unions, the Polish government was not truly engaged in social dialogue (Gardawski 2014). In October 2015, the new Council of Social Dialogue started its work. Anti-crisis packages have a substantial impact on the labour market. In general, they tend to protect existing jobs and support employers, but they have rather improved the situation of employers at the expense of workers (Theiss et al. 2017). The negative consequences for workers include the possibility of introducing work stoppages for economic reasons, reductions in working time and extensions of reference periods, meaning the elimination of overtime in practice, which in turn will result in lower wages. Moreover, according to the second package, employment conditions can be changed without the individual consent of the concerned employee.

Another critical issue in the Polish labour market is the increase of civil law contracts. Under civil law contracts workers are deprived of labour rights such as, among others, unemployment benefits and paid vacation. Due to the popularity of these kinds of contracts and their negative impact on labour law status, they are often called “junk contracts” in Polish debate. They cause a sort of duality (two different statuses of employees) in the Polish labour market. On the one hand, there are fully protected employees with labour contracts regulated by the Labour Code, and on the other hand, persons often work under the same conditions but are deprived of basic rights. In 2012, trade unions (All-Poland Alliance of Trade Unions) submitted a motion to the Constitutional Court to examine whether the impossibility of joining trade unions by persons performing paid work, including people on civil law contracts and the self-employed, was consistent with the Constitution. In a judgement issued on June 2, 2015 (Case K 1/13), the court ruled that the freedom to create and associate with trade unions under the Constitution should include all workers, not only those within the meaning used in the Labour Code. This means that persons working on a non-employment basis, such as under civil law contracts, will have the right to establish and join trade unions. It could be concluded that by broadening the category of employees, the Constitutional Court has thus expanded solidarity to all persons performing work, regardless of the type of contract. Although it does not directly refer to solidarity, this is part of the principle evoked in article 20 of the ruling, which states, “*A social market economy, based on the freedom of economic ac-*

tivity, private ownership, and solidarity, dialogue and cooperation between social partners, shall be the basis of the economic system of the Republic of Poland". However, the employees on civil contracts, who can now be members of trade unions, are still deprived of employment rights (like social security, etc.) but have the right to collective disputes and to partake in strike actions. After this judgement, the Polish legislation is expected to undergo some revolutionary changes in the near future to give employees on civil law contracts some new powers.

### Disability

In Poland, legislation concerning people with disabilities is based on the principles of non-discrimination, integration and equal opportunities. Article 32 of the Polish Constitution stipulates that "*all persons shall be equal before the law and shall have the right to equal treatment by the public authorities and that no one shall be discriminated against in political, social or economic life for any reason*".

These principles also appertain to anti-discriminatory measures and actions regarding persons with disabilities. The Constitution provides particular rights to ensure that persons from vulnerable groups, such as the disabled, shall enjoy equal opportunities to social security and access to health protection and special health care as well as ways to ensure their subsistence, adaptation to work and social communication. In Art. 67, the Constitution also stipulates the right of disabled persons to social security. It states that "*a citizen shall have the right to social security whenever incapacitated for work by reason of sickness or invalidism as well as having attained retirement age*" and that "*a citizen who is involuntarily without work and has no other means of support shall have the right to social security*".

In 1996, a general anti-discrimination provision concerning employment relations was incorporated into the Labour Code of 1974, Article 11.3, for the first time. Since 1 January 2002, Article 11.3 reads as follows: "*Discrimination of any kind, direct or indirect, in employment, in particular on the grounds of sex, age, disability, race, nationality, convictions, especially political or religious, as well as union affiliation, shall be inadmissible*".

However, regardless of existing legislation, social indicators show that Poland is far removed from full and effective inclusion of the disabled.

They constitute 12.2% of Polish society and are among the most vulnerable and exposed to discrimination and social exclusion (Bojarski 2016). Although the employment rate and activity rate have been increasing slightly since 2007, they are still lower than the rates among able-bodied people. According to 2013 data, the employment rate of people aged 20-64 in Poland was 69.9%, versus 44.2% among people with moderate disability and 22% among people with severe disability (EUSILC UDB 2013). Their situation on the labour market is also difficult because they have much lower levels of education than the rest of society (Wapiennik 2016). The risk of poverty considerably increases for people living in households with at least one disabled member. In 2013, the poverty rate was 23.1% in households without disabled persons, 28.8% if a person with a moderate disability is in the household and 35.3% if that person is severely disabled (EUSILC UDB 2013). According to the Central Statistics Office in 2014, 10.8% of households with at least one disabled member lived below the extreme poverty line, as compared to 6.5% of households without disabled members. If a family has a disabled child, their situation is even worse: 14.6% of such families were living below the extreme poverty line in 2014, and nearly 30% were below the relative poverty line (GUS 2015).

Although the situation of disabled people is difficult in comparison to other groups, not only national and local governments but also NGOs perform actions in their favour. The NGO movement is also an answer to the insufficient realisation of legislation and the invisibility of disabled people in different spheres of life. From NGOs' perspectives, their activity is necessary to attain their goals, such as improving the quality of life of the disabled and their families. Moreover, international NGOs' activities help to demonstrate how the government's declarations are not in line with reality: *"it could give the opportunity to show the international public opinion how badly Polish disabled people and their caregivers are treated by the state"*.<sup>7</sup> As in other studied fields of vulnerability, the representatives of grassroots disability organisations did not directly perceive the crisis. They stated that some of the hardships their organisations are currently facing were caused *not* by economic preconditions but rather by inadequate socialisation, education and social attitudes among society and the families with the disabled person as well as from a *"permanent lack of*

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7 Interview DP1, 3.10.2016.

*positive response from the state to the drama of this group*”<sup>8</sup>. But they draw attention to another direct problem: the funds are cut (whether the crisis exists or not, it serves as the justification), which reduces solidarity between grassroots organisations, mainly because there are fewer resources to divide between them. Before, they cooperated; now, they often remain in conflict.

### *Legislation Changes*

The most important provisions concerning the disabled and the labour market are included in the Act on Vocational and Social Rehabilitation and Employment of Disabled Persons of 27 August 1997. The act does not refer directly to the value of solidarity (because it contains no principles), but it does guarantee some of the basic rights of disabled persons in the area of vocational and social rehabilitation, such as the right to attend occupational therapy workshops, to reduced work hours without loss of remuneration, to training and to special leave from work to participate in rehabilitation courses. It also provides some tools to promote an active attitude among such persons and supports their employment, particularly in the open labour market (Gwiazdowicz 2003). Moreover, the employment of people with disabilities in Poland is encouraged above all through the quota (and penalties) system. A basic assumption, which has made disability a collective responsibility, is that every employer with 25 or more employees should employ at least 6% disabled people in the company. Employers who fail to meet this requirement (with some exceptions) have to pay defined amounts monthly to the State Fund for the Rehabilitation of Disabled Persons.

On 6 September 2012, Poland ratified the United Nations Convention on the Rights of Persons with Disabilities. Ratification of the convention was possible through significant changes in Polish law. Two of the most important were the amendments to the: Act on Occupational and Social Rehabilitation and Employment of People with Disabilities, and the adoption of the act that implements certain provisions of EU legislation on equal treatment. The first supports the employment of people with disabilities, and the second introduces the obligation for employers to provide

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8 Interview DP1, 3.10.2016.

reasonable accommodation for people with disabilities and amendments to the provisions concerning the accessibility of means of transport (new rules apply for trams, buses and subways).

The main debate in Poland has been around the refusal to ratify the Optional Protocol to the Convention, which allows individuals or organisations to take a complaint to the Committee on the Rights of Persons with Disabilities when their rights have been breached. Although a Polish ombudsman and 180 NGOs called the Polish government to ratify it, which 88 countries have already done (RPO 2016), the government ignored this call and answered that “*persons with disabilities have the opportunity to assert their rights before the Polish courts*”. Moreover, the minister of family, labour and social policy noted that ratification of the protocol could lead to significant changes in the rules on legal incapacity and on marriage for people whose disabilities come from mental illness or mental retardation as well as on abortion regulations (WatchdogPFRON 2016).

The courts have become an important setting for the application of disabled rights. In general, they recognise the rights of people with disabilities. In the judgement of the Supreme Court in Poland of 18 April 2000 (II ZP 6/00), the court settled a dispute between employees with moderate and severe disability and the company which hired them. According to the Act on Rehabilitation, the working time of employees with a moderate or severe disability cannot exceed 7 hours per day or 35 hours per week. These are the normal, full-time working hours for disabled employees, in other words. Shorter working hours should not affect the amount of remuneration for employees with disabilities. The number of working hours for each employee was 7 hours daily and 35 hours per week. Their salary was fixed on an hourly basis; hence, their remuneration was lower than that of employees without disabilities (who work 8 hours a day and 40 hours per week). They demanded that the employer compensate the lower remuneration for the entire duration of employment, claiming that they would receive an increased salary if they were able to work eight hours a day. In the judgement of the Supreme Court of 6 July 2005 (III PK 51/05), the court ruled that an employee with moderate or severe disability who works over seven hours a day is working overtime; therefore, every hour over 7 hours per day for such a person should be paid as overtime. Even though a disabled person can work 8 hours per day (like persons without disabilities), they should receive a statutory pay premium for this additional hour, which adds to the employee’s regular wages, in accordance with the relevant provision of the Polish Labour Code.



In its judgement of 12 November 2014 (I PK 74/14), the Supreme Court considered whether it is permissible for an employer to terminate a disabled employee's employment contract due to the employer's failure to provide reasonable accommodation for the employee to enable them to work. In this case, a disabled employee appealed to the court against termination of his employment contract by the employer. The reason for termination was a lack of possibilities to continue the employment contract with this worker (a warehouseman), which requires night-shift work. The employee had a disability, and the applicable provisions prohibit night work for persons with moderate or severe disability. The Supreme Court decided that a dismissal because of an inability to continue the employment relationship with a disabled employee was unlawful. Justifying its opinion, the Supreme Court referred to, among others, the "principles of social coexistence", invoking the difficult family situations of the disabled. In this case, solidarity with the disabled employee and his family could be a default principle. The court also evoked the provisions of Directive 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) and the Polish regulations which impose the obligation for employers to provide reasonable accommodation in the workplace. The court recalled that the purpose of this directive is to establish a general framework for combating discrimination as regards employment and occupation to put the principle of equal treatment into effect in the member states. This means that employers should take appropriate measures, where needed in particular cases, to enable a person with a disability to have access to, participate in or advance in employment, or to undergo training unless such measures would impose a disproportionate burden on the employer. The European Court of Justice (ECJ) confirmed this principle in several judgements, such as *Navas* (C-13/05). In this verdict, the ECJ held that the prohibition against discrimination on the grounds of disability contained in Articles 2(1) and 3(1) (c) of Directive 2000/78 precludes dismissal on grounds of disability, which, in light of the obligation to provide reasonable accommodation for people with disabilities, is not justified by the fact that the person concerned is not competent, capable and/or available to perform the essential functions of the post. These principles of European law have been implemented into Polish law by the Act on Vocational and Social Rehabilitation and Employment of Disabled Persons. Article 23a states that an employer is obliged to provide necessary and reasonable accommodation for disabled employees and persons participating in the recruitment



process or undergoing training, internships, vocational training and/or apprenticeships. Finally, referring to the principle of equal treatment, the Constitutional Court, in its ruling K 38/13 from 21 October 2014, stated that offering higher benefits for people caring for people that became disabled before the age of 18 (or 26 years old) than for those caring for persons who became disabled in adulthood is incompatible within the constitution. However, this ruling (until March 2017) has not yet been fulfilled by the government.

### Migration

According to Article 32 of the Polish Constitution, everybody is equal before the law, including foreigners, and any form of discrimination is forbidden. The Constitution in Article 56 states: *“Foreigners shall have a right of asylum in the Republic of Poland in accordance with principles specified by statutory law. Foreigners who in the Republic of Poland seek protection from persecution may be granted the status of a refugee in accordance with international agreements to which the Republic of Poland is a party”*.

The principles, conditions and procedures for granting protection to foreigners within the territory of Poland are regulated by the act of 12 December 2013 on Foreigners; Act on Granting Protection to Foreigners within the Territory of the Republic of Poland of 13 June 2003. Concerning immigration legislation, the changes between 2008 and 2015 were substantial and had completely changed this domain of law in Poland. The new regulations are much more liberal than the previous ones. It is easier to enter Poland and to obtain permission to reside and to work there, especially for citizens from Eastern Europe. Those modifications were implemented for two reasons: for adaptation to EU legislation and for adjustment to actual situations (especially political and military) in Eastern Europe.

One can say that two aspects of solidarity may be considered in the case of immigration to Poland. The first one is solidarity with Eastern post-communist countries as well as descendants of Poles. This element is a part of, for example, *Polish Foreign Policy Priorities 2012-2016*, which emphasises the need for *“openness and solidarity with the East”* and later states that *“Only by acting together can one hope to achieve tangible re-*

*sults, which for Poland would represent the embodiment of the idea of solidarity”.*

Thus, it is easier for citizens from Eastern Europe to obtain permission to temporarily reside and work in Poland, in this case citizens from Belarus, Georgia, the Republic of Moldova, the Russian Federation, the Republic of Romania and Ukraine. Moreover, repatriation exists as a form of acquiring Polish citizenship. The collapse of the communist system resulted in waves of Polish nationals who, due to deportation or other persecution on the grounds of nationality and political opinion, had not been able to settle in Poland. Parliament decided to limit the territories from which persons can be repatriated to Poland to the Republics of Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan as well as Asian areas of the Russian Federation. The solidarity with the eastern countries is also in the numbers of Polish NGOs working in the field of solidarity in countries undergoing democratic transition, including organisations like the Foundation of International Solidarity (which had more than 300 projects for eastern countries in 2012–2016) and the Open Dialogue Foundation.

The second aspect (the refugee crisis) is considered here in the context of human rights and solidarity with the other EU member states, which have to accept immigrants from third countries. In recent years, Polish debate and attitude towards different groups of immigrants has been changing. In the European Social Survey from 2014, Poles were more pro-immigration than other European countries; 63.4% of them agreed or strongly agreed that the government “should be generous judging applications for refugee status”. In comparison, 38.8% of Germans and 60.3% of Swedes agreed with that statement. But Poles were not so welcoming to Muslims – only 34.4% of Poles agreed that Muslims should be allowed to come to Poland (Bachman 2016). According to the Polish Public Survey Centre, attitudes towards migrants started to change after the refugee crisis. In September 2015, 46% of Poles agreed or strongly agreed that Poland should receive refugees arriving from the Middle East and Africa. In April 2016, 25% of respondents agreed. At the same time, Poles have constantly favoured immigrants coming from Ukraine. In September 2015, 62% agreed or strongly agreed that Poland should grant international protection to refugees from the Ukrainian armed conflict areas. In April 2016, it was 60% (CBOS 2016). And the Ukrainians have been the largest group of immigrants to Poland over the last years. About a million Ukrainians worked in Poland throughout 2015 (legally or illegally). However, because of the

circular nature of this migration and the short-term character of their work, only 500,000 resided in Poland at the same time. (Chmielewska et al. 2017). Immigrants from outside the European Union do not view Poland as an attractive destination; many migrants still consider Poland a transit country or a gateway to the West and usually cross the eastern Polish border from Ukraine or Belarus.

As for refugees, the opinion of Poles was similar to that of the Polish government. In September 2015, Polish Prime Minister Ewa Kopacz accepted the EU quota for 7,000 asylum seekers in Poland. However, after the Law and Justice Party won the elections in October 2015 and after the Brussels terrorist attacks in March 2016, the new government refused to accept refugees. Prime Minister Beata Szydło stated, *“I say very clearly that I see no possibility at this time of immigrants coming to Poland”*. In turn, after calls for Poland to show European solidarity in the face of the refugee crisis, the Polish minister of foreign affairs answered, *“You have to be reminded that for every euro we take from the EU, 80 cents go back to Western Europe”* (Bachman 2016).

It is worth remembering that Poland is largely characterised by emigration (including an outflow of almost two million people, especially to the other member states). After World War II, Poland became a very homogeneous country, with a small rate of immigrants, who represent only 0.3% of the total Polish population. This national and religious homogeneity (more than 87% of Poles declare themselves as Christians) of the state could be the reason why a large percentage of citizens are not favourable to immigrants and refugees.

It is unsurprising that many of interviewed members of grassroots organisations and stakeholders focused on migrants from Ukraine. However, they often extended help to migrants from the former Soviet Union (Belarusians, Russians, Chechens, etc.) as well. This reflects the proportion of immigrants in Poland by origin. But organisations are open to everyone in need, which indicates how they realise the value of solidarity: *“Our organisation aims to help everyone living or residing outside of his or her homeland... we do not restrict ourselves to any group”*.<sup>9</sup>

Neither the economic crisis nor migration crisis was perceived by the organisations' members as being important in Poland; consequently, the crises did not strongly affect their work. However, the representative of

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9 Interview MP4, 4.10.2016.

one organisation noticed that along with the refugee crisis, a large number of Poles who had hostile attitudes towards migrants from Africa shifted their hostility towards organisations supporting refugees and migrants. The political climate surrounding perceptions of grassroots organisations is unfavourable: *“What is about solidarity is the solidarity between countries. This results in the need for providing help to the foreigners who are here [in Poland]. There is this narrative that it’s better to help people abroad, where they live, in the areas affected by war. But we think such a narrative is crypto-xenophobic. We help people integrate into Poland”*.<sup>10</sup> Some organisation representatives mentioned that they are in contact with public institutions and exchange some resources and information. However, they believe that this interaction on the side of the public institutions is just a formality. They have been invited to many meetings or asked to send their opinion to the public offices, but their voice is always unheard or ignored: *“Our organisation often receives letters when legislators are working on new legislation regarding migrants; many other organisations also receive these letters. The letters ask us to give our comments about the changes/new legislation. However, I do not reply to any of them anymore. When we received this letter for the first time, we were very engaged in revising it, we wrote arguments and counterarguments, but all this was for nothing”*.<sup>11</sup>

### *Legislation Changes*

In December 2013, the Polish Parliament adopted the new Law on Foreigners, which replaced the former Act on Foreigners from 13 June 2003. The new act comprehensively regulates all issues connected to foreigners residing and working in Poland, and adjusts the Polish law to the EU directives, specifically:

- Council Directive 2003/109/EC, 25 November 2003 concerning the status of third-country nationals who are long-term residents;
- Directive 2011/95/EU from the European Parliament and the Council (13 December 2011) on standards for the qualification of third countries or stateless persons as beneficiaries of international protection, for

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<sup>10</sup> Interview MS5, 13.11.2016.

<sup>11</sup> Interview MP4, 4.10.2016.

a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted; and

- Directive 2011/95/EU of the European Parliament and the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

The new act names the types of residence permits requested by foreigners and lists the rules on how to obtain them (temporary and permanent residence permit, long-term EU residence permit, residence permit for humanitarian reasons and permit for a tolerated stay). A year after this new act came into force, the Office for Foreigners in Poland published a brochure summarising the year of its application. Comparing the last year of the old act (13 June 2003) and the first year after the introduction of new provisions, 76% growth in all pending applications related to the legalization of stay could be seen (45,654 compared to 80,250). Among all of the submitted requests, foreigners applied for the following types of residence permits (in order from the highest to the lowest number of applications):

- temporary residence permit (a 71% increase compared to the last year of validity of the old act);
- permanent residence permit (a 140% increase); and
- EU long-term residence permit (a 27% increase).

Under the new act, most of the applications came from citizens of Ukraine (52%). “Others” accounted for 28%, followed by citizens of Vietnam (6%), China (5%), Belarus (5%) and Russia (4%). Under the previous act, the largest number of applications was submitted by citizens from “other” countries (41%).

Due to the short validity of the new Act on Foreigners (the new act has only been effective since May 2014), few judicial decisions address the new legal systems. However, the administrative courts have adjudged several cases in which foreigners appealed against the administrative decision to deny them refugee status, in accordance with the provisions of the act. In one of the most crucial rulings from October 2016, the Administrative Court in Warsaw, referring to the equal treatment principle, upheld the complaint of the ombudsman for the rights of the child and revoked the denial of the family benefit for a person who had been given refugee status.

## *Challenges for Solidarity in the Country of “Solidarity”*

The economic crisis and refugee crisis are tests of solidarity for European societies. The results are never unambiguous, as has been the case in Poland. The legislation and jurisdiction in the three fields of vulnerability have changed direction. On the one hand, the country that denied the crisis nevertheless adopted “anti-crisis” packages and legislation that mostly affected the unemployed and precarious workers. These were a continuation of liberal changes that have been introduced since 1989. Benefits were cut, while courts ruled in favour of refusing some social rights. On the other hand, legislation on migration and disability (often implementing the European Union’s directives) has become increasingly inclusive, and jurisdiction has often taken into account the values of equality, inclusiveness and solidarity prescribed in the law.

However, reality rarely goes at the pace of legislation. Firstly, the jurisdiction has sometimes been inconsistent, and even though some provisions have existed (like the United Nations Convention on the Rights of Persons with Disabilities), there is no possibility to assert the rights before international organisations, courts or institutions.

Both the extremely polarised public discourse and the government’s attitude (especially regarding migration) have often failed to guarantee solidarity between different groups. According to the interviewed representatives of grassroots organisations (and confirmed by the polls), Polish public opinion is highly divided and often far removed from solidarity, especially with certain groups of foreigners. Even though the economic crisis has strengthened the sense of community and responsibility for all members of society – beyond social classes and borders – the discourse around the refugee crisis has partially squandered this sense by limiting solidarity to ethnicity. Moreover, a lack of real dialogue – as emphasised by the interviews in all of the studied fields – has resulted in a less inclusive society, regardless of legislation. After various crises, Poland has become a country of “Solidarity without solidarity. The levels of solidarity and inclusiveness are not ambiguous. Legislation and jurisdiction are differentiated, depending on the field and time, and NGOs and other grassroots organisations are often weak and divided due to having insufficient funds, but still they have managed to expand their activity to new beneficiaries and members.

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